COMMUNITY DEVELOPMENT AND JUSTICE STANDING COMMITTEE

INQUIRY INTO THE MAGISTRATES COURT OF WESTERN AUSTRALIA'S MANAGEMENT OF MATTERS INVOLVING FAMILY AND DOMESTIC VIOLENCE

TRANSCRIPT OF EVIDENCE
TAKEN AT PERTH
MONDAY, 10 FEBRUARY 2020

SESSION ONE

Members

Mr P.A. Katsambanis (Chairman)
Mr M.J. Folkard (Deputy Chairman)
Mr A. Krsticevic
Mr S.K. L'Estrange
Mr D.T. Punch

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Hearing commenced at 9.36 am

Judge JULIE WAGER
President, Children's Court of Western Australia, examined:

Magistrate ANDRÉE HORRIGAN
Magistrate, Children's Court of Western Australia, examined:

The CHAIR: Good morning. Welcome. I will commence the committee hearing. On behalf of the committee, I would like to thank you for agreeing to appear today to provide evidence in relation to the committee's inquiry into how the Magistrates Court of Western Australia manages matters involving family and domestic violence. The purpose of today's hearing is to discuss your submission to the inquiry. We may also ask you to provide comment on matters raised in other evidence that we have received and obviously to follow up on the correspondence that we have had since your court initiated some discussions with us, which we thank you for.

My name is Peter Katsambanis and I am the chair of the committee. The other members are the deputy chair, Mark Folkard, member for Burns Beach; member for Churchlands, Sean L'Estrange; member for Bunbury, Don Punch; member for Carine, Tony Krsticevic; and the member for Vasse, Libby Mettam, is running late due to the horrendous traffic that has apparently beset our city again today.

It is important that you understand that any deliberate misleading of this committee may be regarded as a contempt of Parliament. Your evidence is protected by parliamentary privilege; however, that privilege does not extend to anything that you might say outside of today's proceedings. Before we begin with our questions, do you have any questions about your attendance here today?

The WITNESSES: No.

The CHAIR: Do you have a brief opening statement that you would like to make?

Judge WAGER: Simply this: the Children's Court deals with the victims of family violence and in that sense also with perpetrators of family violence. The Children's Court deals not just with criminal matters, and often it is perceived in the community that that is what the Children's Court does, but we have an ever-growing jurisdiction in protection and care. That means that the parents whose children are the subject of applications by the department are people who are likely to have had an involvement in family violence—often they still are and it is very entrenched—and the children, the subject of those applications, are likely to be the victims of significant family violence. We also have an ever-growing violence restraining order list and that has increased significantly. What that means is that children are taking out violence restraining orders. Children may be the subjects, so the order might be made against them. In some situations, it may be against adults, it may be against other children, but the family violence dynamic has been increasing.

Our position is that in many jurisdictions there simply is not the sort of legal representation that there should be in that respondent parents, when their children are the subject of applications, are forced to represent themselves, and almost by definition these people have significant impairment, be it intellectual, mental health, drug, alcohol, homelessness, illiteracy, and children have to represent themselves in violence restraining order hearings because there is not provision for legal

aid for that. So in each of these forums we are dealing with very stressed people who, it is acknowledged, are significantly damaged, and they are being put in a situation that in our view is making the situation worse when we could quite easily make the situation better if they had representation and a degree of support. That is really why we are here.

Another factor that I think cannot be ignored is that the overrepresentation of Aboriginal people in all aspects of the Children's Court work is something that needs to be addressed. In recent years, the number of children the subject of protection and care applications has increased, but the number of Aboriginal children in that position has also increased. Of the 2018–19 statistics that we have, and I understand you are talking to the Department of Communities later, on our estimate I think it is about 55 per cent. In relation to crime, as of Friday we had in detention at Banksia Hill 109 young people; 23 of them were young people who were under the care of the CEO, so subject to care orders, and of that number 83 of the 109 were Aboriginal.

There is an increasing number of Aboriginal girls. There were only 11 girls in total, but that used to be a number of around four or five. But of those, eight of those girls are Aboriginal. And of the 98 males, 75 are Aboriginal. So they were the figures as of 7 February. Then, in relation to the violence restraining order issues, anecdotally, from the regional and remote courts, because of course the regular magistrates sit as Children's Court magistrates out of Perth and the metro area, they are reporting increasing numbers of children being involved in those proceedings and a degree of frustration and concern about communicating with them. They are the facets that we come to present from the Children's Court.

Magistrate Horrigan is probably in a better position to speak about the day-to-day experiences. My jurisdiction ends up being predominantly high-level crime; Magistrate Horrigan is there at the coalface in respect of all the other matters.

The CHAIR: You said that family violence is an increasing part of your job on a day-to-day basis. Do you have some figures around that?

Judge WAGER: No, we do not.

The CHAIR: How many applications would you receive where the children are the subject of the application?

Judge WAGER: The subject of the application for protection and care or for —

The CHAIR: For family violence.

Judge WAGER: For family violence—no; you are going to have to ask the Department of Communities for an actual stat on that. Unfortunately, as a court, we have extremely limited resources. We do not actually have the ability to keep our own statistics of things like that. But the Department of Communities is of course the applicant in all protection and care matters. The department also has a requirement under the restraining orders legislation to involve themselves in any violence restraining order or restraining order applications when the child is under care of the department, and should have an involvement in matters when the child is under the age of 16, particularly if the magistrate identifies that there may be a child at risk in that process. When I say "should", in the metropolitan area, yes, we would have a Department of Communities presence; in the regional courts, they often proceed with no Department of Communities presence in restraining order matters.

The CHAIR: Is that as a result of lack of resources?

Judge WAGER: Lack of resources, yes. I do not think it is lack of goodwill; it is a lack of resources.

The CHAIR: So, overall, we are seeing an increase in these general applications.

Judge WAGER: Yes.

The CHAIR: We are not seeing a commensurate increase in the resources available.

Judge WAGER: Certainly not.

The CHAIR: And in relation to legal representation, be it an applicant or a respondent, be it a child or an adult, clearly, being considered a civil jurisdiction, access to Legal Aid is non-existent or limited.

Judge WAGER: Yes.

The CHAIR: Who picks up that slack? Are there any services that are offering provision of some sort of service, even if it is ad hoc rather than official?

Judge WAGER: There are community legal centres. There are family law places like Djinda that assist. But there is still a very large gap, and that gap is particularly so when it comes to trials, be they in protection and care or in restraining order matters, because most organisations are prepared to provide advice and representation at an early level, but when it comes to the actual substantive trial, it is extremely unlikely that the parties will have representation. In the 2018–19 figures in the Children's Court, I think I referred to there being about 27 per cent of respondent parents who had representation. But of course usually in those trials you will have two parents—a respondent father and a respondent mother. Sorry; 23.5 per cent it was. Given that, it means that a greater number than 76.5 per cent of parents are proceeding without representation at trial because there are two of them. So that is that statistic. In relation to what happens in restraining orders. Magistrate Horrigan, what happens in restraining orders, please?

Ms HORRIGAN: In restraining orders, we often find that the applicant will come into court, particularly if it is a family violence situation, quite stressed. They have not been able to access any legal assistance because there is no duty lawyer service available. Sometimes they have had a little bit of advice on an ad hoc basis. They will come into the court and it really relies upon the court to have the time to actually speak to the parent. Our court, some years ago, one of the other magistrates and I created a draft form which could be completed, sworn as an affidavit and could be produced in court to try to reduce the level of stress that the parties are experiencing, but some people have difficulties with literacy, some people are coming into court without English being their first tongue. Our registry staff are pushed to the limit; we really are working on a bare skeleton. So what we try to do is glean some primary facts, so that by the time the person comes into court, I usually sit them down and have them sworn in and then try to elicit the evidence upon which I then decide whether or not to make the application. Some people are really scared. Having a mouthpiece is so important. Having had advice about the quality of their application—is it something that is going to stand up? What it does is that it lengthens our court list and unfortunately you have got to be, I think, balancing compassion with efficacy and making sure that you can deal with matters. But you then have to make the decision based upon the evidence you hear and the questions you ask because they do not have anyone standing up explaining things or listing evidence on their behalf. So, it does take time; people are stressed. If you are going to refuse an application because there is insufficient evidence, I usually adjourn it to allow the person time to go away and get some legal advice and go and find out a little bit more before they come back to the court. I do not dismiss the application because that has the consequence of putting more burden on our registry staff, who then have to go and create another file if there is a further application.

[9.50 am]

The reality is that if there were more resources by way of legal advice, when you invited the judge to make an opening comment, I was going to say the volume and complexity in matters where magistrates are sitting in our court is extremely high. Their lack of legal aid funding in particular has

a massive impact on all areas in our court. We have often combined lists which are very significant with matters often involving family violence. We have children, as I wrote at the outset, who are both accused as perpetrators or as victims. We have the protection care lists where you have family violence as a day-to-day problem. Without people having the ability to have access to support services, advice, they are then at the frontline having to talk on the other side of a courtroom. You could not imagine a worse battlefield for people, and it elevates everybody. Often we have to use the CCTV facilities, which are within the same courthouse, to enable parties to both appear. Some parties do not want to look at each other; they do not want to hear the other person. I had a parent come into court recently and as soon as she saw the image of the other party on the screen, from a prison, she ran out of the room screaming. These are all really confronting facts. If it is confronting for that person, there is then this ripple effect. It affects me as a judicial officer, trying to keep an orderly courtroom. It affects the people who are inside the courtroom and it affects the people who see this woman screaming and running out of the courtroom, and that is not an exaggeration. My view is that, unfortunately, as the volume and complexity rises, the lack of funding for legal advice and programmatic interventions seems to have waned or simply not kept up with the pace.

The CHAIR: That begs the question in my mind: why are we doing this in an adversarial process in a courtroom as the first stage of determining these applications in many cases, rather than as a last resort? Sorry to be provocative.

Ms HORRIGAN: No, I do not think it is provocative. There are good reasons to have things in a courtroom because that is where I work; I work in a courthouse. Things need to be recorded. I always take evidence in proceedings. Much as in these sorts of proceedings, you expect parties to come with the good intention of telling the truth, but their truth might be from their perspective. Things have to occur in a courthouse. They usually have to be recorded in a courtroom. There is a sense of order, much like we are sitting here; there is a sense of order, and we sit in one position and they sit in another. There are safety issues from time to time. We can employ court security to come in and sit at the back of the court if we are concerned. The comment was made earlier about the regions not necessarily being able to access assistance from the Department of Communities. We are blessed in our courthouse to have a variety of agencies under the roof. If when I go into court I see first up a restraining order application that is against a child, that is going to impact on that child remaining in their home. I will always invite Department of Communities staff to come into the courtroom; it is a closed court, and I invite them in so that they can then speak to the applicant, let them know that arrangements can be made, and see if arrangements can be made out of the courtroom so that we do not need to proceed with the application.

I suppose the flipside of hearing matters in court is the opposite of what I do as the magistrate who sits in the drug court. I deal with the children who come to our court who wish to participate in this particular program in as non-adversarial a position as possible, so we do not actually sit in a courtroom. There is a significant benefit from that, but the whole proceeding always starts at life in a courtroom. You have to set some terms. You need to record what your comments are, particularly for a first-up application on a restraining order—the other party is not there; they are not present, so the only way they can access a correct and true record is by applying for a copy of the application, the affidavit and the transcript of the magistrate's reasons for decision, and what was said. So there are good reasons for courtrooms, unfortunately.

The CHAIR: Is the design of your courtrooms sufficient at the moment, or does it vary from court to court?

Ms HORRIGAN: They are very small. In some ways that is good because it keeps it reasonably intimate. For example, if I am sitting in a protection list, I do not want rows of people listening to

personal details that relate to a family. Usually the way the court is structured is such that the orderly will only call in the participant or participants for that particular matter. We will often have the mother and father present in the court, either by video or in person, if they attend at all. I usually encourage a representative be appointed by Legal Aid WA to ensure that at least the children's interests are heard and promoted, but the reality is that it is a problem because the courtrooms are reasonably small and antiquated. They are a little tired, I suppose.

Judge WAGER: Yes, the court building was built 30 years ago and for those of you who do not know the Children's Court, it is that building in the round just near McIver train station. Thirty years ago it was fit for purpose and fabulous; now it is not, because it is just too small. We do not need to look at too many statistics to know that the numbers have increased. It used to be that we could have the protection and care jurisdictions on one side of the building, and the criminal side on another. Of course, now it is this amazing rabbit warren. It has reached a stage where it is very difficult to co-locate services. That does not mean that we necessarily need to have the huge cost of building a new Children's Court straightaway, because we could easily co-locate services there, in my view. We are in an area of Perth with probably one of the cheapest rents, being near McIver train station, so there are lots of little units and things around. It would be easy to co-locate some of the support services in a building next door or behind and do the hospital-style or court-style golden footsteps to follow from one location to another so that those who are stressed or who have literacy difficulties can find their way. There are options that are not necessarily going to break the bank. Clearly, in an ideal world, we need to have new courtrooms and we need to have a court where it is easier to communicate with everybody. Also, of course, these days we need to ensure that we have a degree of security in everything we do. To go back 30 years ago, there was no methylamphetamine. Thirty years on, everyone we deal with is potentially going to act out and get violent. We need to have a court that, on the face of it, appears very equal and very intimate but still with some safeguards.

Ms HORRIGAN: Can I just add to that, judge, one of the other factors that was always talked about was actually ensuring that we had two registries. That would actually have been really useful—one for the criminal matters and one for protection and care. One of the problems we face on a day-to-day basis is we try to keep our children as separate from adults as possible. It is simply very difficult when they all walk through a door that is probably twice the size of the door we entered today. They are all coming and going, they are all loitering out the front. We have serious historical sex offenders coming into our court, so I usually put them on the telephone to stop them actually physically appearing in our building, but you cannot do that for everyone. You really need to think progressively about everything increasing. As the judge said, 30 years ago the factors were all different. Now we have massive numbers of parents coming into the courthouse and all of our protection and care numbers have increased rapidly in the last couple of years. We have more adults coming to the court, more children coming to the court, and something is going to give. Two separate registries would be the ideal.

Judge WAGER: That extends also to the criminal side. I deal with a lot of historical sex offences, so the allegations will have arisen at a time when the accused and the complainant were both children. It may be that there has not been a complaint made by that victim for 30 years, so I am in fact confronted with a sea of adults in the Children's Court on an almost weekly basis because there is a significant load of historical sex matters to deal with. That of course puts all of these adults who could have, in the last 30 years, continued to be sex offenders, into this crowded realm of the Children's Court.

Mr M.J. FOLKARD: I picked up on a couple of things that you said earlier on, judge. One is that children are appearing before the courts as their own applicant.

Judge WAGER: Yes.

Mr M.J. FOLKARD: Is that common?

Judge WAGER: It is in restraining order matters, not in crime. I am sure you are all well aware of the civil versus criminal legal aid funding split, and it is a very literal one in our courts. Protection and care is basically —

Mr M.J. FOLKARD: Does that occur in the city predominantly, or is this a regional WA issue?

Judge WAGER: Look, you have probably got a better chance of representation as a child in a restraining order matter in a regional court these days, because, for example, with travelling solicitors, with legal aid flying in and out, with Aboriginal organisations flying in and out, there are no sort of divisions seen between crime and civil in the way that there is in the city.

[10.00 am]

Mr M.J. FOLKARD: I also picked up on your comment that where they are wards of the state, particularly in regional WA, these children are appearing before the bench with no representation, not even the Department of Communities.

Judge WAGER: That is in restraining order matters, yes.

Mr M.J. FOLKARD: Specifically?

Judge WAGER: Yes. Look, under the legislation, if the child is under the care of the department, then there are restrictions on what can happen with restraining orders, so it would not happen if they were actually under the care of the department, so under the care of the CEO of the Department of Communities. But there are a lot of young people who may be aged between 16 and 18 who may still be at risk and who would not have representation and who the court would not necessarily be able to have an involvement from the Department of Communities on. For example, in Bunbury last year, a girl—and she was just over 16—was in a relationship with her drug dealer, a man in his middle age, so her parents, her mother, had taken out a restraining order against her. It then ends up in court; the magistrate then raises, "Well, hang on, what about this child? If I make the order, then isn't she going to be at risk? Won't she inevitably end up living with the drug dealer?" and wanted an involvement with the department. At that stage, the department said, "Well, look, this doesn't come within our legislative framework; we're not in a position to deal with this matter." I then actually brought it into Perth and it all got sorted, but that is the sort of thing that can occur. It may be that under the Restraining Orders Act it needs to be wider so that all children have that same advantage, be they under 16 or not.

Mr M.J. FOLKARD: It just concerns me that children—in regional WA, often for our kids from an Aboriginal background, English is their third or fourth language, so their understanding of the system, put before a beak, for want of a better term of putting it, to have any understanding of the process. I mean, what hope have we got of a fair outcome in that space? That leads me to my next question: Is there any quality assurance in this space? How do we know that the magistrates are in that? Do you see where I am coming from?

Judge WAGER: Yes. Look, every area is different and, no, there is not any quality assurance. There have been moves with victim support, there have been moves to improve these things, but, of course, it depends on the jurisdiction. This is the Chief Magistrate's position, or should be something that he would be speaking about, not me. But the reality is that if, for example, a regional magistrate goes to a remote community and they have a very busy list, part of that list will be Children's Court. They would usually convene Children's Court early in the list; they would then call on, say, the violence restraining order matter list; they would then deal with that before moving to the other

stuff. Clearly, when you have those sorts of time restrictions, it may well be that the child does not get as good a deal as they would if there was more time.

Mr M.J. FOLKARD: My question next, then, is: as the judge of the Children's Court who effectively is the person in charge of the Children's Court, do you have any oversight as to what is going on in regional WA with the Children's Court listing out there? Do you do any quality assurance as to the outcomes or mentor particular magistrates in that space where there seem to be difficulties in a lack of understanding as to their role or duties?

Judge WAGER: It is a very, very strange area because all magistrates, of course, are appointed as magistrates and also as Children's Court magistrates, so they come under, in that sense, the umbrella of the Children's Court act, but also the Magistrates' Court Act. So in terms of listings and structure of listings, no, that is a Magistrates' Court Act area. In terms of basically being an ear and being someone who can be contacted by the magistrates, yes, that occurs. I do, in crime, section 40 reviews, which are reviews of decisions that have been made by the magistrate. I do bail reviews of decisions by magistrates in remote and regional locations. I can also do reviews of interim orders that they make in protection and care proceedings, so that could come to me, although it rarely does. In relation to restraining order matters, though, that would then go to a single judge in the Supreme Court, so I basically have no role in overseeing what happens in that jurisdiction other than, I suppose, an overarching concern as the President of the Children's Court, so I do not have a statutory ability to review.

The CHAIR: Essentially, our magistrates are generalists.

Judge WAGER: Yes, they are, except for in our building.

The CHAIR: Yes, except for your building, but generally the magistrates are dealing with matters outside of the Perth Children's Court.

Judge WAGER: Exactly, yes.

The CHAIR: They are generalist magistrates.

Judge WAGER: I very much encourage them to contact me, and, indeed, they contact the Children's Court magistrates.

The CHAIR: Sure. There is training for Children's Court–type work for magistrates, and there is training for family violence as well.

Judge WAGER: There is. Look, it has been very limited in the past and we are trying to increase that. There have been some magistrates appointed recently. The rule of thumb was that they would come to Children's Court and sit in with other magistrates for—is it a day and a half or two days?

Ms HORRIGAN: It used to be two days, and I have lobbied as much as I could to have it for a week minimum, because they need to have an understanding of what we do in the combined lists, which is the sentencing, the arrests and remands; they need to see how we manage protection and care. There are so many subsets of what goes on under that big umbrella. We also need to have them sit and assist with a restraining order list, so there are a variety of areas that they really need to get across. It is not simply the old rule of thumb that for an adult you give them three months and for a child you divide it by a third. That is what it used to be. My view is that people need to actually understand the objects and principles of the Young Offenders Act, the objects and principles of the legislation for protection and care under the Children and Community Services Act, and the only way you can really understand something is if you actually see it in action. A bit like driving the car yourself; you actually start taking note when you are actually behind the steering wheel, but at least you get a good idea from the navigator's seat.

The CHAIR: So we have a day and a half, two days, a week.

Ms HORRIGAN: Not a week.

Judge WAGER: No, that was it.

Ms HORRIGAN: Sorry, this is before. For example, if a magistrate is going to the regions, they usually come for two days—two days maximum—before they are then sent to the regions. Often, they will have had some contact with the Children's Court before they go, so as a lawyer practising. They may or may not have. We have had a lot of Director of Public Prosecutions staff appointed to the bench. Their understanding of how the Children's Court works might be slightly more limited if they have never been to the Children's Court prosecuting. Just because you are a lawyer does not mean you can do everything. You need a degree of speciality.

The CHAIR: This is what concerns me because having had legal training and having sat as quasi-judicial, I recognise the significant difference, particularly the jurisdictional differences, perhaps better than most. What I hear today does concern me, as you have said. There seems to be a lack of commitment to funding the sort of training that would equip a magistrate who might be dealing with anything from a residential tenancies dispute through to a criminal matter —

Ms HORRIGAN: A coronial matter.

The CHAIR: — a coronial matter, then all of a sudden is dealing with a Children's Court matter, it could be in family violence, it could be in protection, it could even be in children's crime, for that matter, and they have had two days of sitting in at the Children's Court as their background. It is a possibility; I am not saying they all have.

Judge WAGER: Pretty much all. With the last lot of appointees, we have piloted, so, in fact, there have only been two of them who have done it. I think this structure actually works really well. They still come for the first two days when they are very first sworn in as magistrates, so they are sort of like rabbits in the headlights, and they can get a feel of the pace, what is going on there and who the parties are. These ones came then—one for a week; one, unfortunately, only for three days—to sit in the court just before they go to their regional area.

That has been great so that, particularly for one who was going to Bunbury, she observed the protection and care list and then she presided over it with an extremely experienced magistrate there with her to give assistance. Was that you or someone else? In any event, that worked really well and I was confident that she was going there understanding exactly what was involved in the whole of the jurisdiction. That is something we would like to see happen in the future.

[10.10 am]

The CHAIR: What is the gold standard? What would you like to see in a perfect world, because we are going to be getting new magistrates —

Judge WAGER: Victoria.

The CHAIR: What aspects of the Victorian model do you think would benefit?

Judge WAGER: They have a judicial commission so there is full judicial training for all magistrates and judges, and they have a Children's Court. We do not have a registrar. I do not have legally trained staff. Anything that you read has been written by the likes of the magistrates or me in our own time, on top of our judicial loads. We do not have anybody who provides any assistance like that. The court is as bare bones as you could possibly get. In Victoria, they have people who are working on policy and they have a registrar. Legal representation is given to every respondent parent in protection and care in Victoria and New South Wales. As a result of that, they can do a lot of the stuff that you are talking about, where it is easier to have pre-hearing conferences and mediations

because everyone is on a level playing field. You have the judicial training, you have people who are represented and you have a court that has really experienced people running the show. They are the things that we would like. Then you have all the frilly bits. We are starting a protection and care therapeutic court. Yes, we will have a level playing field; yes, we are getting more Aboriginal art in; yes, we are getting a flagpole and will finally have an Aboriginal flag, which has taken a long time to get sorted. I have been banging on about signage for a significant period. The signage does not acknowledge that nearly 80 per cent of the people in our building have a cognitive impairment and are likely to be illiterate or that English is a second language. All these things are window-dressing. They would happen if we had that sort of a resourced court.

Mr D.T. PUNCH: Is there any comparative research that looks at the outcomes of the court system with family violence restraining orders in, say, Victoria compared to WA, and does that research exist at a level that can drill down into different types of disadvantage, whether it is cultural and linguistic or Aboriginality or whatever?

Judge WAGER: I am not aware of any but that does not mean it does not exist. For the reasons I have already stated, we are not the people doing the research and we are not necessarily aware of everything. For example, I heard on the radio program *AM* this morning that Megan Mitchell has released her report about human rights and children and all the stats. I get my information off the radio. I was commenting that the royal commission into children from 2015 in Victoria is a document I have not read. This is that overarching thing that the court is pretty bare bones and we need to get that information. Is there such a comparison? I have no idea. Not that I am aware of.

Mr D.T. PUNCH: You have probably answered my second question but your experience would be valuable. In terms of the increasing number of children who are appearing in relation to family violence restraining orders, if there is a failure in the system, do you see them flowing through to protection orders taken out by the department?

Judge WAGER: Yes, in that —

Mr D.T. PUNCH: So is it a case of one feeding the other?

Judge WAGER: Yes. In our court, it is simply because they are both under the civil umbrella. It falls into the fact that they are not crime and therefore they are not getting the legal representation and they are not such a concern for registry and matters of that type. There have been reports in the past suggesting that protection and care should move to the Family Court. I have been very opposed to that, as indeed have the magistrates. One of the reasons is that these are very much our people. Although we are impoverished, we are not a threatening environment; it is a very welcoming environment. It is an environment where ever since the court has been set up we have dealt with at least 50 per cent Aboriginal litigants. That is a very different scenario from the Family Court. To say that the Family Court has a nice registry does not mean that we should not have one.

Mr D.T. PUNCH: Notwithstanding the constraints you have explained to us, is the culture of the court itself more appropriate for the people that you see?

Judge WAGER: I think so.

Ms HORRIGAN: I would strongly say that all the magistrates are very aware of the problems and we deal with high numbers of people. I will add one other fact that may or may not be apparent. The judges talked about how criminal law is funded for children who are appearing as offenders. I should say that the Office of the Director of Public Prosecutions prosecutes all the matters in our court. You have got lawyers appearing dealing with matters involving children from a criminal perspective and you have lawyers generally. It is pretty rare for children not to access a service, be it a Legal Aid duty lawyer service—the duty lawyers are all experienced lawyers who have been there for a long time;

they are very good at their job. You flip it over to the civil side, and because it does not have Dietrich, and therefore there is no obligation to fund, you have a group of lawyers who are funded by the Department of Communities to come in to represent applicants and their CEO on the applications to take people's children off until 18, but the parents do not have the flip side. This is the gaping hole where there needs to be an increase in funds. At the moment, Legal Aid offers parents the total sum of $540 for advice, representation, investigation and a response. That amount will be gone in a flash. That means that that parent is going to be appearing in our court. That parent might be a child having had a child or it might be a mother or father in custody who is unable to see their child and unable to access legal assistance. It is just an ongoing battle to try to even the scales. When I do a protection and care trial, more often than not I will have unfunded parties, so I am dealing with in-person litigants who are scared, frightened or incapable of putting a sentence together because English is not their first language and they are frightened of saying something lest the other party with whom they are in a family violence situation or a controlling relationship might react adversely to what they say. So it is a constant.

Mr D.T. PUNCH: I understand that.

The CHAIR: Hence what you were saying earlier about your level of involvement in or requirement to do a certain number of steps that you would not ordinarily have to do if the parties came to you well prepared and well represented.

Ms HORRIGAN: I will give you an example of two different scenarios, particularly in the protection and care jurisdiction. I had two parents arrive at court on the same day. This was the week after Christmas. Each of their children were Christmas Eve babies, so I am dealing with tiny newborns. One set of parents did not attend. The father had not been served because he could not be located and the mother was still trying to cope with what had happened about the apprehension of the baby into emergency foster care because no arrangements had been made for lack of the parents engaging with the department early on in the proceedings. It is pretty obvious they do not just go in and take babies; they try to work with family and make sure there is a family member who can take the baby. On the flip side, the other parents both came. They each had got themselves representation. Each party came with a lawyer. The conversation we were able to have over the half hour we spent, because it was a pretty light list over Christmas, was that I could talk about where the newborn would be placed, who it would be placed with, how often the mother would be able to see the baby, how often the father would see the baby, and how that matter was going to be progressed. You could actually make practical inroads into what was happening for that small child. It is a huge responsibility to make orders that keep parents and children apart, particularly at such a vulnerable stage in that baby's life. The value of being able to have the lawyers on hand at an early stage means that the parties can take a little breath and let their shoulders relax and feel they have been able to speak to somebody, get some advice and information about where the matter is tracking. The lack of that is very difficult. In my general lists in protection and care—my recent number of people I had in the morning list starting at nine o'clock was 53.

[10.20 am]

So, if you think about having a half-hour conversation with everybody, it is impossible. You have to be across the files, know what's happening and be able to cut to the chase with where the direction of this matter is going and you can do that a lot better if you have got lawyers. If you have to try to explain to people what is happening, they do not always understand. Then you might have to repeat it.

The CHAIR: I understand.

Mr D.T. PUNCH: The original question I was asking though, because we have drifted into care and protection matters, was the extent to which some of the front-end support for family violence restraining orders as they relate to children, if there is a failure in those areas, do you see a consequent increase in child protection applications? Is one feeding the other because of this overall trend?

Ms HORRIGAN: I would have said not necessarily.

Mr D.T. PUNCH: That is fine. That is what I wanted to know.

Ms HORRIGAN: But there are not enough services available for the restraining orders.

Judge WAGER: It is really hard to say and we certainly cannot comment on the regions.

[Interruption for technical malfunction.]

The CHAIR: We will suspend the hearing.

Proceedings suspended from 10.21 to 10.23 am

The CHAIR: We will recommence, then. Tony Krsticevic.

Mr A. KRSTICEVIC: Just a very quick one—more anecdotally, I suppose. In terms of the applications for restraining orders, what percentage are, basically, approved? I do not know if you have the specific numbers. Of the ones that are not approved, what are the anecdotal reasons for that?

Judge WAGER: Throughout the state, there were, I think, 585 children involved in restraining orders in 2018–19. Back in 2014–15 it was 374. The proportion of final orders granted, going from go to whoa, if you like, in regional courts in general it seemed to be about five or 11 per cent et cetera, whereas in Children's Court it is 20.2 per cent. This is coming from a report that is entitled "Magistrates Court of Western Australia Family Violence Restraining Orders Report 2014–15 to 2018–19". That is for internal use in the Department of Justice. That is where I am getting those stats from.

Mr A. KRSTICEVIC: So only 20 per cent would be —

Judge WAGER: After trial. It may be that there is an agreement reached. I will let Magistrate Horrigan talk to you about all the —

Ms HORRIGAN: There are a number of things that can happen with a restraining order. Usually we try to apply a therapeutic approach to it. We try to talk to the parties to see if there can be resolution. Often there can be resolution because the parties can either access some mediation. The parties may come with goodwill and say, "Look, we would like our children to be able to go to school together. I am happy as a parent to take responsibility." And you see these things going on in front of your eyes where parties shake hands and say, "Yep, we can all do better." No order made. You can either have parties saying they are happy to sign what is called a minute of undertaking. The child is going to say, "I'm going to undertake that I don't need the restraining order restriction"—because we don't really want the criminal consequence for the child on a breach—"but I will undertake to stay away five metres from this child or this person" so that I can then resolve the matter and then be done with the restraining order that has been made on an interim basis. Or the matter could be litigated, or there could be an outcome where it is dismissed or granted. There are a variety of different orders that can be made—or outcomes. They do not all have to end up being a final order hearing. They could be resolved along the way. I had, for example, a grandmother come recently saying, "I don't want the order against my grandson to affect him later in life, but I need the protection at the moment. Can I put it off for a month so that will allow him to get some legal advice?" There is not one answer to everything. It is a case of how you play each matter individually.

Mr A. KRSTICEVIC: I suppose the fact that it is only 20 per cent, roughly —

Ms HORRIGAN: Some people do not turn up because they do not have a lawyer and they give up.

Mr A. KRSTICEVIC: The question is: is there a better way of dealing with this rather than it going to the courts? Because 80 per cent of them do not end up progressing.

Ms HORRIGAN: Can I say that some years ago the youth law service received an allocation of funds. The allocation of funds enabled children to go to a trained mediator. It was a very useful. I think that on average there were probably more than 95 per cent of the restraining order applications resolved because they were removed from a court situation. They were dealt with appropriately. Let us speak to the applicant first to find out what the problems are. Let us speak to the respondent next. Then let us make arrangements to see if we can actually get the parties together. Because every single problem at its heart needs to be unpicked. The problem is that by simply granting an order you have not solved the problem. There is going to be a number where you know they are not going to solve the problem because people are not going to budge, but the more you can actually invest in actually sorting out the problems and us overseeing the sorting out of the problem, the more value there is for the community.

The CHAIR: Who did this trial—did you say?

Judge WAGER: Youth Legal Service.

Ms HORRIGAN: Youth Legal Service.

Judge WAGER: In fact, last year, for the princely sum of $10 000 we, through the court—now that you know that we do these things because it simply has to happen—we did a school bullying mediation for school bullying VROs. Legal Aid made some videos for us so that the kids could see what was going to be involved in the process et cetera. That, too, was extremely successful. I know you are hearing from Katy Kraszlan, I think, later in the morning.

The CHAIR: Yes.

Judge WAGER: Can I just say this—if anyplace is going to benefit from mediation for VROs and FVROs, it is the Children's Court. I hope I have made it very clear to her and to you. Yes, we do have to start with the formality of a court. With children, it is no different. You cannot just, sort of, all slop in or it simply will not happen. You need to have a structure that is respected. But once that has happened, mediation is fabulous. To have qualified competent mediators would be fantastic.

[10.30 am]

The CHAIR: We are going to run out of time, unfortunately, but could you outline to us, other than the legal services that are available at the court, what are the range of support services that are available at the Children's Court?

Judge WAGER: We have a representative of the Department of Communities. We obviously have youth justice, so they are there for the criminal side of things. We then have some of their community legal people who will be in there at different times and the lawyers will be in offices as duty lawyers. We have Centrelink people drop in and out. We have a disabilities person who is coming once a fortnight for an hour or something—it is not a significant thing. We are very, very happy that finally we have got some representation from the Department of Education, which is another issue and it would take a whole day.

Ms HORRIGAN: Can I just add that we also have two other services under the roof which are incredibly important. One is the Metropolitan Youth Bail Service, which is incredibly important, and also we have a team called the Links team. One deals with bail; one deals with mental health. The Links team has a senior psychologist, a number of senior mental health nurses, and it has support

workers through Outcare. That can provide mentoring support for children and getting children from appointment to appointment. There are actually now a range of options from an agency perspective, so the legal is really lacking. Everyone else is coming to the table to say, "What can I do?" In fact, the disability justice person has only just started through the Department of Communities and I have already had excellent service from them. They have provided a report. They have provided information which is now being acted on for a young person who had spent over 90 days in custody. He is now able to access his NDIS plan. In fact, that is being reviewed today. So the reality is that there are agencies and there is a lot of goodwill. Lots of people do Children's Court work because of the goodwill, and because it is a specialist jurisdiction you actually draw on people's goodwill and speciality. I think that is a really important factor to bear in mind. The legal services are really what is lacking.

The other factor, which I made comment on, is that we have children in the criminal sphere whose parents can be perpetrators as well as victims. There is no behavioural change program for children. I can do quite a bit through the Drug Court because I have dedicated youth justice officers who are actually part of my Drug Court team, but if there are family violence issues, there is no place I can send children off, apart from family counselling. Sometimes kids need to do a behavioural change program and it is simply not available, because services are always, unfortunately, geared towards adults instead of to the front end. If more services were pointed to the front end, hopefully generationally there may be some quite significant change.

The CHAIR: There is no specific child behavioural change program available?

Ms HORRIGAN: No.

Judge WAGER: Not in the family violence context; not in the sex offending context. This is a particular concern in remote and regional locations too. If you are dealing in an Aboriginal community where the whole place has been broken, if you like, through violence and sexual violence, and you have young people who are likely to have an impairment such as FASD—a 2015 Telethon Kids report found that about 80 per cent of the kids in Banksia had an impairment, and a conservative estimate of around 30 per cent with FASD—if you are dealing with those kids, you do need specialist programs, and the time to do it is when they are young people. The studies have made it very clear that if a young person is being violent, who is acting out and has had this experience at home, be that sexual violence or physical violence, it is not going to look pretty when they turn 18 if it has not been addressed when it has been identified.

Ms HORRIGAN: It is a very damaged cohort. The more that could be focused on making change early would actually, I think, be of significant benefit to the community.

The CHAIR: Thank you for your evidence. As I said, we are going to run out of time, unfortunately. If you do not mind, we will have some more questions arising out of this hearing and if we could write to you and you could respond. You have been excellent so far in proactively reaching out to us and providing us with all the information, so we thank you for that. We would like to continue that relationship. We will provide a transcript of the hearing to you for correction. You will get 10 days to correct it. If you do not think any changes need to be made, you do not need to send it back. You cannot use that process to introduce new material; it is just simply to correct the record. But if you want to send anything else to us, we are very happy to hear about it between now and April, when we are due to report. You can do that as a supplementary submission if you like. As I said, we will probably write to you with some other information. Thank you for your evidence. We appreciate the time that you have taken to speak to us today. I will end today's hearing there. Thank you very much and good luck in your work, because it is very, very important work that you do.

Hearing concluded at 10.34 am