



FINDING OF INQUEST

An Inquest taken on behalf of our Sovereign Lady the Queen at Adelaide in the State of South Australia, on the 17th, 18th, 19th, 20th, 23rd, 24th, 25th and 26th days of March 2009 and the 22nd day of May 2009, by the Coroner's Court of the said State, constituted of Mark Frederick Johns, State Coroner, into the death of Jarrad Delroy Roberts.

*The said Court finds that Jarrad Delroy Roberts aged 10 years, late of 43 Johns Road, Prospect, South Australia died at the Women's and Children's Hospital, King William Road, North Adelaide, South Australia on the 6th day of October 2006 as a result of sepsis (*fusobacterium necrophorum*) complicating right otitis media. The said Court finds that the circumstances of his death were as follows:*

1. Introduction

- 1.1. Jarrad Delroy Roberts died on 6 October 2006 in the Women's and Children's Hospital where he had been taken by ambulance from his home address at 43 Johns Road, Prospect. An autopsy was performed by Dr John Gilbert on 9 October 2006. Dr Gilbert wrote a report which was admitted as Exhibit C64 in which he gave the cause of death as sepsis (*fusobacterium necrophorum*) complicating right otitis media and I so find.

2. Background

- 2.1. The house in which Jarrad Roberts lived was rented by his mother, Michelle Roberts. She and her other child Chantelle Klein, Jarrad's half sister, also lived in the house. Police officers attended at the house shortly after Jarrad's death and gained entry. The house was in an extremely squalid condition. The floors and furniture were covered in a variety of objects and it was difficult to find free floor space in order to

search the house. Much of the house was strewn with rubbish. The house smelt strongly of a combination of urine, faeces and unwashed clothing. Most of the light fittings in the house did not have light globes. In the toilet area the officers could see faeces on the floor and there was no toilet paper. There was a T-shirt lying on the floor in front of the toilet which had faeces all over it. It appeared to have been used instead of toilet paper. The fridge and stove were stained and coated with old food. In the lounge room, the police officers saw a mattress lying on the floor and two or three lounge chairs. There was a television running and the room smelt of urine. The mattress looked to have been recently used and was stained. Clothes carpeted the floors in these rooms. The police located a pigeon in the house and three dogs. The police officers took more than 100 photographs of the interior of the house which were admitted as Exhibit C28b. The photographs show quite clearly that the house was filthy and unfit for human habitation.

3. Jarrad's schooling

- 3.1. In 2006 Jarrad was enrolled in Year 4 at Nailsworth Primary School. He had been enrolled at that school for the whole of his school life. From a very early stage in his schooling he was assessed as requiring special education assistance under the 'Students with Disability' policy. He received additional assistance in the classroom. In Year 2 he was receiving 40 minutes assistance on three mornings per week on basic reading and writing skills. He worked with a one-on-one parent helper for an additional 30 minutes per week. He was assessed as functioning in the borderline range of intellectual ability. From the beginning Jarrad's attendance at school was unsatisfactory. He was frequently absent, and these absences became much worse by the school year in which he died. In fact, in the school year 2006 Jarrad's mid-year report, which recorded attendance and punctuality through to 2 June 2006, recorded that of a total number of possible school days of 76, Jarrad had been absent for 65 and late for 7 of the days on which he did attend. The evidence before the Court shows that Jarrad never attended school at all between that date and the date of his death some 4 months later.
- 3.2. According to Jarrad's end of year school report for Year 1, which was in 2003, Jarrad had made some progress at school that year. However, his report for Year 2 shows that out of a total possible number of school days of 178, Jarrad only attended on 124 days and was late on 34 of those. His report noted that frequent absences from school

had resulted in a lack of continuity in specialist programs which had been put in place for him. Jarrad's report for Year 3 (2005) shows that this trend was becoming worse. In that year, out of a possible number of schools days of 179, Jarrad only attended on 90.5 days and was late on 22 of the days on which he did attend. Again, the teacher commented upon the fact that Jarrad's absences had impeded his achievements during that school year and emphasised the need for regular attendance in the year 2006.

- 3.3. However, as noted above, Jarrad's school attendance in 2006 was extremely poor. In effect, after the first couple of weeks of the school year, Jarrad did not attend at all.

4. The evidence of Chantelle Klein

- 4.1. Chantelle Klein was Michelle Roberts' other child and Jarrad's half-sister. She was 6 or 7 years older than Jarrad and was 16 at the date of Jarrad's death. She gave evidence at the Inquest and said that she, her mother and Jarrad had lived at the Prospect address for 5 to 6 years. She said that male visitors would sometimes stay in the house. Two such visitors were Hillary and Benny. These two men would stay in the house for quite long periods. Ms Klein regarded them as having been a good influence on her brother.
- 4.2. Ms Klein said that she did the cooking in the house because her mother was always in bed. She said that after Hillary and Benny left the household circumstances went downhill. She said this would have started approximately a year before Jarrad died.
- 4.3. Ms Klein finished attending school part way through Year 10. From that time she stayed at home and her time was spent playing games with Jarrad and looking after her mother. Ms Klein said that her mother has post-traumatic stress syndrome and is a recluse. Ms Klein said that when she was younger, she was diagnosed with attention deficit disorder (ADD) and prescribed dexamphetamine by a paediatrician, Dr Harry Nash. She said that Jarrad was diagnosed with ADD when he was little and was also prescribed medication in the form of dexamphetamine and Catapres. She said that Jarrad also had a respiratory ailment called RSV which caused him to be wheezy and require the use of an inhaler.
- 4.4. Ms Klein said that she would take Jarrad to school sometimes and that Hillary and Benny would sometimes assume that responsibility also. She said that Jarrad did not like to stay at school and would become physically upset when required to do so. She

said that he would sometimes come home from school when he was not supposed to. She recalled that people from the school sometimes came to the house.

- 4.5. According to Ms Klein, Ms Roberts did not like being alone and so she did not really want the children to be at school. She added, however, that her mother would send Jarrad to school.
- 4.6. Ms Klein said that after Hillary and Benny left, no cooking was done in the house and the family would have takeaway food for lunch and dinner almost every day. Ms Klein said that people stopped coming to the house. She said the family would not answer the door and in particular that Ms Roberts never liked answering the door. When the phone rang they would not answer it. Her mother did not want people coming in to the house 'because of her nerves and that'¹. She said that after they stopped answering the door to callers, the house became messy. If a person knocked at the front door her mother would tell her not to open it. Ms Klein would go to the shops to buy necessary items, and sometimes her mother would go with Jarrad. Sometimes Ms Klein would go out and stay out late and her mother would have to come and find her. Ms Klein recalled that one of Jarrad's teachers had come to visit the house on occasions. She described the teacher as a nice lady. She recalled going to a meeting at the school in 2005 as a result of which an 'agreement'² made. This document appears in Exhibit C44 and is headed 'Agreement made on 17.10.05 at a meeting attended by Chantelle and Jarrad Roberts and Toni Ballard'³. The agreement sets out undertakings on behalf of the school to provide Jarrad with a friendly environment to work and play and, in turn, Jarrad agreed to attend school and establish a routine in the morning for getting dressed, eating breakfast, cleaning teeth and so on. This agreement was entered into as a result of some of the difficulties in Jarrad's schooling to which I have made reference above.
- 4.7. Ms Klein recalled the meeting at which the agreement was made and said that her mother would not come to the meeting, nor would she go to the school at all. She said that when Ms Ballard came to the house, her mother would not ask her in but would talk to her on the verandah.

¹ Transcript, page 64

² Transcript, page 72

³ Toni Ballard was a teacher at Nailsworth Primary School and gave evidence at the Inquest – I will make further reference to her later

- 4.8. Ms Klein confirmed that she, Jarrad and her mother slept on a futon in the lounge room. She said the house also contained a pigeon and four dogs. She confirmed that sometimes the pets urinated and defecated inside the house and that the pigeon was free to fly around inside the house⁴.
- 4.9. Ms Klein said that Jarrad was generally a sickly child with flu and like ailments. Ms Klein would often have responsibility for taking him to see his doctor, Dr Zuvela. Ms Klein said that Jarrad became sick a few days before he died. She was not sure precisely how many days he was sick for, but said maybe three or four. She said that Jarrad complained of an earache but that it was not really hurting⁵. Ms Klein herself had had an earache recently and had some eardrops left over from that. She said that she used those to put into Jarrad's ear. She noted a yellowish discharge coming from Jarrad's ears about a day before he died. It was running down his neck. The day before he died, according to Ms Klein, Jarrad was talking 'strange'⁶ and it seemed that he did not know who she was. She said that sometimes Jarrad would not get to the toilet in time. According to Ms Klein, her mother said that they would take Jarrad to the doctor the following day.
- 4.10. On the day of Jarrad's death, Ms Klein took Jarrad to a doctor's surgery at the Foundation Health Clinic in Prospect. She said that Jarrad was unbalanced and it was hard to get him into a taxi⁷. The discharge from his ear was continuing. She went with Jarrad and a person called Tim Denton who was staying at the house at the time⁸. She said that at the surgery they had to use a wheelchair. They saw a doctor by the name of Dr Mudaliar who, according to Ms Klein, said that Jarrad's was the worst ear infection he had ever seen⁹. Ms Klein claimed that she asked the doctor whether Jarrad should be taken to hospital and that Dr Mudaliar had said this was not necessary and that they would just have to wait at a hospital to obtain the same treatment that Dr Mudaliar could provide. She said that Dr Mudaliar prescribed Clamoxyl and some eardrops. Dr Mudaliar said that if they went to the hospital they would have to wait for a long time. Dr Mudaliar said that Jarrad would be better in 48 hours and wanted to see Jarrad the following day¹⁰. She and Mr Denton left the

⁴ Transcript, pages 45-46

⁵ Transcript, page 47

⁶ Transcript, page 49

⁷ Transcript, page 50

⁸ I will deal with Mr Denton later in this Finding

⁹ Transcript, page 51

¹⁰ Transcript, page 53

surgery with Jarrad and obtained the Clamoxyl and other medication at the pharmacy next door to the surgery. She described the circumstances of Jarrad's collapse shortly after at the Prospect address. I will deal with that later in this Finding.

5. The evidence of Mr Timothy Denton

- 5.1. Mr Timothy Denton gave evidence at the Inquest. He is a 37-year-old man. He said that he met Chantelle Klein in 2006, in the weeks preceding Jarrad's death. He was staying at supported accommodation in prospect. He had recently been released from prison and was taking medication for a psychiatric condition.
- 5.2. He visited Chatelle's home and met Michelle and Jarrad. He was a frequent visitor in the three weeks before Jarrad's death and slept at the house on a number of nights during that period. He confirmed that the house was a mess and that it stank of urine and faeces. He referred to Michelle Roberts as being too lazy to look after Jarrad¹¹. He was aware that Jarrad had not attended school and thought that the non-attendance had extended for a year and a half at that time. He said that Michelle Roberts wanted Jarrad to stay home and keep her company while Chantelle was out doing whatever she was doing¹².
- 5.3. Mr Denton claimed that he attempted to assist the family to clean up the house but said that the task was too great. He said that they were all sleeping in the lounge and that the house was a 'pigsty'. He claimed that 'no amount of cleaning would have cleaned it'¹³.
- 5.4. Mr Denton confirmed that no meals were cooked in the house and that the kitchen was piled up with rubbish. Take-away food was obtained for lunch and dinner every day.
- 5.5. Mr Denton said that while he was at the house he became aware that dexamphetamine tablets were being used. He asked what they were and Michelle Roberts told him they were dexamphetamine tablets and asked him if he wanted a couple. He agreed¹⁴.
- 5.6. Mr Denton said that Jarrad was unwell for approximately a week and a half before his death. He claimed that he told Michelle Roberts to take Jarrad to the doctor but she

¹¹ Transcript, page 93

¹² Transcript, page 94

¹³ Transcript, page 94

¹⁴ Transcript, page 120

did not do so¹⁵. Approximately three days before his death Jarrad had a discharge coming from his ears and Mr Denton claimed that he decided to arrange for Jarrad to attend a doctor of his own initiative.

- 5.7. In the days leading up to this Jarrad was sleeping all the time and crying. The airconditioner was being turned on and off to accommodate his needs. At first Mr Denton thought that Jarrad might have pneumonia but when he saw the discharge from the ear he realised that it was an ear infection. He said that Jarrad was in pain and that he was not eating but that he was drinking water, probably a litre per day. Jarrad was upset night and day and looked sick and pale¹⁶. He was sick for four of five days before Mr Denton suggested he be taken to the doctor. Then, according to Mr Denton, approximately another six days passed before Jarrad was actually taken to the doctor. He said that Jarrad was given some Panadol. Jarrad was on the bed¹⁷ and was too weak to get up and go to the toilet. Jarrad was helped to stand up and allowed to urinate into a jar.
- 5.8. According to Mr Denton, Jarrad told his mother that he was in pain. He also said Jarrad was sweaty and clammy for the 24 hours before he died¹⁸.
- 5.9. Mr Denton confirmed that on 6 October 2006 he took Jarrad to the doctor with Chantelle. Chantelle did most of the talking at the doctor's surgery. The doctor had asked why they did not bring Jarrad in earlier. The doctor said that Jarrad had an ear infection and prescribed Amoxil. According to Mr Denton, Dr Mudaliar said that Jarrad should be in hospital. Mr Denton said he was in the doctor's surgery for the whole of the consultation¹⁹.
- 5.10. Mr Denton was asked whether it was possible that Chantelle might have been the first person to raise the question of hospital for Jarrad. He said this was a possibility but that his recollection was that the doctor had raised it first and that Chantelle had said that her mother could not afford an ambulance.
- 5.11. Mr Denton said that he himself was taking antidepressant and antipsychotic medications. He gave his evidence in a straightforward manner.

¹⁵ Transcript, page 95

¹⁶ Transcript, pages 96-97

¹⁷ I take this to be a reference to the mattress in the lounge room

¹⁸ Transcript, page 101

¹⁹ Transcript, pages 101-103

6. My conclusions as to Mr Denton's evidence

- 6.1. Ms Roberts was a single woman living in a house with her two children. It would not be expected that she would welcome a person such as Mr Denton, newly released from prison and staying in a supported residential facility known to house people with psychiatric problems, into her house to stay. I do not suggest that Mr Denton caused any physical harm to either Jarrad or Chantelle; although there is some evidence that he wrote a note to Chantelle containing an inappropriate and indecent proposition. There is no evidence beyond that of inappropriate conduct on his part. Indeed, to his credit, he was clearly present at the doctor with Jarrad and had accepted some level of responsibility towards Jarrad for his well-being.
- 6.2. Mr Denton expressed a negative view of Michelle Roberts. He described her as lazy and uncaring towards her children. On the other hand, Ms Roberts, in her evidence, did not appear to be well disposed towards Mr Denton. She described him as a schizophrenic at one stage in her evidence²⁰, in a manner which left me in no doubt that she wished to discredit him. However, this did not prevent her from entrusting Jarrad to his care (admittedly in the company of Chantelle) for the medical visit to Dr Mudaliar when Jarrad was clearly extremely ill. Nor did it stop her from allowing him to live in her house for days at a time.
- 6.3. I accept Mr Denton as a truthful witness.

7. Events after Jarrad's return from the doctor's surgery

- 7.1. Mr Denton said that when he and Chantelle returned to the Prospect address with Jarrad after the visit to the doctor, they took him inside and laid him on the mattress in the lounge room. They gave him the first dose of the liquid Amoxil antibiotic and, according to Mr Denton, very soon after that they noticed that Jarrad was not responding. Mr Denton did CPR and said that Jarrad regurgitated some of the antibiotics²¹. An ambulance was called and Jarrad was taken to the Women's and Children's Hospital.
- 7.2. At the Women's and Children's Hospital extensive efforts were made to revive Jarrad. He was intubated and defibrillated on multiple occasions. Sinus heart rhythm was eventually regained. However, despite fluid loading and inotropes it was

²⁰ Transcript, page 714

²¹ Transcript, page 105

impossible to maintain adequate cardiac output and Jarrad died at 1412 hours on the same day.

8. The evidence of Michelle Roberts

- 8.1. Michelle Roberts was Jarrad's mother. She gave evidence at the Inquest. She is 37 years old.
- 8.2. Ms Roberts said she came from a dysfunctional family. Her mother was an alcoholic. Her father worked at three jobs and consequently was not around for much of the time. When Ms Roberts was a young child her mother would take her to hotels where she would approach men in order to get drinks from them. Ms Roberts would sometimes be under the table while her mother drank with a male acquaintance. She observed many unpleasant and disturbing events during these times²².
- 8.3. At a young age she was raped.
- 8.4. When Ms Roberts was 20 her mother rang her one afternoon to tell her that she had had an argument with her partner²³. She asked Ms Roberts to come around to her house and when asked why, explained that she thought that her partner was dead. Ms Roberts' mother had fired a gun at her partner causing extensive head injuries. Ms Roberts said that she suffered post-traumatic stress disorder as a result of this episode²⁴. She claimed that the following day, after the police had finished at the scene, she obtained keys to the house from the police station. She had the task of cleaning the house after the crime scene examiners had departed. There was blood and other tissue to be cleaned and as a result she was extremely distressed. She claimed that this was a reason why she did not clean houses thereafter.
- 8.5. Ms Roberts' mother was imprisoned for a period but upon her release she played a disruptive part in Ms Roberts' attempt to parent Chantelle. Ms Roberts said that after experiencing behavioural difficulties with Chantelle she consulted paediatrician, Dr Nash, who diagnosed Chantelle as having the condition ADD and prescribed dexamphetamine and Catapres. Some time after this, Jarrad was also diagnosed with ADD by Dr Nash and was prescribed medication for that condition. Ms Roberts said

²² Transcript, page 600

²³ The mother's then partner was not Ms Roberts' father

²⁴ Transcript, page 603

that as a result of her post-traumatic stress disorder she became a recluse²⁵. She confirmed that Hillary and Benny stayed in the house for a time. She denied that she had a sexual relationship with either of them. When asked why they stayed at the house she explained that she had a car and that Hillary and Benny used to drive it. She thought that this was the explanation for their interest in her and her children²⁶.

- 8.6. She explained that in the last couple of years before Jarrad's death she was at times bedridden. She was really scared when someone knocked on the door and claimed to sometimes hide in her bed when she could hear people getting in through her bedroom window and rummaging through the room²⁷. She said that she would only answer the door very rarely and only allowed Jarrad or Chantelle to answer the door sometimes.
- 8.7. She felt she could not cope. She knew she needed help but did not know where to get it. Ms Roberts claimed that she would sometimes scream for help²⁸.
- 8.8. Ms Roberts said that the family lived on take-away food because all of the dishes had been used and she could not do the dishes. She said that just looking at them was too much. She was asked why she did not raise the issue of her inability to cope with the house and home duties with Dr Zuvella whom she regularly visited. She claimed that she did not think the doctor could help with those things²⁹. She acknowledged that one could hardly move in the house and that the family rarely left the lounge room.
- 8.9. Ms Roberts claimed that Dr Nash diagnosed her as having ADD, although Dr Nash was a paediatrician. However, she said that she had never been prescribed dexamphetamines. She said that she had consumed Jarrad's dexamphetamine medication on two occasions in order to cope with necessary visits to doctors³⁰. She said this was because she was not giving Jarrad all of his dexamphetamine medication. She said he was prescribed up to six per day and she regarded this as 'ridiculous'³¹. She said she would only give him his dexamphetamines when he was having a bad day.
- 8.10. When discussing Jarrad's schooling, Ms Roberts said that she wanted him to stay at home but that she also wanted him to go to school and have a normal life and friends.

²⁵ Transcript, page 618

²⁶ Transcript, page 619

²⁷ Transcript, page 620

²⁸ Transcript, page 624

²⁹ Transcript, page 627

³⁰ Transcript, page 635

³¹ Transcript, page 635

Jarrad told her that he did not want friends, he only wanted her and that he would not budge from this attitude. After Jarrad's Year 2 things got worse at school for him. She acknowledged that the teacher, Toni Ballard, had contacted her and expressed concern about Jarrad being so far behind at school. She acknowledged that Toni Ballard had come to the house and that they would sit on the verandah to talk. She recalled the agreement entered into by Jarrad with Nailsworth Primary School in relation to attendance. However, she said that the agreement did not work and that nothing did work³². When asked about the year 2006, Ms Roberts said that Jarrad was especially sick that year and that the weather was very changeable. She claimed that the changeable weather affected his health and that she did not think it was a good idea to send him to school³³.

- 8.11. Ms Roberts said that the Prospect house did not have a landline telephone. She had a mobile but she could not find her phone charger in the house. A lot of the time she was too scared to answer the door. She was asked if she recalled receiving letters from Families SA and replied that she could not recall any³⁴.
- 8.12. Ms Roberts denied that she ever gave any of Jarrad or Chantelle's dexamphetamine tablets to anyone else (apart from Jarrad and Chantelle). She said that some of the tablets were disappearing and explained that she believed this occurred when Chantelle took them out of the house. When they were returned tablets would be missing³⁵. She claimed that she would notice them disappearing from within the house as well.
- 8.13. Ms Roberts denied receiving letters from Families SA, and particularly letters, to which I will refer later in this Finding, dated 27 May 2004 and 10 April 2006.
- 8.14. Ms Roberts presented as a reasonably articulate person. Her use of the English language was quite adept. Overall, I approach her evidence with caution. I have no reason to disbelieve the general thrust of her evidence about her early life and the many challenges she faced. The incident involving the murder of her stepfather by her mother and the resultant effect upon her is credible. However, I believe that she exaggerated the impact of the post traumatic stress disorder so as to justify her lifestyle, and her inadequate parenting of Jarrad and Chantelle.

9. Jarrad's visit to Dr Mudaliar

³² Transcript, page 644

³³ Transcript, page 645

³⁴ Transcript, page 647

³⁵ Transcript, page 649

- 9.1. The South Australian Ambulance Service received a request to attend at the Prospect address at 11:43am on the morning of 6 October 2006³⁶. The computer record of Dr Mudaliar's notes³⁷ show that the starting time of Jarrad's visit was 10:22am that day. The text of the note records that the visit started at 0930am. Dr Mudaliar confirmed in his evidence that the correct time was 10:22am and that the other time was a typographical error.
- 9.2. From this it can be seen that Jarrad's collapse at home took place one hour and 20 minutes after he was first seen by Dr Mudaliar. This raises the question whether Dr Mudaliar should have identified that Jarrad was grievously ill and near to death.
- 9.3. Dr Mudaliar was called to give evidence. The Court was assisted by an overview that was carried out by Dr Joyner³⁸, an experienced general practitioner who commented upon Dr Mudaliar's treatment.
- 9.4. Dr Mudaliar's notes recorded that Jarrad was suffering from neck pain and a bleeding right ear. He had bilateral ear discharge and had swelling to the right side of his head. His temperature was 36.8°C and his pulse rate was 68 beats per minute. The notes record that Dr Mudaliar assessed Jarrad as suffering from bilateral otitis media, an upper respiratory tract infection and attention deficit hyperactivity disorder. The notes record that Dr Mudaliar recommended hospital 'despite Mum's request'. He prescribed Clamoxyl, an antibiotic, and suggested that Jarrad should go to the Women's and Children's Hospital if his mother agreed.
- 9.5. Dr Mudaliar gave evidence that he was told by the receptionist at the clinic that Jarrad had walked into the clinic³⁹. He was unsteady and was placed in a wheelchair, partly because it was desirable to separate him from other patients because of the discharge from his ears. Dr Mudaliar said that Jarrad was able to tell him that he had been unwell for three days⁴⁰. He asked Jarrad why he was using a wheelchair and Jarrad said that he was very tired. According to Dr Mudaliar, Jarrad knew what he was talking about and was oriented to place and time. He complained of a sore head and a

³⁶ South Australian Ambulance Service patient report form for Jarrad's conveyance to the Women's and Children's Hospital

³⁷ Exhibit C36

³⁸ Exhibit C73

³⁹ Transcript, page 255

⁴⁰ Transcript, page 257

sore neck⁴¹. Dr Mudaliar did not ask Jarrad to get out of the wheelchair. He thought it was not necessary to put Jarrad through that discomfort.

- 9.6. Dr Mudaliar said that it is not unusual for a child to have pus coming from the ear. He said the unusual feature of Jarrad's presentation was the swelling of the neck. He said that that is not usually a feature of ear infection and that was why he suggested strongly that Jarrad should go to the Women's and Children's Hospital⁴². Dr Mudaliar said that he could not remember specifically, but believed it was more likely him than anyone else who first suggested the possibility of hospital. However, very early in the consultation Jarrad's sister had told him that her mother had instructed that Jarrad not go to hospital. Despite this, Dr Mudaliar said that he suggested very, very strongly that they go home and attempt to persuade the mother to take Jarrad to hospital⁴³.
- 9.7. Dr Mudaliar did not think that an ambulance was called for. He did not think that Jarrad's condition was urgent. In particular, Dr Mudaliar denied having said that it was the worst infection he had ever seen and he denied saying the hospital would only do for Jarrad the same thing that Dr Mudaliar himself could do⁴⁴.
- 9.8. Dr Mudaliar said that he is a qualified paediatrician, despite practising as a general practitioner at the moment. He said that there was nothing in Jarrad's presentation to suggest that he was going to collapse so soon after the consult as he did. He said that there could have been no misunderstanding about the message that Dr Mudaliar believed that Jarrad should go to hospital. However, Dr Mudaliar did not believe that the outcome would have been any different even if Jarrad had been taken to hospital⁴⁵.
- 9.9. Dr Joyner gave evidence at the Inquest. He said that symptoms of sepsis can appear rapidly and that a child of Jarrad's age can certainly react very quickly to sepsis. Against this, Dr Joyner pointed out that Jarrad had been unwell for several days and was progressively getting worse. Dr Joyner said that the degree of swelling to the neck indicated that the ear infection had spread. He thought that it put the case into an unusual category and implied more than an ear infection⁴⁶.

⁴¹ Transcript, page 258

⁴² Transcript, pages 262-263

⁴³ Transcript, page 264

⁴⁴ Transcript, page 268

⁴⁵ Transcript, page 281

⁴⁶ Transcript, pages 424-425

- 9.10. Dr Joyner said that if Jarrad had been oriented, cooperative and not delirious, Dr Mudaliar might not have realised how sick Jarrad actually was. Dr Joyner considered that Dr Mudaliar should have insisted that Jarrad get out of the wheelchair in order to assess him better.
- 9.11. Dr Joyner was not unduly critical of Dr Mudaliar in his evidence. He made the point that it is too simplistic to say that because Jarrad died within hours of being examined by Dr Mudaliar, Dr Mudaliar was somehow at fault⁴⁷. However, it was clear that Dr Joyner would have preferred a different approach. He regarded this case as one in which what he described as a ‘couple of red flags’⁴⁸ had been raised. The first was that Dr Mudaliar did not know the patient. The second red flag was that the patient, although very sick, was not accompanied by his mother or a parent at all. He said that for these reasons he would have taken extra care. He said that he would have told Mr Denton and Chantelle that they did not really have a choice about hospitalisation. He said that he would use a mixture of information and some degree of what he described as ‘verbal force’⁴⁹ to persuade and cajole them to take Jarrad to hospital. He said that he may have tried to tell Chantelle simply to go to hospital, or he may have tried to ring Ms Roberts at home, or perhaps he may have written a letter to Ms Roberts and offered for her to ring him. Dr Joyner said it was not certain that Jarrad would have survived even if he had been taken to hospital at that time⁵⁰.
- 9.12. I am not critical of Dr Mudaliar. It would certainly have been desirable for him to have made some greater effort to contact Jarrad’s mother in the particular circumstances of his presentation which, as Dr Joyner pointed out, should have raised some ‘red flags’. However, the perilous nature of Jarrad’s condition would not necessarily have been apparent to Dr Mudaliar at the time of the consultation, even though Jarrad collapsed less than an hour afterwards. Dr Joyner was mildly critical of the dosage of Clamoxyl prescribed by Dr Mudaliar. In the circumstances, I do not consider it necessary to examine this matter further. It seems to me to be a matter of clinical judgment. It certainly would have made no difference to the outcome.

⁴⁷ Transcript, page 430

⁴⁸ Transcript, page 439

⁴⁹ Transcript, page 427

⁵⁰ Transcript, page 411

10. Families SA - History of notifications relating to Chantelle and Jarrad

- 10.1. Brevet Sergeant Tania Sheldon prepared a very useful table of the contacts between Families SA and the family unit of Michelle, Chantelle and Jarrad. The table was admitted as Exhibit C32b. It refers to notifications, or intakes as they are referred to in Families SA, numbering 20 prior to Jarrad's death. These intakes spanned the period from 1 June 1993 until 22 August 2006, a little more than 13 years. As early as 1997, one intake referred to a general concern about Ms Roberts' physical and mental health because there was inadequate food in the house and the house was filthy with cat faeces on the floor. On that occasion there was no investigation by Families SA. Later in the same year, there was a further notification expressing concern that Chantelle was not attending school. On this occasion there was no investigation and no action.
- 10.2. In October 1998 another complaint was made of neglect of Chantelle and Jarrad. The notification asserted that there was no food in the house and no lunch for the children to take to school. Furthermore the mother was said to sleep for most of the day. On this occasion, Families SA took action. On 25 October 1998 workers attended to investigate however they were met by a babysitter and were not permitted to come into the house. They were told that Ms Roberts was in bed unwell. On 17 November 1998 a worker contacted the notifier to be advised that a third party had attended the house and described the condition of the house as being such that it would 'take a 6-page write-up'⁵¹. On 25 November 1998 a worker attended the home but there was no answer. A letter was left in the letterbox. There was no response. The worker contacted the notifier and was informed that Chantelle was now bringing her lunch to school. On 1 December 1998 the worker contacted the school and was informed that Ms Roberts was not responding to the school's invitations to meet with her. On 23 December 1998 the worker attempted to contact Ms Roberts but there was no answer. The file was closed on 29 December 1998. During the whole of this period Ms Roberts had evaded the Department's attempts to engage with her. Nevertheless, the file was closed.
- 10.3. In May 1999 a notification was made that Chantelle was not attending school and was dirty with poor hygiene. This notification was not investigated.

⁵¹ Exhibit C45, page 36

- 10.4. In August 2001, Ms Roberts did have some engagement with Families SA. On this occasion, Chantelle had gone to live with Ms Roberts' mother. However, Ms Roberts was unhappy about this and contacted Families SA to express her concerns about Chantelle living with her mother. An interview was conducted with Ms Roberts on 20 August 2001. After this, an interview was made for Ms Roberts to attend at the offices of Families SA and be advised of the outcome of the deliberations, however she did not attend. Subsequent to this Chantelle returned to live with Ms Roberts. A further similar contact occurred in February 2004 when Chantelle again went to live with Ms Roberts' mother. Again on this occasion there was contact between Ms Roberts and workers of the Department.
- 10.5. In September 2005 a further notification was made in relation to non-attendance at school. The notifier said that mother was not answering phone calls and not responding to home visits by the schoolteacher. There were further concerns that the mother was not arranging appropriate medical appointments for Jarrad. This notification was closed without action. It was designated 'resources prevent investigation'⁵².
- 10.6. In April 2006 a further notification was made in relation to Jarrad. The notifier said that he was not attending school and that the family was hard to contact by phone. The notifier expressed concern about the mother's mental health and her ability to care and support for her children. This was responded to by a letter from Families SA to Ms Roberts inviting her to attend a family meeting. There was no response to the letter and no further action was taken.
- 10.7. On 22 August 2006 a further notification was made in relation to Jarrad. This notification advised that Jarrad had not attended school since Term 1. On this occasion Families SA took no action.
- 10.8. The above summary outlines only some of the 20 notifications outlined in Exhibit C32b. The Court heard oral evidence from four witnesses employed by Families SA. They were Catherine Harman, the Manager of the Crisis Response Unit, Dianne Cooper, a Supervisor with the Crisis Response Unit, Monica Snowden, a Supervisor with Families SA Port Augusta and Phillipa Paxton, another Supervisor with the Enfield District Office of Families SA. All of these witnesses acknowledged that the

⁵² Exhibit C45, page 76

resources available to Families SA are insufficient to investigate every notification received by that organisation. Ms Harman, the most senior of the witnesses, was probably the least forthcoming in that respect. However, even she conceded that there are problems in juggling resources⁵³. She also acknowledged that Families SA and the Department of Education and Children's Services (DECS) find it difficult to judge the point at which an issue of truancy became an issue for Families SA to respond⁵⁴.

- 10.9. The evidence showed that there is a Memorandum of Understanding between Families SA and DECS about the interaction between the two agencies on the issue of truanting. I will return to that shortly.
- 10.10. Ms Cooper, a Supervisor, acknowledged that Families SA does not have the resources to work on each individual notification that is received. She said that the Department took over 44,000 notifications in the previous financial year⁵⁵. They used the tier rating system to determine how they would respond. The tier rating system has three categories. Tier 1 is the most serious category. It requires a response within 24 hours. The tier 2 category is the next most serious, requiring a response within 2 to 7 days. Ms Cooper acknowledged that at least 40% to 50% of all tier 2s do not get investigated at all⁵⁶. The third category is the tier 3 category. These are low-level concerns and the only response from Families SA in this instance will be to write a letter to the family concerned, inviting the parents or carers to attend a family meeting with the Department. If there is no response to the letter within two weeks, the matter will be filed. Sometimes the resources available to the Department do not even permit the sending of a letter inviting a meeting, because it is judged by the relevant staff at the relevant time that they will not have the capacity to meet with the family in the event that there is a positive response to the letter. In that event, the matter will be filed immediately.
- 10.11. Ms Snowden works at the Port August District Office of Families SA. Her role in this case was to prepare a report for an internal committee of the Department known as the Adverse Events Review Committee. A copy of the report appears in Exhibit C46, the Families SA Contact File for Jarrad. Ms Snowden believed that the number of notifications taken as a whole should have elevated the Department's response. She

⁵³ Transcript, page 336

⁵⁴ Transcript, page 339

⁵⁵ Transcript, page 402

⁵⁶ Transcript, page 404

commented that maybe someone from the Department 'should actually go and knock on the door and visit'⁵⁷. She said that because Jarrad had only been attending school for only one or two days each week for nearly two years the question arose 'what was actually happening in his family for him not to be going to school?'⁵⁸.

10.12. Ms Paxton was very clear in her evidence. She said that unfortunately Families SA is not resourced to the degree that it is able to respond to every intake. Thus, supervisors have the difficult task on a daily basis of working out which intakes will be actioned⁵⁹. She acknowledged that although all tier 1 notifications are actioned, some tier 3 and even some tier 2 notifications are sometimes closed under a code called 'Closed No Action', explaining:

'... that's really solely and wholly about resources that we don't have enough resources to respond to them all.'⁶⁰

She said that in deciding which intakes will be actioned and which ones won't, a supervisor needs to read all of the notifications. However, a supervisor would not read notifications which have been designated by the Child Abuse Report Line (CARL) as a 'notifier only concern'. Some notifications are classified in that way by the operators of the CARL service in an initial triaging. It is the CARL operators who assign a tier rating of 1, 2 or 3 to a notification and, in some instances, they will designate a notification as a 'notifier only concern' which means that they have assessed the notification as not requiring any action on the part of the Department. Even so, they are required to record the notification on the Department's computer system. Ms Paxton explained that the job of a supervisor in a district office, such as the Enfield District Office,⁶¹ is to read the notifications that are assigned to that office each day. However, a supervisor does not read the notifications which have been designated 'notifier only concerns' by the CARL operators.

10.13. In her very clear and frank evidence, Ms Paxton said that Families SA is concerned about information regarding chronic non-attendance at school. She said:

'... it's not that we're - we're not worried or we don't think that they're at risk, of course they are. However, as a supervisor who on a daily basis needs to make decisions about which intakes will be actioned and which won't - because my team doesn't have the

⁵⁷ Transcript, page 455

⁵⁸ Transcript, page 456

⁵⁹ Transcript, page 554

⁶⁰ Transcript, page 557

⁶¹ Enfield District Office was the relevant office for Jarrad's case

capacity to pick up every single intake that comes in - when I read information like this and I compare it to other intakes that are looking at me, this really doesn't - it just doesn't get a priority, unfortunately. Because the sorts of intakes that I'm looking at to allocate that need to be allocated are things like, you know, a mum with a significant drug-abuse problem who has a two and a three-year-old in the back of her car and deliberately drives into a Stobie pole to commit suicide. It's, you know, kids who are being sexually abused by a caregiver or an older sibling in the family home and the parents aren't protective. It's, you know, babies - very, very young infants - with, you know, with unexplained injuries: fractures, broken arms, broken bones, skull fractures, you know, all of those sorts of things; significant and serious physical assaults on children to the extent where, you know, a three-year-old's liver is perforated. We're talking about really, really serious sort of stuff. So when I look at a number of intakes on my desk, yes, I'll read them all but the kid that's being sexually abused or the child that has a serious injury is always going to be allocated over a child that's not attending school on a regular basis.'⁶²

This passage of evidence explains quite graphically the dilemma confronting the staff of Families SA. Ms Paxton said that the task really is one of measuring risk⁶³.

10.14. Ms Paxton acknowledged that the various notifications concerning Jarrad, when taken as a whole, were extremely concerning. She added:

'But still, you know, I've still got those intakes with a child being sexually abused looking at me and even if that's just one intake and there's no history on a child, how could I as a supervisor not do the sexual abuse intake and allocate something like this, you know.'⁶⁴

11. **The legislation**

11.1. The Children's Protection Act 1993 (the 'Act') defines 'abuse or neglect' in section 6(1) to be:

- '(a) sexual abuse of the child; or
- (b) physical or emotional abuse of the child, or neglect of the child, to the extent that -
 - (i) the child has suffered, or is likely to suffer, physical or psychological injury detrimental to the child's wellbeing; or
 - (ii) the child's physical or psychological development is in jeopardy'

Part 4 of the Act provides for the notification of abuse or neglect⁶⁵. The obligation to notify applies if a person to whom the section applies suspects on reasonable grounds

⁶² Transcript, pages 562-563

⁶³ Transcript, page 565

⁶⁴ Transcript, page 595

⁶⁵ Section 11

that a child has been, or is being, abused or neglected and the suspicion is formed in the course of the person's work. The notification is then made to the CARL service.

- 11.2. The Act deals with the subject of persistent non-attendance at school in section 6(2)(d). It provides that a child is at risk if the child is of compulsory school age but has been persistently absent from school without satisfactory explanation of the absence. The effect of this is that there is no obligation on a person, including a schoolteacher, to make a notification on the CARL service of persistent absence from school without satisfactory explanation even though the Act treats this as an indicator that the child is at risk. That is because section 11 only requires a notification to be made where a person suspects that a child has been abused or neglected, and as the analysis above shows, persistent unexplained failure to attend school is not abuse or neglect within the meaning of the Act.
- 11.3. Section 19 of the Act provides for the situation where the Chief Executive of Families SA suspects on reasonable grounds that a child is at risk. The Chief Executive has powers of search and seizure, exercisable by an authorised police officer, on the authority of a warrant issued by a Magistrate. The Chief Executive has a power in section 20 to make an application to a Court where the Chief Executive has information or evidence leading to a reasonable suspicion that a child is at risk. The Court may make orders authorising an examination and assessment of the child and requiring persons to answer questions and provide information.
- 11.4. I questioned Ms Paxton about the use of these powers. I formed the impression that the Department does not often make use of the powers in sections 19 to 21 of the Act which relate to children at risk⁶⁶. Instead, the Department seems to focus on applications under Part 5 of the Act for care and protection orders. These orders tend to be applicable to children where abuse or neglect has already occurred. In short, it seems to me that there is a tendency to react to cases where abuse or neglect has been confirmed, rather than to take preventative action under sections 19 to 21 where it is only suspected that a child is at risk. By definition, these will be cases which are at the lower end of the scale of risk referred to by Ms Paxton. It appears that the Department's scarce resources are devoted to the acute end of the problem and not so much to the chronic end at which the opportunity may exist to prevent a situation from becoming worse.

⁶⁶ See Transcript, pages 568-572

12. Memorandum of Understanding

- 12.1. In June 1998 a Memorandum of Understanding (MOU) was made between the Department of Education and Children's Services and Families SA⁶⁷. The MOU was admitted as Exhibit C77d in these proceedings. The MOU is a rather confusing document. It provides that 'intervention' will be the least intrusive necessary to achieve desired outcomes. It establishes an inter-agency referral process which I take to mean a process by which particular cases are referred to committees formed by representatives of both DECS and Families SA. The nub of the document is on page 5. It divides habitual and persistent non-attendance at school into two categories. The first category is cases of habitual and persistent non-attendance that involve abuse and/or neglect. In this case, teachers and other DECS staff will notify the CARL service.
- 12.2. The second category is cases of habitual and persistent non-attendance that do not involve abuse and/or neglect 'but where the young person faces significant risk of harm'. Under this heading, the following appears:

'If considerable information has been gathered in relation to habitual and persistent non attendance and the level of risk/harm to the child/young person's development, then this information could be provided to FAYS⁶⁸ at an Interagency Referral meeting. Refer attached proforma.

FAYS would require information that indicated:

- Department of Education, Training And Employment⁶⁹ had exhausted all of the options available to them within their system;
- if the matter had been taken to court (identify which court) under what legislation, or that there was a clear rationale why the matter would not be taken to court;
- there was a significant level of risk being faced by the child/young person.

In these instances FAYS staff could take the matter to a Family Care meeting, to allow for a formal exploration of the issues and facilitate solutions'⁷⁰

- 12.3. Jarrad's case fell into the second category. There was no evidence available to DECS that established abuse or neglect, certainly not in the last two years of Jarrad's life. Thus, it would not have been appropriate, at least in terms of the Children's Protection Act, for his teachers to make a notification to the CARL service. Notwithstanding

⁶⁷ It should be noted that each of these agencies had different names at the time the MOU was made. For simplicity, I will refer to it as if it was made between the two agencies as they are currently named

⁶⁸ Families SA

⁶⁹ Department of Education and Children's Services

⁷⁰ Exhibit C77d, page 5

this, some notifications were made by DECS personnel. This reflects an understandable confusion about the process. Jarrad's case fell under the second category, namely that in which the habitual and persistent non-attendance did not appear to involve incidents of abuse or neglect. However, the document goes on to stipulate that the young person 'faces significant risk of harm'. The difficulty with this is that DECS' staff do not have the powers of entry and inspection that would have enabled them to properly investigate the circumstances in which Jarrad was living. Instead, the legislative scheme confers those powers of early investigation of potential instances of 'risk' to a child to be assessed and investigated upon Families SA under sections 19 to 21 of the Children's Protection Act.

- 12.4. The difficulty with the MOU is that it places the onus of establishing that a child is at a significant risk of harm upon DECS and teachers. However, these people have no means of establishing that the child is at risk. DECS, and the teachers employed by that Department, do not have the responsibility for administering the Children's Protection Act. It is the Children's Protection Act which provides that a child who persistently fails to attend school without proper reason is to be considered as a child at risk. It then establishes the mechanisms for investigating and assessing whether the risk is real or not⁷¹. The MOU is quite misconceived in placing the onus for establishing that a child is at risk of harm upon the teachers and other staff of DECS. For example, the MOU requires that 'considerable information' will have been gathered about the level of risk/harm to the child's development. It requires that DECS be able to establish that there is a significant level of risk being faced by the child. The MOU then says that this information 'could' be provided to Families SA and that Families SA 'could' take the matter to a family care meeting and so on. This language implies a reticence to take the matter further.
- 12.5. In my opinion, the MOU is misconceived and in need of revision. I believe that it creates confusion amongst both the teaching staff and the staff of Families SA.
- 12.6. The MOU quite properly requires that DECS' staff will have exhausted all of the options available to them to procure the attendance of the child at school. One of those options is a consideration of the prosecution of the parents or guardians of the child for offences under the Education Act.

⁷¹ See sections 19 to 21 of the Children's Protection Act

13. The Education Act 1972

- 13.1. The Education Act 1972 provides in section 76 that a child of compulsory school age is required to attend at the school at which he or she is enrolled on every day, and for such parts of every day, that instruction is provided for the child at the school. Section 76(3) provides that where a child fails to attend school as required by subsection (1), each parent of the child is guilty of an offence. The maximum penalty prescribed by that section is \$500. Section 76(4) provides that it is a defence to a charge under subsection (3) that the failure of the child to attend school did not result from any failure of the parent 'to exercise proper care and control of the child'.
- 13.2. No action was ever taken against Michelle Roberts pursuant to Section 76 of the Education Act 1972. The evidence before me was that there have been very few prosecutions in the past 30 years under this provision. Indeed, the witnesses could recall only two prosecutions in that period. It appears that there is a policy within DECS not to prosecute parents for offences under section 76 of the Education Act.
- 13.3. Section 79 of the Education Act provides that authorised officers must take all practicable action to ensure attendance at school by children of compulsory school age. The expression 'authorised officer' includes any member of the police force, any person authorised in writing by the Chief Executive of DECS and any person authorised in writing by the Chief Executive of Families SA.
- 13.4. In my opinion, section 79 of the Act would require an authorised officer to at least consider the laying of a complaint against a parent of a child who persistently truants under section 76. A blanket policy against prosecutions would contravene section 79. In my opinion, DECS should obtain legal advice as to the status of its policy about prosecution under section 76 of the Act.
- 13.5. Authorised officers have powers pursuant to section 80A(1) in relation to children whom they observe in a public place. They can seek the child's name, address and age and the reason for his or her non-attendance at school. In a case where the authorised officer is a police officer, he or she may return the child to the school or to the child's parent or guardian. An authorised officer may attend at residential premises and request any person in the premises to provide the authorised officer with the names of all children of school age resident within the residence and the ages of the children. However, an authorised officer has no power to insist upon entry to a house and certainly has no powers to effect entry against the will of the occupant of the house.

14. The efforts of the officers of DECS

- 14.1. Three witnesses from DECS gave evidence in this matter. The officers were teacher, Ms Toni Ballard, school attendance officer, Mr Martin Shaw, and Ms Jennifer Kernich, the Student Inclusion and Well Being Manager for the East District of DECS.
- 14.2. Ms Toni Ballard is a teacher working at Nailsworth Primary School. She is experienced, having been a teacher for over 25 years. She made a statement which was admitted as Exhibit C75. She also gave oral evidence. She said that when Jarrad started in Reception at Nailsworth Primary School his teachers identified that he had learning disabilities. At the beginning of Year 1 his then teacher prepared a request for guidance assistance which was submitted to the DECS' East District office. As a result of that request, Jarrad was assessed by the guidance officer, Psychologist, Dr Sandy Neuling, and identified as a student with a disability. He was provided with one to two hours per week support time. Ms Ballard became involved and they set up meetings to look at how best to support Jarrad. Ms Roberts was invited to these meetings but she was unable to, or did not want to, come to the school. Jarrad's classroom teacher wrote notes home to Ms Roberts about how Jarrad was going. Ms Ballard said that in 2003 when she first knew Jarrad, he was a positive student who had a very good connection with his, then, teacher. Ms Ballard said that while Jarrad had some learning difficulties, there was nothing alarming in his presentation or conduct at school. She said that his mother did not come to school, but apart from that, everything seemed appropriate.
- 14.3. Ms Ballard said that in 2004 her involvement with Jarrad continued. Jarrad had by then acquired highly developed "avoidance" skills. He did not engage with other students. As 2004 progressed his attendance became irregular and communication with his home became more erratic. He became socially isolated and tended to play with younger children rather than his peer group.
- 14.4. Ms Ballard said that she and Jarrad's teacher were concerned about his irregular attendance and his social isolation. They tried to set up meetings with Ms Roberts to discuss their concerns but she did not respond. Ms Ballard said that she began to visit Jarrad's home in 2004. She met Ms Roberts. She said that she and Ms Roberts would talk on the verandah at the front of the house. According to Ms Ballard, Ms Roberts

felt that Jarrad was a victim at school and was harassed by other children. She asked Ms Ballard to investigate allegations of harassment. According to Ms Ballard these allegations were investigated and no substance was found to them. Ms Ballard also met Chantelle while at the house. After that she saw Chantelle from time to time at the school and sometimes in the community.

- 14.5. In March 2005 Ms Ballard spoke to the attendance officer about Jarrad's non-attendance. The attendance officer said that a letter would be written to Ms Roberts to organise a meeting to discuss Jarrad's non-attendance. Ms Ballard said she would be prepared to write the letter because Ms Roberts would be more likely to respond to her. She wrote a letter dated 30 March 2005 and posted it to Ms Roberts. Later on, she saw Ms Roberts at her home and they spoke about Jarrad's school attendance. Ms Roberts said that Jarrad's health was a problem and that his ears and nose were 'blocked up'. Ms Ballard suggested that she seek appropriate medical treatment. After this, Jarrad's school attendance pattern improved during 2005. Ms Ballard then spoke to the school attendance officer and they decided to close Jarrad's attendance file. This occurred in late May 2005.
- 14.6. Towards the end of 2005, Jarrad and Chantelle approached Ms Ballard and said that Jarrad was finding the schoolwork very hard. In fact, Jarrad was way behind the level of the other students. Ms Ballard was aware that Ms Roberts would buy Jarrad all sorts of things and that Chantelle was constantly doing things for him. Towards the end of 2005 things went downhill. Ms Ballard was aware that Hillary and Ben, who had been supporting Ms Roberts, had left the household. She said that Jarrad's school attendance fell off and that he became belligerent and disobedient. On 17 October 2005, Ms Ballard had a meeting with Chantelle and Jarrad at which the written agreement, which I have previously referred to, was made. I have already related the history of Jarrad's non-attendance at school in 2006. Ms Ballard confirmed this in her evidence and I will not repeat it.
- 14.7. Ms Ballard had extensive interaction with the family during 2006. She called at Ms Roberts' home on a number of occasions. She also spoke to Chantelle at school. Ms Ballard's contact with the family stopped at the end of Term 2 in 2006 when she took long service leave. While she was on holidays in 2006 she heard about Jarrad's death. She said she went to Jarrad's funeral and Ms Roberts asked her to delivery the eulogy, which she did.

- 14.8. Ms Ballard said that she visited the Roberts' house in the order of 20 times or more. She never gained access to the interior of the home but from her observations of the outside she believed that the house was reasonably well kept. She never saw any of the disarray revealed by the photographic evidence⁷². She never noticed any offensive odours while at the house. Of course, I bear in mind that Ms Ballard did not attend the house during the last three or four months of Jarrad's life because she was on long service leave. Things may have been different during that period.
- 14.9. Mr Martin Shaw is a school attendance officer in the employment of DECS. He has been employed for 27 years and has been working as a school attendance officer for the whole of that time⁷³. He explained that the role of a school attendance officer is to receive referrals from schools and to work with them to 'resolve issues of non-attendance'⁷⁴. He became involved with Jarrad's case in February 2006. Mr Shaw had an enormous workload. He had 15 to 30 cases in the Felixstow area which included the Nailsworth Primary School. However, he also was responsible for the Elizabeth office where he had 400 cases. He had two separate offices and two separate managers. In order to obtain a vehicle he would need to give a week's notice in advance. All in all, he was operating under severe difficulties and limitations.
- 14.10. He said that he was not aware of any prosecutions against parents under the Education Act for persistent non-attendance in the past 10 years. Exhibit C39 is the Nailsworth Primary School file. That file contains a report dated 10 February 2006 of unsatisfactory school attendance. This operated as a referral for Mr Shaw.
- 14.11. Exhibit C32d is a summary of Mr Shaw's attempts to contact the Roberts family. It shows that on 21 February 2006 he sent a letter. On 7 March 2006 he visited the home and met Chantelle but not Ms Roberts. On 20 March 2006 he made a home visit but there was apparently no-one home. On 4 April 2006 he made another home visit and there was apparently no-one home. He left a written request that contact be made with him. There was no response. On 1 May 2006 he made a home visit but there was apparently no-one home. On 9 May 2006 he made a home visit and it appeared that no-one was home. On 5 June 2006 he made a home visit and apparently no-one was home. He left a written request that he be contacted. He did not receive any response. On 13 June 2006 he made a home visit and apparently no-

⁷² Exhibit C28b

⁷³ Transcript, page 486

⁷⁴ Transcript, page 487

one was home. On this occasion he sent a letter requesting that contact be made. No contact was made and on 3 July 2006 he made a home visit and apparently no-one was home. On 1 August 2006 he made a home visit and apparently no-one was home. On 15 August 2006 he made a home visit and apparently no-one was home. On 21 August 2006 he made a home visit and apparently no-one was home. He left a written request that contact be made with him. He received no response to that. On 29 August 2006 he made a home visit and apparently no-one was home. He left information at the house in relation to the "Youth Pathways" program. On 11 September 2006 he posted a letter to the Roberts family in relation to the "Youth Pathways" program. On 26 September 2006 he made a home visit but there was apparently no-one home. Mr Shaw said that when he visited the home on each of these occasions the lawn was always mown and edged and the driveway clean. The rubbish bin was neatly placed and everything seemed to be in order⁷⁵. During the home visits he said there was never any reply to his doorknocks. He never saw any movement in the house and he never heard dogs barking or any other form of response.

14.12. On 28 August 2006 Mr Shaw had a conversation with his then Manager, Jenny Kernich, about the progress of Jarrad's case. He said the conversation followed a visit he had made to the school when he had discussed Jarrad with the staff at the school. He told Ms Kernich that he was really concerned about this case and that he had been to the home on a number of occasions and was unable to make contact. He said that he was considering a prosecution of the parent⁷⁶. Ms Kernich asked Mr Shaw if they were certain that the family was still living at the house. Following this, a decision was made to place the family on a statewide 'whereabouts unknown' register which goes to all district student attendance counsellors. Accordingly, Jarrad's name was entered on that register.

14.13. Ms Kernich gave evidence at the Inquest. She said that she believed that all avenues of intervention by DECS had been exhausted by the time of Jarrad's death⁷⁷. She said that she believed that Mr Shaw had tried, in a whole range of ways, to engage the family but without success.

⁷⁵ Transcript, page 502

⁷⁶ Transcript, page 507

⁷⁷ Transcript, page 545

- 14.14. Counsel for the Department of Education and Children's Services and Families SA tendered a document entitled 'Inter-Agency Processes for Chronic Non-Attendees'⁷⁸. This document is a new approach to the way in which agencies will deal with chronic non-attendees. According to counsel, Exhibit C81 has come about as a direct result of Jarrad's death and the recognition that children who do not attend school have not ranked "particularly high" in the Families SA tiering system. The document says that when DECS is unable to assess a student's well-being in circumstances where a student has been persistently absent from school for 10 weeks, there is no parent/caregiver contact for 6 weeks and the student has not been sighted for 6 weeks then the Manager, Regional Support Services⁷⁹ will make a mandatory notification through the CARL service. In turn, Families SA will ensure that all such notifications are given a specific tier 2 response. The tier 2 intake will remain open until a home visit and assessment are completed. The Families SA District Office will initiate a joint home visit with DECS within 5 to 7 days. Entry to the house will be obtained and the risk to the child will be assessed. If the child on that assessment is not at risk, DECS will continue to manage the question of school attendance. If the level of risk is assessed as compromising the child's safety and well-being, Families SA will take the matter further pursuant to the Children's Protection Act. In the event that it is necessary to obtain assistance from SAPOL, that assistance will be obtained in order to gain entry to the house.
- 14.15. Counsel for the Departments explained that this 'new' policy, as represented by Exhibit C81, will make use of sections 19 to 21 of the Act to which I have already referred.
- 14.16. There is an irony in the fact that this latest response is nothing more than a recognition by the agencies of the options which have been available at all times to Families SA for earlier intervention and investigations pursuant to those sections of the Act. In effect, the 'new' policy adds nothing to the tools that were always available to Families SA at all relevant times in this case. When I pointed these facts out to counsel for the Departments, he responded as follows:

⁷⁸ Exhibit C81

⁷⁹ It is not clear whether this is a position with Families SA or within DECS

'... it's a tragic situation and equally so, there will be other children who will be in homes and their situation won't come to light, the department won't be there and they will die and that is simply a fact of life.'⁸⁰

Counsel said that if Families SA were to investigate every child who is not attending school on a chronic or habitual basis then it would be unable to investigate child sexual or physical abuse⁸¹

14.17. In my view this response is simply unacceptable. It effectively amounts to a concession that Exhibit C81, the 'new' policy which was proffered as a response to Jarrad's case, is no solution at all. I am left wondering why it was produced in the first place.

15. The causes of Jarrad's death

15.1. The medical cause of Jarrad's death is, as I have already found, sepsis (fusobacterium necrophorum) complicating right otitis media. Otitis media is a medical expression for an infection of the middle ear. The particular bacteria involved is usually quite sensitive to commonly prescribed antibiotics. Dr Gilbert commented that one does not often see fatal infections if the organism is appropriately treated⁸². He also said that lethal infections in childhood are uncommon in his experience⁸³. He said this would probably be the only case of fatal middle ear infection that he has seen out of approximately 5,000 autopsies he has conducted during his career⁸⁴. The infection would have been in existence 'for at least a few days'⁸⁵. We know from other evidence, which has been extensively traversed, that the infection had been evident and Jarrad's illness had been obvious for at least a week. Some estimates put the timeframe at closer to a week and a half. Dr Gilbert was of the opinion that earlier treatment of Jarrad with antibiotics may well have prevented his death⁸⁶.

15.2. When Jarrad was finally taken to see Dr Mudaliar it was clearly too late. The fact that it was not apparent to Dr Mudaliar that Jarrad was close to death, or that he was in the grip of an overwhelming sepsis, does not mean that it should not have been obvious to

⁸⁰ Transcript, page 786

⁸¹ Transcript, page 786

⁸² Transcript, page 24

⁸³ Transcript, page 24

⁸⁴ Transcript, page 25

⁸⁵ Transcript, page 29

⁸⁶ Transcript, page 30

Jarrad's mother many hours, or indeed days, earlier that he was in need of medical treatment.

- 15.3. Mr Denton gave evidence that he suggested medical treatment some days before Jarrad's death. Ms Roberts was asked when she noticed that Jarrad was becoming sick and she responded that it was on the Wednesday⁸⁷. She denied that she had noticed signs of sickness earlier than that⁸⁸. In the transcript from page 656 and following, Ms Roberts was asked a number of questions about when she first noticed Jarrad's signs and symptoms of illness. She was warned that potential answers to questions relating to that subject might tend to incriminate her of an offence. She declined on a number of occasions, having been given that warning, to respond.
- 15.4. The effect of her evidence on this subject, such as it was, was that she did not notice that Jarrad was sick until the Wednesday, two days before his death.
- 15.5. The overwhelming weight of the evidence of the other witnesses, Mr Denton and Ms Klein, is to the effect that Jarrad was sick for much longer than two days. I reject Ms Roberts' evidence that she did not notice that he was sick until the Wednesday. In my opinion, it must have been apparent much earlier than that day that Jarrad was suffering from a most unpleasant ear infection.
- 15.6. Ms Roberts gave no explanation as to why she did not obtain earlier medical treatment. She was repeatedly warned that potential answers to questions about that subject might tend to incriminate her, and she declined to answer after those warnings were given.
- 15.7. Ms Roberts was clearly the adult with responsibility for attending to Jarrad's needs and, particularly, to his health. It is true that Mr Denton was in the house but Mr Denton was a virtual stranger who had no obligations in relation to Jarrad at all. Chantelle Klein was a child herself at the relevant time, albeit a 16-year-old who had been relied upon more than she should have been to assist in the parenting of Jarrad. Nevertheless, it can hardly be suggested that responsibility for the obtaining of medical assistance fell upon her. The clear responsibility rested with Ms Roberts.

⁸⁷ Transcript, page 656

⁸⁸ Transcript, page 656

- 15.8. I have no doubt that if Ms Roberts had sought appropriate medical attention for Jarrad in the several days prior to his death, his death could have been avoided. Jarrad's death was entirely preventable.
- 15.9. It is clear that a significant cause of Jarrad's tragic death was the fact that medical treatment was not afforded to him during the week and a half, or thereabouts, that he was ill prior to death.
- 15.10. However, Jarrad was living in most unusual circumstances. He was living in an unsanitary environment with a mother who was completely unable to provide him with proper care. In short, Jarrad was not being cared for in anything like an acceptable manner. His diet was completely inadequate, consisting only of takeaway fast foods. The circumstances in which he lived were unsanitary and would have exposed him to risks of infection that would not be tolerated in any reasonable household. His diet may have weakened his immune system.
- 15.11. My jurisdiction requires me to look not only at the immediate causes of Jarrad's death, but to the circumstances surrounding his death. Part of those circumstances is the involvement of the DECS and Families SA.
- 15.12. In my opinion, DECS made considerable efforts to engage with Ms Roberts in order to procure Jarrad's proper attendance at school. However, I am critical of Families SA. In saying that, I am not critical of any individual. The evidence was plain that the resources available to Families SA are insufficient to address cases of persistent non-attendance at school, even though persistent non-attendance at school may be indicative of far more sinister neglect, as this case most graphically and tragically shows.
- 15.13. I am unable to say that Jarrad's death may have been prevented if his persistent non-attendance at school had been addressed by Families SA at any time prior to his death. However, there is a likelihood that, had Families SA more closely investigated Jarrad's circumstances, steps may have been taken to intervene to ensure that Ms Roberts either cared for him properly or relinquished his care to a foster carer. If she had been unwilling voluntarily to permit the latter, the Department may have taken the necessary steps under the Children's Protection Act to obtain an order from the Children's Court.

15.14. Bearing in mind the evidence that Families SA does not have the resources to visit the homes of every child who persistently fails to attend school, I pose the question: How might things have been different?

16. The Commonwealth Government's income management regime

16.1. In the course of her evidence, Chantelle was asked about her mother's habits in relation to the opening of letters. When questioned about that subject, Chantelle said that her mother would open letters which were 'important ones like Centrelink and all that, she'd open ...'⁸⁹. In my opinion that answer is indicative not of Chantelle's attitude to the relative importance of correspondence, but to Ms Roberts'. Ms Roberts in her evidence denied having seen letters from DECS. In particular, she denied having received the specific letters referred to earlier in this finding. I have no doubt that the letters were delivered to Ms Roberts' house. It may well be that Ms Roberts did not read them but, if so, I believe that would have been a deliberate choice. In my opinion, Ms Roberts was perfectly capable of identifying important correspondence. Important correspondence clearly included letters from DECS about Jarrad's truancy. Ms Roberts was perfectly capable of identifying the importance of those letters. However, it would appear that, at least as far as Chantelle was concerned, her mother attached the greatest level of importance to correspondence from Centrelink.

16.2. In 2007 the Commonwealth Government made amendments to the Social Security (Administration) Act 1999. The amending legislation was entitled the 'Social Security and Other Legislation Amendment (Welfare Payment Reform) Act 2007'. The amendment set up an income management regime for recipients of certain welfare payments. A person might become subject to the income management regime for a number of reasons, including that a Child Protection Officer of a State or Territory required the person to be subject to the income management regime, or that the person has a child who does not meet school enrolment requirements or that the person has a child who has unsatisfactory school attendance. A person who is subject to the income management regime will be required to have an income management account. Amounts will be deducted from the person's welfare payments and credited to their income management account and amounts will be debited from the person's income management account for the purposes of enabling the Social Security Department to take action directed towards meeting the priority needs of the person and the person's children.

⁸⁹ Transcript, page 68

- 16.3. The income management regime has been deployed in the Northern Territory, a fact which is well-known and has received much publicity. The regime has also been applied in parts of Western Australia. Income management commenced in Kununurra in the Kimberly region and in the Cannington district of Perth on 24 November 2008⁹⁰.
- 16.4. The Social Security Administration Act of the Commonwealth, as amended by the reforms of 2007, provides in section 123TF that the Commonwealth Minister may, by legislative instrument, determine that a specified State or Territory is a declared child protection State or Territory. The Act also provides that if a person is not subject to the income management regime and the person has a child whose school attendance is unsatisfactory, the Secretary of the Commonwealth Department may give the person a formal warning that they could become subject to the income management regime.
- 16.5. In my opinion, if such a warning had been received by Ms Roberts, it is highly likely that she would have opened the relevant letter because it would have been readily identifiable as having come from 'Centrelink'. I think it is highly probable that had she received such a letter she would have read it, and understood that her welfare payments may become subject to income management by reason of Jarrad's non-attendance at school.
- 16.6. This would have had the effect of bringing matters to a head. Ms Roberts would have been forced to put her affairs in order to the extent necessary to ensure Jarrad's regular attendance at school. This in itself would have forced the household circumstances to change radically. Of course I cannot say that this would have prevented Jarrad's death, however, in my opinion it would have made its occurrence much less likely.

⁹⁰ Media Release of the Australian Government Department of Families, Housing, Community Services and Indigenous Affairs, internet reference http://www.fahcsia.gov.au/internet/facsinternet.nsf/family/wpr_child_protection.htm

17. **Conclusions and recommendations**

- 17.1. In my opinion this case shows that the issue of chronic and habitual non-attendance at school is simply not dealt with appropriately in South Australia. Prosecutions are almost never launched under section 76 of the Education Act 1972. In my opinion they should be. Furthermore it is my view that the appropriate Court for dealing with such matters should be the Children's Court. At present, the Magistrates Court of South Australia would hear a prosecution under section 76. In my opinion, it would be more appropriate for it to be heard by the Children's Court and I so recommend. I acknowledge the fact that this recommendation would involve a change to the legislation.
- 17.2. In my opinion the policy that appears to exist of not making use of the power to prosecute parents and guardians for non-attendance at school should be changed. The Education Act 1972 provides for the existence of an offence in these circumstances. It does so for good reason. This law should be enforced and prosecutions should be brought where there is a reasonable prospect of success based on legal advice and I so recommend.
- 17.3. I recommend that DECS obtain legal advice as to the status of its existing policy about prosecutions under section 76 of the Act.
- 17.4. In my opinion there is insufficient coordination between the Department of Education and Children's Services and Families SA. I am not suggesting that another inter-departmental committee be established. From what I have seen in this case there are already enough of those. What I am referring to is a genuine rationalisation of the efforts of the two agencies in relation to school attendance. There is clearly an inter-relationship between the agencies in this area. The Children's Protection Act 1993 shows that the Parliament has recognised quite rightly that persistent non-attendance at school is a sign that a child is at risk of neglect or worse. Denying a child of the age of 8 or 9 or 10 the right to an education, and the opportunity to mix with his or her peers, is a form of neglect. If that is occurring there is a risk that other, more sinister, things may be occurring. Investigation is essential in such cases. The powers under sections 19 to 21 of the Children's Protection Act 1993 are available for this purpose. The resources of the Department of Education and Children's Services and Families SA should be pooled and rationalised so that there is no delineation between the roles

of the two agencies in this area. They should work together seamlessly to ensure that the efforts of each agency could be used by the other to achieve their respective objectives. In that respect, I recommend that the Chief Executives of the respective Departments personally review the question of non-attendance and the options that are available for the resources of the two agencies to be better coordinated so that the apparent demarcation that exists at present can be eliminated.

- 17.5. I recommend that a copy of this Finding be forwarded to the Commonwealth Minister for Families, Housing, Community Services and Indigenous Affairs together with an offer to provide the Minister with access to the transcript and exhibits in this Inquest.

Key Words: Child Protection; Child Abuse; Families SA; DECS; Inadequate Examination

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

Seal the 22nd day of May, 2009.

State Coroner