CITATION: *Minister for Health & Community Services v NB, KPP, HPP [2007] NTMC 069*

PARTIES:	THE MINISTER FOR HEALTH & COMMUNITY SERVICES (APPLICANT) v NB (CHILD) v KPP (GRANDMOTHER) v HPP (MOTHER)
TITLE OF COURT:	FAMILY MATTERS COURT
JURISDICTION:	ALICE SPRINGS
FILE NO(s):	20316564
DELIVERED ON:	23 OCTOBER 2007
DELIVERED AT:	ALICE SPRINGS
HEARING DATE(s):	19–22 MARCH, 16, 18-20 APRIL, 30 MAY, 01 JUNE, 14-15 JUNE, 2-3 AUGUST, 13 AUGUST AND 27 AUGUST 2007
JUDGMENT OF:	Ms Little SM

CATCHWORDS:

Community Welfare Act, whether Sole or Joint Guardianship Order

REPRESENTATION:

Counsel:

Minister:	Mr Stirk
Child:	Mr Whitelum
Grandmother:	Ms Munster
Mother:	Ms Hepburn

Solicitors:

Minister:	Povey Stirk
Child:	Morgan Buckley
Grandmother:	NT Legal Aid Commission
Mother:	CAALAS

Judgment category classification:	
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IN THE FAMILY MATTERS COURT
AT ALICE SPRINGS IN THE NORTHERN
TERRITORY OF AUSTRALIA

No. 20316564

[2007] NTMC 069

BETWEEN:

THE MINISTER FOR HEALTH & COMMUNITY SERVICES
Applicant

AND:

NB
Child

AND:

KPP
Grandmother

AND:

HPP
Mother

REASONS FOR DECISION

(Delivered 23 October 2007)

Ms LITTLE SM:

1. This is a review of an Order made in the Family Matters Court with respect to the child, NB, ordering that the child be in the joint guardianship of the Minister for Health & Community Services ("the Minister") and his maternal grandmother, KPP, with custody at the discretion of the Minister. The maternal grandmother will be referred to as the grandmother or KPP throughout this decision. The review is conducted pursuant to s 43(6) of the *Community Welfare Act (NT)*. Following the review, the Court may extend the period of the Order. There was no application to review the declaration that the child NB was a child who was in need of care.

2. The Minister is seeking an Order that the Minister be ordered to be the sole guardian of the child NB. The grandmother is seeking an Order that she continue as a joint guardian. The grandmother's application is supported by the mother, HPP and the child's representative. The father of the child is deceased. No other parties or persons have sought to be involved in the hearing. The grandmother's original position that she be the sole guardian of the child was abandoned during the hearing. This meant that some evidence taken in the first part of the hearing is not directly relevant to this decision.

3. The child was born on 10 May 2002 and is now five and a half years of age. The child NB is an Aboriginal child and in particular, a Pitjantjatjara child. He is currently residing in Alice Springs with Family & Community Services (FACS) registered foster carers.

4. The hearing of this matter became protracted due to a variety of reasons, including the availability of the Court and Counsel. The case has raised some important issues which relate to the operation of the *Community Welfare Act* and especially when the Family Matters Court is considering Orders with respect to Aboriginal children. During the hearing I made it clear that I was concerned about the lengthy nature of the cross-examination of witnesses and in particular, the FACS Manager who was cross-examined for many days. Section 40 of the *Community Welfare Act* sets out that the Court "shall proceed without undue formality and shall endeavour to ensure that the proceedings are not protracted". The Court's task is to ensure all parties are heard and allowed to test the case of opposing parties.

5. The discretion given to the Court in the Family Matters Court is most appropriately exercised when parties have at the fore of their minds that the welfare of the child is the focus of the case. That may or may not coincide with the interests or priorities of the other parties to the case. This case demonstrated that the common practice of calling FACS case workers at the

start of the hearing is not always the best way to proceed. Had the evidence of Dr White been given at the outset of the case, Counsel and the Court would have had a head start into some of the key issues in the case. Similarly, if Ms Turbull had given her evidence earlier, another set of key issues would have been identified. Cross-examination of Ms Walker would likely have been greatly reduced and in my view, more relevant to the issues in the case. By the end of the hearing, the parties were adopting a more co-operative approach to the case. This approach maximises the opportunity for the Court to make Orders which take account of all factors to be considered and in particular, the factors in s 43(1) of the *Community Welfare Act*. This approach also acknowledges the ongoing relationship between the parties and promotes co-operation in the implementation of any Orders made. With respect to the child NB, it is essential that the parties work co-operatively to give him every opportunity to develop to his full potential. The parties are urged to maintain their co-operative approach.

6. The onus of proof rests with the Minister with respect to all matters in dispute and the burden of proof is on the balance of probabilities. I have considered all material, oral evidence and documentary evidence before the Court. Some of the evidence will be summarised later in the decision.

7. At the end of the hearing and during submissions, a preliminary matter arose which needs to be addressed prior to any further consideration of the matter. It indeed may mean that the Orders sought by the grandmother are not capable of being made and accordingly, will be addressed prior to consideration of her application. This issue relates to whether the 'grandmother' is within the category of persons who are eligible to be a joint guardian of the child, NB.

8. The Minister has raised the question of who can be ordered to be guardians pursuant to s 43(5)(c) of the *Community Welfare Act*. The grandmother does not come within the definition of parent. The question is, was she a

guardian or did she have custody of the child NB at the time the child was taken to the Alice Springs Hospital and prior to any Family Matters Court Orders being made? I find on the facts presented before the Court that the grandmother KPP had custody of the child NB at the time he was taken to the Alice Springs Hospital and immediately prior to any Community Welfare Act Orders being made. In particular, I find she had the responsibility for the daily care and control of the child, including decisions concerning the urgent and routine health needs of the child. I do not find that she was the only person having custody of the child at this time. Nevertheless, she is eligible to be one of the persons whom a Joint Order for Guardianship can be made by the Court pursuant to s 43(5)(c) of the *Community Welfare Act*.

9. If the interpretation of s 43(5)(c) of the *Community Welfare Act* put forward by the Minister is held to be correct, many appropriate and even the most appropriate, potential guardians are excluded from consideration by the Court. For example, an auntie may not come within the category of a potential joint guardian, but reports may conclusively point to the auntie as the best potential joint guardian. This interpretation will most dramatically impact upon Aboriginal children in the Family Matters Court in the NT, given the importance placed upon extended family connections within the Aboriginal society if it is held to be the correct interpretation. Nevertheless, in this case, I find that KPP is not excluded from consideration as a joint guardian.

10. The Minister is seeking an Order pursuant to s 43(5)(d) of the *Community Welfare Act*. They are seeking an Order that the sole rights with respect to guardianship rests with the Minister. Section 43(7)(a) sets out that the Court shall not make an Order under sub-section (5)(d), unless the Court is satisfied that no other Orders that it may make will adequately provide for the welfare of the child (sub-paragraph (b) does not apply in these circumstances). Accordingly, not only does the Minister bear the burden of proof with respect to satisfying the Court that an Order should be made, they

bear an additional burden in needing to satisfy the Court that no other Order that the Court may make, would adequately provide for the welfare of the child.

11. Some matters are not in dispute. The child, NB, is an Aboriginal child. He is a Pitjantjatjara child. The grandmother, KPP is his maternal grandmother and is a Pitjantjatjara woman. His mother and father are also Pitjantjatjara people. His mother is not seeking to be a guardian. His father died early in his life. During the hearing, another significant grandmother in NB's life (his paternal grandmother) died. Much of the focus of this case has been upon the need to ensure that the child remains connected with his country, family, community and his Pitjantjatjara origins. He is presently placed in a foster care placement in Alice Springs. He is undertaking pre-school and has limited contact with people who speak the Pitjantjatjara language. He has also attended the Congress Childcare Centre and that has allowed him some exposure to Aboriginal people. There are no urgent pressing physical health issues. The present placement has not addressed the specific concerns raised by the representatives for the child, mother and grandmother, as to the child's Pitjantjatjara background.

12. Section 69 of the *Community Welfare Act* will be considered in this case.

Section 69 sets out as follows:-

> **69. Aboriginal child in need of care**
>
> Where a child in need of care is an Aboriginal, the Minister shall ensure that –
>
> (a) every effort is made to arrange appropriate custody within the child's extended family;
>
> (b) where such custody cannot be arranged to the Minister's satisfaction, every effort is made to arrange appropriate custody of the child by Aboriginal people who have the correct relationship with the child in accordance with Aboriginal customary law; and
>
> (c) where the custody referred to in paragraph (a) or (b) cannot be arranged without endangering the welfare of the child – after consultation with –

(i) the child's parents and other persons with responsibility for the welfare of the child in accordance with Aboriginal customary law; and

(ii) such Aboriginal welfare organisations as are appropriate in the case of the particular child,

a placement that is consistent with the best interests and the welfare of the child shall be arranged taking into consideration –

(iii) preference for custody of the child by Aboriginal persons who are suitable in the opinion of the Minister;

(iv) placement of the child in geographical proximity to the family or other relatives of the child who have an interest in, and responsibility for, the welfare of the child; and

(v) undertakings by the persons having the custody of the child to encourage and facilitate the maintenance of contact between the child and his or her own kin and with his or her own culture.

An Aboriginal Child Placement Principle has been developed by the Minister to give effect to s 69 of the *Community Welfare Act*. The principle is Exhibit A1. The principle largely summaries s 69, though some variations are evident. Consultation is reinforced in the principle.

13. Section 43 of the *Community Welfare Act* incorporates s 69 as one of the factors the Court must consider.

Section 43(1) sets out:-

43(1). Findings of Court

(1) In proceedings in relation to a child in relation to whom an application under this Part is made, the Court shall consider –

(a) the need to safeguard the welfare and development of the child;

(b) having regard to the age and comprehension of the child, the reactions of the child to the proceedings and the child's wishes in relation to the outcome of the proceedings;

(c) the importance of maintaining and promoting the relationship between the parents, guardians or persons having the custody of the child (and, where appropriate, the extended family of the child) and the child;

(d) the desirability of maintaining the continuity of living in the child's usual ethnic and social environment; and

(e) where the child is an Aboriginal – the person or persons to whom, in its opinion, custody of the child should be given should the child be found to be in need of care, having regard to the criteria imposed on the Minister by section 69.

14. One of the issues pressed by Counsel for the child, the mother and the grandmother, is that, if a Joint Guardianship Order is made, the maternal grandmother is given authority and would be in a position to work with the Minister to ensure that his cultural needs are met. This submission goes to the heart of some of the more contentious issues in this case. The ability of the Minister through the FACS Department and the maternal grandmother to work together is an issue in dispute. On 23 February 2005, an Order was made substituting the grandmother for the mother as the joint guardian with the Minister. The maternal grandmother has been a joint guardian with the Minister from 23 February 2005. It was not until 6 December 2006 that the Minister sought to vary the Order, when at the review date, the Minister applied to have a Sole Guardianship Order.

15. Section 4 of the *Community Welfare Act* sets out the definitions of custody and guardianship as follows:-

> "custody", in relation to a child, means the responsibility for the daily care and control of the child, including decisions concerning accommodation, attendance at school, clothing, feeding, transportation, behaviour and urgent or routine health needs of the child;
>
> "guardianship", in relation to a child, means the custody of the child and the responsibility for the long-term welfare of the child, including decisions concerning the education, changes in place of residence, religion, employment and the general health of the child and other rights, powers and duties before the commencement of this Act vested by law or custom in the guardian of a child.

16. A hearing was set. The hearing of the matter has continued on for some time, due to a variety of factors. During all periods of the adjournment, the current Orders have continued, namely that the grandmother and the Minister have remained as joint guardians. Accordingly, for some considerable time, there has been ongoing contested proceedings, where the grandmother and the Minister have continued to act as joint guardians.

Contested proceedings are ordinarily a particularly stressful period of time. There is nothing to suggest this case is any different. All evidence before me is that the grandmother has acted in a dignified and measured way with respect to the Minister and the Department. There is no evidence that she has made unreasonable demands or been disruptive during the hearing process. There was nothing that has occurred during the hearing process which caused the Court to consider that the maternal grandmother could not work with the Minister as a joint guardian in the best interests of the child, NB. The Minister points to matters that have occurred prior to the contested hearing as being justification for a Sole Guardianship Order.

17. I would not consider it is appropriate to make an Order for Joint Guardianship where there is clear evidence that the proposed joint guardians could not work together in a constructive way in the best interests of the welfare of a child. That statement is made in a general way and applies to any matters which are heard before the Family Matters Court. The Court must always place the welfare and best interests of the child as the central focus of any Order it makes. If the Court is satisfied that those interests could not be promoted by a particular combination of guardians, the Court should not make the Order.

18. There has been an enormous amount of evidence in this matter. There has been some failures to communicate as between the grandmother and the Minister's office. I do not regard these failures to communicate as being of such a serious nature as to mean that the Department and the grandmother cannot work together. It is my view that one of the primary issues which was raised by the evidence as to whether the maternal grandmother is an appropriate person to be a joint guardian for NB is her blind spot with respect to her son, who was previously on parole and who is currently back in custody. Her son was convicted of manslaughter within a domestic relationship. During times when her son was on parole she allowed the child, NB and her son to have some limited contact. The Minister did not

agree to this contact and KPP was aware of that. This issue has caused the Court concern as it would seem readily apparent that someone who was on parole for such a serious charge, should not have contact with a child who has a complicated history such as this. There is no evidence that this contact has compromised NB's development. Nevertheless, it was an appropriate condition imposed by the Minister which was not acted upon by KPP. While this issue is not determinative of the issues, it demonstrates the different approaches taken by the Minister and KPP in NB's care and welfare requirements.

19. The child, NB has a complicated health condition. He was a child who was exposed to alcohol prior to his mother giving birth to him. As a consequence, he has been diagnosed as having foetal alcohol syndrome. He has also suffered as a consequence of malnourishment. These conditions are, to some extent, interrelated. He also has other health issues such as hearing difficulties. Dr White's evidence on the child's needs and his prognosis for the future is crucial in the case. I am satisfied that the child has very particular needs which require a consistent and dedicated approach. For example, he is a child who can take many hours to eat even the smallest meal. To ensure he is to obtain adequate nutrition, he needs significant dedicated supervision and monitoring of his feeding.

Evidence of Dr White

20. Dr Andrew White's evidence will now be summarised. Dr White is a Paediatrician working in Central Australia and he is a member of the Foetal Alcohol Spectrum Disorder Working Party which reports to the Commonwealth Health Minister. He is the Northern Territory representative. In his work he sees a number of children with foetal alcohol syndrome, as well as others with foetal alcohol spectrum disorders. If a foetus is exposed to alcohol, the syndrome or one of the spectrum disorders may be a consequence. The child may suffer growth abnormalities. The

child may have facial features which would be indicative of foetal alcohol syndrome. He was working for Remote Health within the Department of Health and Community Services and was undertaking outreach clinics at various communities, including Docker River, Mutitjulu and Areyonga. The child NB had been at all of those places. Dr White first saw the child NB when he was eight months old, on 14 January 2003 in Areyonga. The child was with his mother HPP. The child had growth problems and Dr White formed a view that the child had possible foetal alcohol syndrome. A history was taken from the child's mother with respect to her consumption of alcohol during the pregnancy. She gave a history of heavy alcohol consumption throughout the pregnancy with occasional additional binge drinking. The child's nutritional status also indicated he may have had foetal alcohol syndrome. He saw the child again in August 2003 and expressed concern about the child's nutritional status. Dr White formed the view that the child was malnourished with no nett weight gain over a period of seven months. He wrote to the Alice Springs Hospital with respect to the child's growth issues. He drew the child to the attention of the paediatric liaison team, who offered support on an outpatients' basis from the Alice Springs Hospital. At the age of thirteen months, the child was two kilograms below the third centile. He noted very marked malnourishment. The Doctor was of the view that the child NB had a significant risk of developing neurological deficits, as well as being at risk of developing chronic diseases. The child was unwell. The next time he saw the child was on 25 January 2005, when he saw the child in the presence of FACS workers whilst the child was in foster care. He could not obtain much current history, as the carer was not in attendance. He was advised that it was difficult to get him to eat well. The child showed significant improvement in his nutritional status and had been making some developmental progress. A speech pathologist became involved. Feeding was still an issue and there was discussion about a handover and support in feeding. John Bethwell, a Paediatrician from Congress was also seeing the child.

21. Dr White concluded that the child had foetal alcohol syndrome when taking into account all factors he had noted. The child was underweight and thin for his height. Nutritional advice was required. A child with this condition needs structure and early involvement with respect to schooling and various types of therapy. These recommendations are made with respect to children with foetal alcohol syndrome. These are highlighted to workers involved in any such case, but are also relevant to any child of three years. Dr White was concerned how many times placement had changed in this case. He believed it was not good for the child to be moved all the time, moving backwards and forwards. He was of the view that it was not good for the child NB to have changes of carers all the time. Dr White saw NB in March and April 2006 and reported to Ms Walsh from FACS. He attended a meeting about the child. On 16 August 2006, he had seen the child at Alice Springs Hospital Outpatients with the carer. The child had started at Gillen Pre-School and his speech had improved. The child was looking well and was doing "quite well". The child had mild hearing loss and there was fluid behind his middle ear. Dr White was of the view that grommets may assist. The grommets may also help with speech development. They may not provide long term benefits with respect to hearing. On 31 October 2006, he saw the child again with the carer. The carer was finding things difficult. His eating had not been going well and the child's weight had not increased in three to four months. He had two sores on his leg. He saw the child again on 16 January 2007 and he was more settled and had had less significant tantrums. The child was eating more and asking for seconds. The child weighed 13.6 kilos and had increased 300 grams since 31 October 2006. The child was doing reasonably well health wise. Monthly appointments with the paediatricians were planned. He had not seen the ear, nose and throat specialist at that time. A child with foetal alcohol syndrome will have fewer problems relating to feeding and weight as they grow up. Other issues such as developmental issues will arise. They can have specific problems such as attention, speech, coping with change, coping with excess

stimulation and social skills. They may have difficulty linking their actions with consequences. There are high risks for mental health problems and problems with the law in the long term. The things that can make a difference to avoid these potential outcomes include stable care relationships, stability, understanding, a consistent approach and access to the best educational and speech resources.

22. Dr White was then cross-examined on behalf of the grandmother. He explained that the charts setting out the centiles for a child's weight, average the weight and height of the child. They do not just show where the child sits at a particular time on the charts, but also look at the growth of a child and the trajectory of the child's growth, bearing in mind the child's weight and height. The charts are not specifically linked to Aboriginal children. Nutritional intake in early years of children is not as different as maybe expected as between different ethnic groups. The child's weight is now at the third centile. The child is thin but his nutritional status is no longer bad. His nutrition is not a risk at the moment and it is not currently causing him acute health problems. It is a struggle, but if his weight continues to go up the line, the Doctor would be happy with his progress. In 2006, for a period of six months there was little nett weight gain. As a child gets older, weight gain is not so much of an issue. There are gradings for seriousness of foetal alcohol syndrome - mild, moderate to severe. He considered the child NB to fit within the moderate category. He was not able to make an assessment with respect to language, as Dr White did not speak Pitjantjatjara. The pre-school would be in a position to provide useful information with respect to such issues.

23. Dr White was then cross-examined by the solicitor acting for the child. Rather than using the expression 'failure to thrive', which he regarded as not being a well defined term, he had diagnosed the child as having severe growth faltering with malnutrition. If growth continues to falter, the child will become malnourished. Foetal alcohol syndrome may contribute or be a

reason for this condition. It may affect the way a child grows. Foetal alcohol syndrome children often don't eat well. Extra support is needed to ensure their growth is not affected. The doctor spoke in general terms about foetal alcohol syndrome. He was not aware whether the condition had affected the child's IQ. There are a whole range of developmental delays that are affected by the condition. Gross motor development of the child is not of concern. The fine motor skills were not as developed as should be for the child's age. Feeding was a problem. He agreed that it would have been a good idea to have an interpreter present when assessments were being undertaken of the child. His opinion was that the speech and language of the child were behind, but the child had made a lot of progress. Since pre-school, he had progressed quite a lot. The child has a short attention span and difficulty following routines, although this was improved. Foetal alcohol syndrome also can lead to behavioural problems, hearing problems and language problems. These latter problems may also contribute to behavioural problems. Dr White was cautious to say that not every child with foetal alcohol syndrome had the same behavioural problems. Typical issues were difficulties in concentrating, following instructions, memory, organisation, consequences and actions. The child needs structure and a behavioural program to consistently apply social rules. Nutritional issues may recur in this case if there is a change of carers. Carers need to ensure they pass on information as to how best to get the child to feed. Placement changes are not good for the child. Any child who has a change of carers takes adapting. It is a difficult time for a four or five year old when there is change. There is a need to ensure that information moves from one guardian to another. The child has been in the care of the current carer from 9 January 2006. On 31 October 2006, there had been no weight gain for a few months. He had expected that there would have been weight gain at that age, over that period. He raised the issue and the next time he saw the child, the weight was up. It was possible that the change in residence of the carer had affected his eating patterns. If there is no contact with Pitjantjatjara

people, he agreed it would be difficult to learn the language later. A stable arrangement can be in any number of ways, as long as it is stable. This could include weekly access to the child. He agreed that behavioural problems arising around the age of four years was probably consistent with foetal alcohol syndrome. As a child gets older, the behavioural problems may get more serious.

24. In re-examination he agreed that issues regarding neurological development can develop with someone with foetal alcohol syndrome. Alcohol affects the way neurological development occurs. Access to support services is very important. It is especially important for foetal alcohol syndrome children to have boundaries as to how to behave. The boundaries need to be clear and simple.

25. There were numerous documents and letters which were tendered to the Court where Dr White had reported on the child's health and welfare. Some were part of Court reports. These are not summarised but are taken into account. That finalises the summary of the evidence of Dr White.

26. The evidence of Dr White has given a sound basis for the Court to consider the medical needs of the child, NB. I find NB is a child with foetal alcohol syndrome and has, in the past, been malnourished. He also has other health issues, most notably hearing difficulties. He has a range of developmental issues which are linked to foetal alcohol syndrome. His needs are far more complex than that of a child who does not present with foetal alcohol syndrome and past malnourishment. The need for stability and consistency are the two key messages which Dr White reinforced throughout his evidence. These messages are also given in written reports. To ensure the child NB develops to his full potential, these factors must be taken into account in his upbringing.

27. During the course of the hearing, it became evident that a point of tension between the parties related to the fact that the child NB is currently placed

with a non-Aboriginal family in Alice Springs. The concern expressed by Counsel for the grandmother and the child and supported by Counsel for the mother was the pressing need for the child, NB to have ongoing and regular contact with his Pitjantjatjara family and country. I accept that it has not been possible to place the child, NB with a registered indigenous foster carer, whether that be with a Pitjantjatjara or non-Pitjantjatjara Aboriginal foster carer. I accept that there is a dearth of registered Aboriginal foster carers in the Alice Springs and Central Australian region, notwithstanding the pressing need for such carers to be available. Calls for registration of foster carers are not met with sufficient applications. Efforts have been made over the years to have the child placed in a family placement. During the course of the hearing, the grandmother's position changed. Due to a change of circumstances, she was not able to provide the Court with a firm proposal to provide full-time care for the child, NB. This was in large part due to other family considerations, including the fact that another grandchild is suffering a serious life threatening condition. She is providing support and care for not only that grandchild, but other family members. Like many women in her position, she is working hard to address the pressing needs of her family members. As heartbreaking as the concession was, I was impressed by the fact that the grandmother was able to articulate to the Court that her position had changed and that she was now seeking a Joint Guardianship Order. That demonstrated to the Court that KPP could put the interests of NB ahead of hers.

Evidence of KPP

28. KPP gave evidence at the hearing. I formed the view that she was an impressive and strong woman, who was committed to the child, NB in ways that she found difficult to express. She has steadfastly and repeatedly expressed her view that the child NB will suffer if he is not able to have ongoing and strong contact with his family and his Pitjantjatjara culture. The question for the Court to decide is whether a Sole Guardianship Order is

appropriate and as stated, the Court must be satisfied that no other Order it would make will adequately provide the welfare of the child.

29. I will now summarise the evidence of the grandmother, KPP. Exhibit R26 was the affidavit of the grandmother in these proceedings. That will be summarised firstly. She is the maternal grandmother of the child NB and she is sixty years of age. She is married to CPP. She grew up at Utju (Areyonga) Mission and both her parents were Pitjantjatjara people. Pitjantjatjara is her first language. She also speaks Arrente and English. She can read in all three languages and has translated the bible and hymn books from Arrente to Pitjantjatjara. Her preference is to speak in Pitjantjatjara and her health is good. She learnt the laws and customs of her culture and about white people's ways. She is a Christian woman and a Pastor with the Lutheran Church and takes services in various communities and in Alice Springs area. Throughout her life she has been working two ways, talking to her people about Northern Territory laws and work and helping white people to work with her people and learn about Anangu laws and customs. She worked with the NPY Women's Council and was on the board of management for the Uluru National Park. She still does some work as a counsellor for Yirara College, helping with the children when they are upset. Today, she mostly looks after her family and is a senior person in the community. She also has cultural responsibilities. She then deposed about her children and grandchildren. After the child NB was born, she travelled to Alice Springs to visit. HPP was living with the child's father at Karnte Camp in Alice Springs. Soon after NB was born, the child's father passed away. KPP tried to help HPP look after NB and NB was getting sick. The doctors told them that NB was skinny because HPP had drunk alcohol whilst she was pregnant. She has also now found out that NB might have learning problems because of this drinking before he was born. She went to the Alice Springs Hospital to seek help for NB and asked Welfare for help. While she has helped grow up all of her grandchildren, she had more responsibilities in

helping grow up HPP's children as HPP had continued to drink on and off. She deposed that people who drink can't look after their children themselves. At Christmas 2005, Welfare allowed NB to travel to Utju for Christmas with KPP. Welfare had said that she must not take NB away from Utju and as a result of pressing sorry business, she was required to leave Utju. She asked family at Utju to look after NB and was gone longer than planned due to car difficulties. When she returned to Utju she heard that Welfare had collected NB. She tried to explain her position to Welfare, but she was of the view that they would not listen. She asked for the child, NB to come back to Utju but Welfare would not allow that because of what had happened at Christmas 2005. She kept trying to work with Welfare. She felt that Welfare was not listening to her story. She believes that children have nothing if they don't know themselves and don't know their families. In 2006, Welfare started talking about shared care and she described that as a good thing that had happened. She understood this to mean that NB would stay with his foster carers in Alice Springs, but would spend more and more time with his family in Utju. KPP and family were very happy when NB came to Utju. He would play and eat food from the store and bush tucker and sit and listen to stories about the old people and old days. They would talk to NB in Pitjantjatjara. Sometimes he replied in Pitjantjatjara and sometimes in English. She got a big shock when she was told at the end of 2006 that Welfare wanted sole guardianship because they believed the visits to Utju were not working and that the child NB was upset after the visits. She had not been told that the child NB was upset. Since that time, it has been very hard to talk to Welfare and make plans for the child. She has still been going to their meetings and listening to their plans.

30. Growing up children Anangu way means all the jobs involved in looking after the child such as feeding and washing, as well as teaching ceremony and business. Under Anangu law it is the responsibility of all the family to grow up the children. Grandmothers have a special responsibility for the

grandchildren, especially the children of their daughters. This custom is still the same today. She has taught her grandchildren about the right way to behave, about the country, special and sacred places on the country, the ancestors, the spirits, how and where to find bush foods and bush medicine, how to prepare food the proper way and how to show respect to country and to other people. As the children get older, they are taught deeper knowledge. The grandmothers must decide when a girl is ready to learn about women's law and the grandfathers must do the same for their grandsons. In 2006, she was working part-time at the Utju School teaching the children about their laws. Utju School has two way learning, Anangu way and Piranpa (white people's way). NB came to school when he was visiting Utju. Grandparents also have the job of teaching children about white fella's way, especially when the parent can't do these jobs. She has been doing this for HPP's children and also the children of one of her other daughters because "they were running around following the grog". She was teaching her grandchildren about washing clothes, cleaning the house, eating the right foods, the importance of going to school and learning to read and write. In her culture and her family, grandmothers are very important and close to their grandchildren. They must grow up their grandchildren and this is the law. In her culture, it is important that their children know their family, their country, their language and their culture. She believes this is the same for all people and all cultures, not just her culture. She believes children cannot learn these things if they don't live with their own people, don't speak their own language and don't live on or visit their country. She then sets out members of NB's extended family who are worrying about him. In her culture, her people get sick if they stay away from their families and their country. They get sick if they do not do the right ceremonies on country. They get sick if they don't follow the right ways of behaving and if they don't teach their children the things they must teach them. She is worried that if NB stays with white foster carers for a long time, then he will not know who he is. He will get sick, lonely and hungry for family.

This sickness is just as serious as a sickness that the doctors will talk about with him being too skinny or having trouble learning. She is worried that NB will lose his language if he stays with white people for too long. If it is said by the Court or Welfare that NB can't live with his family, then she believes that NB should live with other Aboriginal families from this area. If this is not possible, then she believes that it is very important that he spends lots of time with his family, to make sure that he is strong inside and knows who he is and where he comes from. She believes if the Sole Guardianship Order is made, that the family will be shut out of the Court case and out of NB's life. It is her wish that NB comes and lives with her and her family. If the Court decides to make more Court Orders about NB, she would like an Order where NB's family and Welfare can work together. She has been told this is called a Joint Guardianship Order and that is what she is seeking. She will keep working with Welfare, even though this work is often difficult and she often feels that the Welfare workers do not listen to her or respect her. She is of the view that family must be involved in NB's Court case and in NB's life. She believes that it is important for the child NB that family and Welfare work together to grow him up strong.

31. KPP then gave her evidence in chief. The grandmother was able to use an experienced Pitjantjatjara interpreter to give her evidence and this greatly assisted the Court. As well as doing Council work and working for the National Park, she undertakes work with the Church looking after Aboriginal people. She is a Pastor. When she was at Mutitjulu she had a driver's licence and used to drive the school children to the school. She has been a Pastor at Mutitjulu and other places including Docker River, Areyonga, in the bush and in Alice Springs. She still works as a Pastor for the Lutheran Church. She talked about her work as a translator and working with the children at Yirara College. She is a senior person in her community and has cultural responsibilities. She has not been able to tell her whole story to Welfare before. In the meetings with Welfare, there are a lot of

papers and words and she gets confused. There has been no interpreter at the meetings. Her husband is CPP and he knows all about the children. They teach the young children about going out bush, bush tucker, places they can go, making them aware. She takes the grandchildren to Congress and to the big hospital. When they grow up, they learn the proper way. HPP has had a big problem with drinking and she has had to look after HPP's children. Drinking was a big problem for HPP, but today she is alright. She would agree to keep working with Welfare and stated that even if Court says that NB must live with foster carers, she would work with Welfare. Even though she knows the house that NB is living, she did not go to that house and she did not want to break Welfare's rules. Soon after NB was born, she was asked to look after the child and that was good. The father asked KPP to look after NB. There was drinking going on and it was not right. The mother also asked KPP to look after NB. She was asked to look after NB, to speak for him and to protect him. It is a right for a daughter to ask this of her mother in her culture. In her culture, KPP has responsibilities. It is important to go to funerals in her culture. She has missed funerals for reasons connected to the child, NB and she has always wanted to go to Court for NB. She has been teaching the child NB about his culture and his stories. The men also have responsibility to teach him as well. It is the grandfather's job to talk to the young men about country and it is the grandmother's job to talk about bush tucker. She has been doing that when she has been able to. The child NB should learn about his culture. If he does not learn about his culture, it would be really hard. When she spends time with him and cares for him, she is working two ways, her way and white man's way. She works with Welfare for the child NB. When she feeds the child NB she makes dampers, meat, kangaroo, goanna and foods from the bush, such as bush tomatoes and bananas. She did not just buy food from the shop, but would make it with her own hands. She has talked to Welfare and the nurses about what food is good for the child NB. They would not tell her ideas. She was working with the Women's Council about

food for NB. NB eats food when he is with her. She takes him to the Clinic if he is sick. If the Clinic gives medicine, she will give the medicine to NB.

32. She was then cross-examined by the Minister's representative. She wanted the child to live with her. She is worried about getting her grandson back. Evidence was given about where she was living at and around when the child was born. The first time that she had spoken to FACS about the child, NB, there was a meeting at Alice Springs Hospital. She agreed that there were two meetings at the Alice Springs Hospital, 11 August 2003 and 14 August 2003. NB was left in the care of Welfare. She was thinking that they were all talking together. She is getting very, very sad about the situation now. She is sad as he is only a little Aboriginal child and he has been with Welfare for many years. It was put to her that the child was in hospital for sixteen days when he was just under one month old. She remembered that. She was aware that the child NB had been taken to the Hospital six times in his first year. She was not able to give evidence about the dates that were being put to her. She had listened to and recalled the evidence of Dr White which was given in the Court case. She deposed that she understood the things that were needed to be done to grow him up. She could recall meetings with Dr White where discussions were being held about food. She could not recall talking to Dr White about NB staying in one place, rather than moving around a lot. Then there was considerable cross-examination about dates and what had been agreed with respect to the Christmas 2005 placement at Utju. When asked whether she could remember FACS saying only she was to look after NB, she said she thought he could stay there a long time. She had got a job at the School and to teach him culture and it got cut short. She left her job and followed, leaving her house, clothing and belongings, as she wanted to follow NB. She agreed she had seen NB at the Congress Child Care Centre. She was asked what she said to him and her response was that she had told him not to make a mess, not to be sad and to sit down in a happy way. It was suggested to her that

she had said to him that she would like to care for him. She denied that, saying that she did not talk to him that way saying "he is still only a child".

33. She was travelling a lot with another grandchild who was very sick. She has been looking after another grandchildren. She came to Alice Springs for NB's Court and as another grandchild was sick. She agreed that she had been Joint Guardian with the Minister since February 2005. She was asked whether her concern was whether, if the Court ordered FACS to be sole guardian, that FACS may not listen to her, she replied that "they don't listen to me already". Part of Dr White's transcript was read to KPP and she responded that she did not agree with what Dr White was saying. She felt NB had spent enough time with Welfare and that the family were waiting and they wanted to see NB. They were waiting to see him out bush. Her son, who was previously on parole, is now in jail. He gets out of jail after about four years. The sick grandchild was only in the Adelaide Hospital one week and is now back at the Mt Gillen House. It was put to her that she had taken this grandchild from hospital when the doctors were still looking after her. She answered that "from what I knew, she was ready to go out" and then "she ran away to the safe house". Once she ran away and KPP said she had to go back to hospital. She would take her other grandchild to be checked at the hospital. Sometimes she would get help getting to the hospital, sometimes she would get there late when they worked. Territory Housing told HPP to leave the house in Alice Springs. She was asked further questions about her affidavit and she became upset saying she was the grandmother the Aboriginal way and why are you asking me all your questions. She was asked whether the words in the affidavit were her words and she said they are my words. She had said it straight. She was asked "do you believe if there is an Order for sole guardianship, you are shut out of NB's life". She replied "I want to be the joint guardian". She became quite distressed when asked why she believed that the family would be out of his life if there was a Sole Guardianship Order. She said "I haven't got my

grandchild in my heart, I haven't seen him". "I never got rights to visit my grandchildren". "We were trusting them to share, why are they like that now" … "we trusted them, we should be together sharing". She continued, "we are all human beings and get no visit rights. I don't see the people involved in NB's life, only in Court. They are hiding the little one from me. They think I am the devil walking around looking for my grandson. I know God's word. The Government rule is not straight. I talk straight". It was asked "do you understand you'll still have access if there is a Sole Guardianship Order made" and she said "yes". She was asked did she want NB back and she said "maybe later on". "We haven't got a home at the moment". When asked the hypothetical question whether if she had a home would she want NB back straightaway, she said "yes, but maybe later". She talked about the possibility of obtaining housing at Docker River and being able to have NB at Docker River. She plans to spend time in Docker River with her sick grandchild and they would come into Alice Springs each month to see the doctors. She would like to see NB when she came in for those visits once a month. She heard FACS say that they did not want NB to go straight back to the family. He was eating okay when they were at Utju.

34. She heard Dr White in Court and was worried about what he had said. She accepted that NB needed permanency. She believed she could deliver permanency at Docker River, but said "that's okay he's in care at the moment". She was asked if a Joint Guardianship Order was made, what help she could give Welfare in bringing NB up properly. She said from before we were working together and she was happy working together. There is no more visits and no access. She felt that Welfare did not trust her. If we share, we can help one another.

35. She was then cross-examined by the representative for the child. She plans to move to Docker River in the near future with a sick grandchild. She would come to the clinic in Docker River and visit Alice Springs to see the hospital. She would like to see NB when they are in Alice Springs. She has

not seen the child NB this year, since before Christmas. She had not seen him at funeral time or at his birthday. She did not know if NB had seen the lady doctor at Congress. She had not been told about the psychologist. She had not been told how NB was getting on with the carer, or anything about his health. She had been asking for a long time to see him. She didn't know how he was going at Gillen Pre-School. The cultural duties as a grandmother were to look after him and to teach him about bush tucker, to take him to ceremonies and teach him about dreamings and showing him his own country. She believes she could work with Welfare to teach him those things. She would like NB to learn that way. She would like to do that. She does not know if he understands the language anymore. She has not seen him for a long time. If she is able to see NB in Alice Springs, she will use the time to tell stories, but if she does not see him, she cannot do that. She knows the things that Dr White has said. She agrees that stability is needed, but she wants to be able to see him. NB has shown her where the carer lives but she has not gone to the house. She is able to teach NB about spiritual beliefs as well as religion. She wants to work with NB about religion and spiritual matters. Only she can teach him spiritual matters. When she sees NB, she has spoken to him in Pitjantjatjara and she will continue to do that.

36. She was then re-examined. She was asked if NB was visiting or living with her and the doctor said he needed special food would she do that and she replied "yes". She would also take him to the doctor if needed and would take him to a special teacher. She had originally asked Welfare to help look after NB. She could not recall what she had said to them. There had been a conference in April 2006 and she asked if NB could live with her, but they said no. That's the end of the summary of the evidence of the grandmother, KPP.

37. KPP's evidence was consistently strong on many aspects of the case. She was an impressive witness. There was no challenge to the evidence that she

is an appropriate person, if not one of the most appropriate people at this stage, to be providing NB with cultural education, ensuring he retains his language and a grounding in his Pitjantjatjara culture. KPP is married and her husband is also a Pitjantjatjara person. There is a large family network in the Central Australian area. I formed the view that the grandmother, KPP was a strong and resilient woman.

Evidence of Ms Bryce

38. She is also able to get access to support services such as the NPY Women's Council. Susan Bryce from that service gave evidence at the hearing. I will now summarise her evidence. Assistance has been sought by KPP to help with NB. NPY assisted by attending meetings with FACS staff as KPP met with them. NPY staff attended some meetings with FACS and other workers involved in the case. NPY also assisted with referrals and liaising. KPP is a senior woman with many responsibilities. She comes to NPY when she needs support, but she is a good advocate in her own right. It was on or around 4 August 2006 that the shared care notion was introduced by FACS. Sometimes NPY would provide practical assistance such as transport assistance or vouchers. In future, if KPP is looking after NB, she can call upon NPY services as she requires. There is now a worker based in Alice Springs who can assist with nutrition work. KPP's view of nourishment is wider than simply food. She sees it as nurturing from the family. She understands the importance of monitoring his weight. KPP is good at asking for help. The witness was happy to do the hands on nutrition work with KPP. She was then cross-examined. She has seen KPP interacting with her grandchildren and she is a loving, caring and thoughtful grandmother. The system places responsibility on the grandparents and in particular, a strong educational role. Grandparents have an important role in teaching about dreaming, taking the children out bush to country and teaching about the important sites. There is a very close relationship to grandchildren. When they were talking about the notion of shared care, there was a very good

rapour with the case worker. Things seemed to be moving forward. KPP has not been able to understand the move towards sole guardianship. She has continued working with FACS, even when these Court matters have been on. KPP has complied with a request not to see NB over the past few months. She was then re-examined. The concept of shared care had engaged KPP. She understood that the child would be in foster care, but then would spend time with family. The idea was that family time would be increased. Working on issues with respect to food were part of the shared care plan. The report of 6 December 2006 said that shared care was not appropriate and the Department was seeking sole guardianship. There were then meetings between FACS and the lawyers to talk about the question of sole guardianship. That was the end of the evidence of Susan Bryce.

39. I am satisfied that to date, KPP has sought the assistance of NPY Women's Council and that she is in a position to seek further assistance from them with respect to the child NB as she requires. Ms Bryce's evidence was able to corroborate the evidence of KPP that she would be in a position to work with FACS in a cooperative way. Ms Bryce indicated that even when the notion of sole guardianship was first raised, KPP has continued to meet with and work with FACS. Ms Bryce was also able to give some evidence about the seniority and characteristics of KPP. This is not to suggest that these matters were in dispute, but certainly the material does assist the Court in reaching a decision in the matter.

Evidence of Ms Walker

40. Ms Prue Walker from FACS gave her evidence over many days. She was in fact the first witness in the case. The cross-examination on behalf of KPP of this witness was extensive. I will summarise what I believe to be the relevant matters in reaching this decision, though I have reviewed all the evidence given by Ms Walker. She gave evidence that she was the Team Leader in out of home care in the FACS Department, Alice Springs Office.

She had taken over that position in August 2006. She set out her qualifications, including a Batchelor of Social Work, Masters of Social Policy and that she had been working for many years with young people and in a variety of roles. She was familiar with NB's file and had had a hand over of that file with the previous officer, Ms Walsh. She prepared a chronology which is dated 11 March 2007 and which did provide quite a bit of assistance in the case. She set out the various notifications with respect to the child and some of the earlier Orders made. She outlined the attempts to place the child with various family members and the ongoing issues with respect to his feeding. The Aboriginal Child Care Placement Principle and numerous reports from FACS were tendered. She gave evidence that the child had had numerous placements including FACS placements and family placements. A report of 23 February 2006 indicated that NB's family were not able to recognise his needs, they had not worked with professionals and that his development has been compromised by family placements. He had had a total of eight placements at that stage. He was placed with a non-indigenous registered foster carer and there were periods of access to family members. Behavioural changes were reported after access visits and FACS became concerned about the severity of the behavioural changes reported. FACS formed the view after reviewing the matter, that there was a need to stop moving the child backwards and forwards. FACS had concerns with respect to DPP, who had been released from custody on a manslaughter charge. He was KPP's son and NB's uncle. Concerns were that DPP may be present during access visits.

41. In October 2006, shared care was being advocated. NB had strong attachments to KPP and HPP and some carers. At the end of October 2006, NB's behavioural problems were of concern. There was a meeting between various members of FACS, including their indigenous worker. It was concluded that NB's health issues would suffer if he spent further time at Areyonga (Utju). It was decided that the child needed to be in Alice

Springs. It was concluded that if the child remained in the community with the combination of foetal alcohol syndrome and failure to thrive, he would not thrive. He started pre-school in January 2007. Because of behavioural difficulties after access visits, access was stopped. The Minister is seeking a Sole Guardian Order which it considers is a most appropriate order in the circumstances. An order of two years is sought to ensure that there is stability for the child. The child will thrive when he has stability. It was acknowledged that KPP was committed to the child, but she was not in agreement with the FACS proposals relating to the child. It would be difficult to work as joint guardians. Court reports were tendered. A document with respect to permanency policy was tendered and became Exhibit A13.

42. Ms Walker was then cross-examined by the lawyer for the grandmother. The concerns about NB's stability had been expressed for a long time. She agreed there had been a change of case workers in the matter. It was suggested that not enough time had been spent by FACS workers observing NB and his family at Utju and she disagreed with that. There had never been a formal assessment by FACS of NB's interaction with his foster carers. There had not been a thorough critical assessment of his interactions with family members, but she stated that there had been some assessments undertaken. She agreed that KPP is not a drinker and she had no concerns about that issue. She agreed that there is no physical abuse alleged with respect to KPP and also that KPP and NB had a close relationship. Issues of nutrition were a factor of concern, although not the only factor. She agreed that there was no evidence of weight loss when NB was with KPP in 2006, although she suggested that the visits of three to four days were not so long as to be indicative of weight change. One of the workers expressed concern that he was always very hungry when he was picked up from access visits and it was reported the next few days he would be hungry. There was a general pattern of losing weight when with family. Carers had reported that

he is difficult to feed. KPP does not always acknowledge that, saying that there were no problems for him eating when he was with her. The original notification to the Alice Springs Hospital involved family members expressing concern to health care professionals. She accepted that this showed insight by family members.

43. She agreed that from the records they had, there were periods when the child, NB was in foster care with non-family placements and he had not gained weight. Similarly there were periods when he had in fact lost weight in care with non-family placements. She agreed that his weight was consistently low whether or not he was in care. FACS were operating on the premise that the child had foetal alcohol syndrome. She had no formal training with dealing with children with foetal alcohol syndrome and that there may be certain behaviours associated with the syndrome. She agreed that this may increase the need for support for carers. The current carer had expressed that trying to feed NB involved "every waking minute".

44. Ms Walker agreed that access was important for cultural identification and language. In September 2006, a Court report proposed a shared care plan, with a long term goal of returning the child to the family. Support would be provided to KPP for that purpose. The present carers moved house in late September 2006. His behavioural difficulties could have been linked to that or any other number of reasons. She agreed that he is an Aboriginal child and can speak and understand English and Pitjantjatjara. She agreed that if there was not extensive contact with family in early years, it can be expected that the child would be less proficient in Pitjantjatjara. In November 2006, the carer indicated that they were not able to continue caring for NB because of behaviours which were being experienced. The carers later changed their mind and were available for further ongoing care of the child NB. The child's behaviour demonstrated, in the view of the witness, that he could not manage the shared care arrangements which were being implemented. If NB had shown he could manage shared care, the

witness would have supported the proposal. The reports from the foster carer as to the child's behaviour following access was detailed. They were dealing with a very distressed child. There was a need to contain his environment, settle his behaviours and then consider what to do. NB knows his carer, his respite worker and his foster grandparents well. The child saw psychologist Donna Turnbull and then she has suggested that the child be referred to a physiatrist who specialises in children. An appointment has been made for that to occur. FACS had made it clear that they had concerns about DPP (KPP's son who was on parole) being in the house at the same time as NB. The witness believes access and behavioural problems are associated. She has never advocated for no access. The current carer has a strong attachment to NB. She agreed that at times carers get attached to their foster child. She formed the view that the child needed a stable placement to test things out. She was of the view that the child was not ready to go to KPP for full-time care. FACS would not normally allow the child to stay with someone who was on parole for a serious charge such as the charge DPP has faced. There had been ongoing discussions about this. The child had a secure attachment to the foster carer. There needs to be consideration of his needs. She was of the view that the only attachment figure within the family unit is KPP. There were concerns that if he was placed with family again, there may be further health issues. There was no one placement which satisfied all of his needs. KPP has good intentions to NB. She is deeply committed to him. Nevertheless, the witness was of the view that promises are not always reliable. Further, KPP does not think that DPP is a risk to NB.

45. A structured environment is important for NB. The new structured environment at the Pre-School will assist. Congress Childcare tends to be more unstructured. He did have contact with other indigenous children at the Congress Childcare Centre and accordingly, there was agreement for him to attend for that reason. They also allow for family visits. Following the

meeting with FACS in November 2006, the witness was still unsure of what was the appropriate option for NB. She acknowledged the strong attachment between KPP and NB. She wanted to maintain the attachment between KPP and NB. His primary attachments were with KPP and his carer. As she was preparing the report for 6 December 2006, she formed the view that the only suitable Order was an Order for Sole Guardianship. If there were any immediate prospects of him returning to Areyonga, it would mean another year of instability. It was decided that the child needed stability now and not in 12 month's time. The case is on a holding pattern until the Court case finishes. Decisions have to be made on a day to day basis, but no long term planning has been conducted. Late last year it was decided that reunification was not possible.

46. Ms Walker was of the view that none of the family carers who have been put forward are suitable carers for the child NB. There was extensive evidence about the family placements which had been attempted. The witness was of the view that there had been three and a half years of trying to make family placements work. She was concerned that it was too late for this little boy. She formed the view that KPP was unsuitable as a full-time carer. NB's behaviours are very difficult. He does not react well to being told what to do. He needs boundaries and support for development, including his fine motor skills. Family placements have shown that family are not in a position to put things aside to care for NB. There were concerns from the Alice Springs Hospital that KPP may not have sufficient insight into the failure to thrive issues. The family plans keep changing and there is no sense that the child NB will return to one place. The witness made it clear that she was not criticising the fact of moving, but it was not a stable environment for the child NB. She was concerned about risk, boundaries regarding behaviour and parenting. When NB went on access visits he was going from one different type of home to another and he could not cope with the differences. The risk to the child at eight to ten years was less than the

risk was to him at his present age. They would never rule out a plan to return the child to his family at his present age. He may be robust enough when he is approximately seven years of age to consider returning to his family. That would depend on his health and other developments. She acknowledged that his family have skills with respect to cultural issues. His family is not fully able to cope with his emotional needs. The carers can cope almost fully with his emotional needs. The carers can't always fill the gap. The risk of deficits was outweighed by the benefits of being with the current carers. The challenges increase each year. He needs structure and stability, more than an average indigenous child. She agreed that maintenance of culture was important. She denied that other facts outweighed cultural matters and said it was not a matter of mathematical equation. There were a range of factors involved. She had made a decision that an anthropologist would not be called to give evidence in the case. An anthropologist could not say how to balance the needs of a child in this situation. She agreed that access to family would assist in language development. She gave evidence that it was common knowledge in child development that richness in environment helps cognitive ability and development issues. Congress Childcare Centre takes account of culture and most of the children are indigenous children. She believed it was important for him to continue attending at Congress Childcare Centre. NPY would advocate for KPP. There are interagency protocols when FACS are dealing with child welfare matters. FACS have an ongoing relationship with NPY in NB's case. NPY advocate for KPP. NB's needs and KPP's wishes are not always the same. Sometimes decisions are made regarding a child and family members are not happy about the decision. Relationships can deteriorate then. FACS believe that the best option for NB is to keep him stable. The contested hearing had put a halt to friendly chats between agencies with respect to NB. Most Sole Guardianship Orders mean that the child is in permanent care. An Order is less common where there is a potential return to family members. The witness indicated that she was not

saying KPP could not contribute as a joint guardian. It would be difficult to do long term planning. KPP could still be involved if there was a Sole Guardianship Order. A two year Order would give stability to plan for NB. She agreed that the question of custody or placement of the child is separate from that of guardianship. She agreed that KPP had attended all meetings she had been requested to attend. She agreed that KPP had not broken any Court Orders. She was hopeful that the Department and KPP could work together in the future. She agreed that KPP and the Department had worked together for three years. An Order for sole guardianship was needed for stability. A two year Order was needed. It is not possible to have a two year Joint Guardianship Order as this limited to a 12 month Order. She was not wedded to the proposal that he have access every two months. Once the child has seen the child physiatrist, access would be supported after that, if the report recommended it occurring. As the child's communication skills improve, it is easier to explain what is happening. The priorities are for containment, structure and predictability. They will then look at the whole case plan and work out how he will obtain his cultural identity. Contact with family would be part of that. There is attendance at Congress Childcare Centre, Pitjantjatjara books, language classes and a whole range of other things that can be undertaken. The Department is happy to take advice as to how to maintain his culture. They plan to send him to the Gillen Pre-School and then Gillen Primary School.

47. The mother did not cross-examine this witness and then there was cross-examination from the lawyer for the child. Ms Walker agreed that the position of the Department changed between the recommendation made on 13 October 2006 for a Joint Order between the Minister and KPP for 12 months and the report of 6 December 2006, calling for a two year Sole Guardianship Order to the Minister. His first language is Pitjantjatjara and he speaks English at the home he is presently living in. He has good skills in English. She agreed that language is an important matter. It had been

decided by the Department that an anthropological report was not necessary. The Minister is aware that they must attend to the child's cultural needs. NB needs to feel secure in his indigenous culture and this is critical to his development. Some indigenous children will not have the same immersion in their culture. Some have special needs such as failure to thrive and foetal alcohol syndrome and other disabilities. She agreed that his behavioural issues could be linked to his foetal alcohol syndrome.

48. It was put to her that there are a series of questions to ask as to who an indigenous child should be placed with (following the principle in A1). The first to ask is whether the parents can care for the child, then the extended family, then their wider family. If there is not an appropriate family carer, then consideration is given to foster carers. There is a genealogy that has just been obtained with respect to other children in this family and there is a family tree. It is raised with family as to who they suggest is the best option to care for a child. If there is an appropriate family member, FACS do not look for other options. In early years, the family had suggestions for carers for NB. The family tree had been prepared in this case. She could not recall seeing new information regarding family from Tangentyere Council. There had been eight placements for NB. It was not in his best interests to make new attachments. They would not investigate any new family members now if NB had no knowledge of them and he had no attachment to them. There had been good efforts made to find family carers. They have gone through the processes here. They have looked for family, extended family, then Aboriginal people who are not part of the family.

49. The indigenous carer was not able to manage NB's feeding and was not able to continue caring for him. They had tried family placements in Docker River and that had not worked. A range of carers have been tried. They have been focusing on KPP since that time. If there was a carer within the Department that meets his needs, that person would be considered. He is now nearly five years of age and it is hard to start with a new carer. It

would mean another disruption for him. The placement support team at FACS would recruit carers. There are new carers coming through all the time.

50. Ms Walker was asked about s 69(c)(v) of the *Community Welfare Act* with respect to the current carers. She was asked what the carers had undertaken to do to comply with that sub-paragraph and in particular, undertakings by them to encourage and facilitate the maintenance of contact between the child and his own kin and his own culture. The carers have made NB available for access and prepared him for access. They support him when he returns from access. FACS take the majority of the role and if a permanent placement is made, they would talk to the carers about what to do. The carers in this case have offered to have one of the other grandchildren over (the one who is very close to NB), but they have indicated that they do not want the whole family coming to their house. There is goodwill in this situation. Nevertheless things are uncertain at the moment. The Minister has not requested them to undertake a cross-cultural course or language course. If the child NB remains in the care of the present carers, that can be investigated.

51. There has been an assessment of the attachment between NB and his grandmother and mother and has been assessed that he has a good attachment. There is an agreement to access but contact has been problematical with behaviours deteriorating after access. Access has proved disruptive to NB. There is a psychiatric assessment scheduled to investigate this. How much access will be recommended will depend on what he can manage. The child needs access to family, but in ways he can manage. She agreed that Dr Blunt is a person who can undertake an attachment assessment, but she did not believe it was necessary to have Dr Blunt do this assessment. Access needs to be tested and monitored. She was advised that NB had alcohol foetal syndrome by a paediatrician. This will often lead to behavioural difficulties. In May 2006, these behavioural difficulties first

surfaced. Before that, there were feeding behaviour issues such as willingness or unwillingness to eat and co-operation. The first real behavioural issues related to feeding. His other behaviours have an impact on his feeding. NB is very active and won't sit down. His concentration and inability to sit still for feeding were evident early on. It is accepted that in May 2006 behaviour may have been related to trying to process the two families. She would look at the possibility of NB coming back to the carers via another carer after access, as there was some material to suggest that he may be more stable that way. This may help access work better.

52. An appointment was made with Donna Turnbull in early March 2007 to assess his behaviour. There is no substitute care panel established in Alice Springs in compliance with the manual (A17-14.4.5). On 2 November 2006, there was a meeting which brought in a range of people to consider what path to head down with respect to NB. There was some pressure to get a Court report prepared with a firm recommendation. The Court report was prepared for Court on 6 December 2006. The matter had been adjourned throughout the year. No one attempted to explain to NB in Pitjantjatjara the regime with respect to care and access. There was an attempt to explain that to him in English. His language is still not fully developed. She agreed that it would be hard to understand these concepts in any event. Further, she agreed Pitjantjatjara is his first language. With respect to his behaviours, FACS will work with Donna Turnbull and the psychiatrist. Home, Pre-School and Kinder will be most important. A regime will be established and advice will be given to carers as well. The co-ordinator of Congress Aboriginal Childcare had said that NB could not cope with change. In July 2006 there was an increase in behavioural difficulties. Rather than referring him to a psychiatrist or counselling, FACS worked with carers at that time.

53. She considered a two year Order would ensure stability for the child. When asked why they were not proposing a 12 month Order, she replied that it could be reviewed in 12 months, they were not inflexible in the time for the

review. When asked why their preference was for a Sole Order as apposed to Joint Guardianship Order, she replied that there were difficulties especially when there is a strong disagreement. They have concern that KPP was saying to NB that he will be returning to live with family. This creates a false impression. When asked whether KPP has cooperated with FACS in general, she replied that she hasn't tried to remove him. KPP has come to meetings and she has not agreed with what FACS has done at times. Their main concern was what KPP had said to NB on access and what he may be exposed to on access. When FACS talk to KPP, she says that he's eating okay when he is with her. KPP's view of his eating is different from FACS' view. She is not co-operative with FACS on this question. This is one element of difference in their views. Another is when DPP is around. KPP says that DPP minds the children and he is fine with the children. That is a difficulty for FACS. She does not believe KPP takes on FACS' concerns about DPP.

54. Counsel then went through the definitions of guardianship and custody in the Act. There were then questions regarding aspects of the definition that FACS believe KPP should be excluded from. FACS say that KPP should not be involved in some aspects of NB's custody and in particular his accommodation, daily care and control, feeding, behaviour and urgent or routine health needs of the child. They had no difficulty with KPP being involved in NB's attendance at school, his clothing or transportation. Notwithstanding this concession, it would seem that unless NB was currently in the daily care and control of NB, that these matters would not normally arise on access visits.

55. They went through the aspects of guardianship and it should firstly be noted that guardianship means both custody and responsibility for the long term welfare of the child. The definition then sets out certain aspects with respect to the long term welfare of the child, which were put to Ms Walker. FACS' position is that KPP should not be excluded from questions of

education. They did not wish KPP to be involved in decisions regarding changes in the place of residence. That was primarily because KPP did not agree with the current placement. FACS believe KPP should not be excluded from decisions concerning religion. With decisions concerning the general health of the child, the witness was not able to understand what that meant in practice, given that the child was in someone else's custody. The main issue relates to the question of where the child resides and the case plan, which is proposed by FACS. She agreed that culture could well be included within the meaning of education. Culture also could be included within the meaning of religion. She agreed that KPP could provide cultural experiences for NB. The carer had been thinking of removing the child from the Congress Childcare Centre because of his challenging behaviours after unplanned access. The witness did not support the move from Congress Childcare Centre. The carer is not the guardian and cannot enrol him anywhere else. The carer can request FACS to move the child. There was a reference to the possibility of a move, but there was no formal request for a move. The carer has never asked FACS to have access denied at the Congress Childcare Centre. The carer had requested that the visits do not occur at the Gillen Pre-School. It was planned for him to go to pre-school and FACS had no preference as to which pre-school he attended. He commenced pre-school in October 2006. A prior enrolment had been arranged by FACS in that pre-school. It made sense to attend a local pre-school. The carer went through the proper procedure to arrange enrolment into pre-school. A FACS worker signed the enrolment form. FACS had not spoken to the carers regarding relevant ceremonies for NB. The witness was not aware of any ceremonies within the next 12 months. No arrangements have been made regarding his birthday. The witness has not been discussing the matter with KPP while the hearing has been on. She regarded it as a positive if the grandmother spoke to NB about land and family members talk to him about places on the land. Over the next few months, she would be awaiting news from the psychiatrist with respect to access. There may be a

possibility of supervised contact at the Congress Childcare Centre or maybe at another location. There would probably be a series of supervised accesses to get him comfortable. She did not see supervision as going for too long. NB's family could spend the day with him, with him knowing that he would be returning to his carers at night. FACS would rely on their expertise with respect to access, as well as material from reports. She did not know what a psychiatrist would have to offer. Decisions will be made about schooling later on in the year. With respect to language, there could be life books, photos, words in Pitjantjatjara language and there may be a language playgroup. There is a possibility of a Pitjantjatjara tutor, to work with children and to speak their language. There is access to books, tapes and music and contact can be with family members. They would promote him going to community events such as NAIDOC.

56. Counsel for the grandmother was allowed to cross-examine this witness further. She agreed that in October 2006, it was the Minister's position that DPP did not pose a significant risk to NB in Alice Springs while DPP was at Areyonga. The question is a difficult one. DPP has committed a serious offence involving a partner. There is no indication of any prior assaults to a child. There are concerns that he may have brain damage from past petrol sniffing and his behaviour could be unpredictable. That was assessed as a risk. They could never be entirely confident that there would be no risk.

57. With respect to foetal alcohol syndrome, there is a high risk with respect to mental health problems. The witness did not believe KPP is an appropriate person to whom the Court should give power to have discretion about questions of custody. If there was an Order for custody at the discretion of the Minister, that would be an extension of the current Order. The present Order has not allowed for stability and has not allowed for permanency planning. Joint guardianship is difficult when a guardian doesn't agree with the proposed case plan. There is a need to address cultural issues. A person does not have to be a guardian to be involved in cultural matters. A 12

month Joint Guardianship Order will leave things in the same position. A 12 month Order offers no stability for the child.

58. Police checks are carried out on all family members at a home where a child is residing. If there are convictions, they will look at the nature of the offence and the likely impact on the child. Some offences are not negotiable, such as sexual offences. If there are drug offences, they will look at how long ago they were and what the person has done to deal with those issues. Some serious offences such as manslaughter are non-negotiable offences. FACS had wanted NB to maintain links with KPP and Areyonga. They did not allow him to be at the house where DPP lived. KPP has said that DPP is good with children and FACS had concerns about that issue. That ends the summary of the evidence of Ms Walker.

59. Ms Walker's evidence was first in time, but does reflect much of the evidence heard later in the hearing. She had an extensive knowledge of the case, not withstanding her late involvement in the case. She was subjected to extensive cross-examination and was understandably frustrated by some of the questions. While a professional witness is expected to maintain a steady temperament, her level of frustration was not so high as to impact on her credit or the veracity of her evidence.

Evidence of Ms Turnbull

60. I will now summarise the evidence of Donna Turnbull, Psychologist. She received a referral from FACS and undertook an assessment of NB. She received some background material, including a paediatric assessment, a report from Dr White and an Occupational Therapist report. She had some interactions with the current carer and she met with NB. She noted it was important to try and stabilise his environment, to make it more predictable. This is for all children with behavioural problems, not just children with foetal alcohol syndrome. A person with foetal alcohol syndrome is subject to abuse, chronic illnesses and there are a lot of issues. Consideration needs

to be undertaken as to what is occurring at access. That may involve supervised access. The reports were tendered, which had been prepared by Ms Turnbull. These became Exhibits A16 and A22. In the report of 21 March 2007 (A16), she recommends that a comprehensive assessment be conducted by a child psychiatrist to consider his behavioural questions. She recommends that the child's day care environment incorporate educational programs that are individually tailored to meet his educational needs. Small class sizes or one on one interaction with staff, clear guidelines and a great deal of individual attention may maximise his intellectual capabilities or prevent further deterioration. Firm rules need to encourage appropriate behaviour and must be consistent and continual. At home, the child requires a lot of support and structure, for example, predictability and nurturing. As an absolute minimum, the child must have stable consistent care giving, with a care giver able to learn specific skills to maximise his functional potential. Consultations with occupational therapists and a child psychologist are recommended. Children with foetal alcohol syndrome are at high risk of physical and sexual abuse in the community at large and in dysfunctional homes. Given the behaviours which have been reported prior to and following access, she recommended visitation to family cease in the short term. This will allow some degree of behavioural and emotional stability. A process of close supervision should be undertaken should access continue. It is recommended only that NB be given significantly smaller portions of food with the option of additional serves. An assessment of NB by Ms Turnbull became Exhibit A22 and is dated 17 April 2007. Once again, a comprehensive assessment by a child psychiatrist is recommended. Medication options may be considered after this assessment has been undertaken and in particular, to deal with his level of hyperactivity and poor concentration levels. Similarly, recommendations were made with respect to his education and at home in the same terms as the previous report and will not be repeated. Ms Turnbull is employed at the Central Australian Aboriginal Congress (Congress) in Alice Springs.

61. She was then cross-examined. This was the first case she had with a child with foetal alcohol syndrome to assess. She had undertaken a review of the literature and looked at information with respect to behavioural and cognitive aspects of the condition. The first part of the assessment occurred at the carer's home, with NB in attendance with the carer. She spent approximately one and a half hours at the visit. Approximately a month later, she had both carers present with the child. An appointment has been made for him to see Rosemary Howard, a child psychiatrist. The second visit occurred at her office at Congress. The child was seen for approximately an hour. She received some further information about the child's behaviour from the manager at the day care centre at Congress and from the carer about his behaviour. The child had been hard to discipline with outbursts when he was having his behaviour corrected. He was less oppositional with the male carer. She agreed there were varying degrees of foetal alcohol syndrome. She also agreed there were varying degrees of problems. Given the behaviours described by the carer, the sooner systems are in place, the better. She also had information regarding his relations with peers which she had obtained from the child care centre. In her office, the child was very hyperactive. He communicated with the carer and spoke directly to her. On a visit to the home, she observed problems with him feeding. She had become aware that there was a significant increase in anti-social behaviour at the day care centre over the past couple of months (prior to her assessing him). She had not spoken to the pre-school. The initial letter of March 2007 was a request for some preliminary assessments. Exhibit A22 became the final assessment. A draft report went to Ms Walker from FACS. She made some suggestions for changes and in particular, the name of the child's sister and the fact that the father was deceased. She was not given information that he spoke an Aboriginal language, but she was aware English was his second language. She only observed conversations in English. There was no interpreter present at any stage during the assessment. Sometimes she would find NB's language hard to understand

and would seek clarification from the carer. He only spoke in English and his English was unclear. He may expect delays in English if English is the second language. It is possible this has not been an affect from the foetal alcohol syndrome. He would start and stop and would become distracted and was constantly going off the task. Her recommendations were the same as her letter of 21 March 2007. She had not changed her mind between March and April 2007. She agreed that she had not made any observations with his family members, nor with any other children. She believes the assessment by Rosemary Howard is the most appropriate recommendation to look at his best interests. Whilst the witness has experience with children, she is not a specialist. She will see NB again to follow up and see if any of the strategies have worked. She is not proposing therapy with the child at this stage, nor further assessment. For a comprehensive assessment, there is a need to speak to family. She was asked if she became aware that there were strong attachments to people, would it cause her to revise concern she had about foetal alcohol syndrome and the impact on the child. She responded that it would possibly affect her views. If the child had strong attachments, it would probably not cause her to revise any of her other recommendations. If the information that she had received was that the child loved to visit his grandmother, she would not be suggesting the need for close supervision and not to stop access. She was asked whether if she had been told the defiant behaviours were after access had ended and it might be that he did not want to leave his family, would her opinion be different. She replied that she had been told his behaviours were happening before going to access as well as after. If she was of the view that there was a strong attachment to the grandmother and this was not causing any behavioural problems, it would cause her to change her recommendation regarding multiple care giving. The caution is, can stability be established with the move between the families. She indicated that in her experience with indigenous children, cultural identification is a critical component of mental health wellbeing. That ends the summary of her evidence. Ms

Turnbull's evidence revealed the limited nature of the assessment of the child and the other significant people in his life. Her evidence does assist the Court to some extent. Had KPP still be seeking to be the sole guardian of the child, it would not have been able to adequately assist the Court.

Conclusion

62. Joint Guardianship Orders are Orders made pursuant to s 43(5)(c) of the *Community Welfare Act*. It is certainly arguable that there is no power to do anything other than extend the term of the Order (if the Court thinks fit) s 43(6) of the *Community Welfare Act*. This interpretation is found by reading sections 43, 48 and 49 of the *Community Welfare Act*. If this interpretation is correct, there is no opportunity to move to a Sole Guardianship Order except by an application under s 48 of the *Community Welfare Act*. There can not be an Order for a period longer than 12 months.

63. The *Community Welfare Act* has given the Court an unfettered discretion under s 43(6) of the *Community Welfare Act*. The evidence before the Court justifies the extension of the Joint Guardianship Order in the same terms for a period of 12 months. That finding is made based upon the best interests of the child, his welfare and development, taking into account the evidence.

64. Nevertheless, the case has not been conducted on the basis that a Sole Guardianship Order cannot be made. Parties have assumed the Court can make a Sole Guardianship Order at this review hearing. Further, it may be that I am found to be in error in my interpretation of the *Community Welfare Act* and what Orders can be made. The question of whether the Minister should be granted sole guardianship will be considered.

65. Joint guardianship is not a concept which can easily be conceptualised or defined. Indeed, the expression is not even referred to in the *Community Welfare Act*. Orders can be made placing a child under the guardianship of the Minister and certain other nominated persons. All Orders for joint

guardianship must have the Minister as one of the guardians. At the heart of joint guardianship is the need for the guardians to be able to make decisions *in loco parentis*, or along similar lines. The *Community Welfare Act* does not limit the type of decisions to be made, but rather sets out short and long term areas of responsibility for the welfare of the child and leaves open the possibility of other types of decisions by the use of the word "including". The period of a Joint Order is limited to 12 months. A Sole Guardianship Order, either to the Minister or another person, is not limited to 12 months. It can be made until the child is 18 years of age. A Sole Guardianship Order can only be made upon the Court being satisfied of the factors in s 43(7) of the *Community Welfare Act*. The sole guardian is given the same responsibilities as joint guardians. Given the possibility of longer Orders, a sole guardian can potentially achieve more effective long term planning. That is one of the key reasons the Minister seeks a Sole Guardianship Order in this case. Given the disrupted upbringing the child NB has had and his high needs to ensure he develops to his full potential, this is not an insignificant factor. It has caused the Court to carefully review the evidence, in an effort to consider just where the child could suffer detriment if an Order of 12 months was made. I am not able to find a detriment would be suffered if an Order for 12 months was made.

66. Irrespective of the length of the Order, an Order for sole guardianship can only be made if the Court is satisfied that no other Order that it may make will adequately provide for the welfare of the child. The Minister's representative properly concedes that is an onus they must discharge and it is an additional hurdle to obtaining the Order they seek.

67. The material before the Court supports the view of the Minister that NB was at risk if he did not have intensive and dedicated nutritional support, which was not able to be provided whilst being subject to disruptive and variable care arrangements. His behavioural challenges first emerged with respect to feeding and were a direct risk to his life and his health. In recent times, his

negative behaviour has not just related to feeding. Temper tantrums and behavioural problems now put his development at risk in other ways, such as education. The nutritional issues can not be said to be over. The need for stability and predictability are the key to a successful transition to formal education. A successful transition to school is vital to NB if he is to develop to his full potential or to avoid some of the more common complications experienced by those diagnosed with foetal alcohol syndrome.

68. Can this be achieved by the confirmation of the present Order or can it only be achieved by a Sole Guardianship Order? The Minister's case is that only a Sole Guardianship Order can lead to the level of stability and predictability needed. The other parties disagree. Ms Walker was frank in her evidence, saying no placement can meet all of his needs. KPP did not press for NB to be moved from his present placement. There is no evidence before the Court demonstrating that the Minister and KPP have a complete breakdown in their relationship, such that they cannot work together in the best interests of the child NB. While the relationship is not perfect, there are sufficient areas of commonality that I am not inclined to order a Sole Guardianship Order. It is certainly possible that the process itself and in particular, listening to the evidence, has moved KPP's position closer to the Minister's than it had been before the hearing.

69. I acknowledge that there are difficulties for the Minister's representatives when joint guardians are not always easily contactable. Access to telephones, transport issues and language differences all mean that it is not as easy as when a joint guardian can be telephoned directly, has a vehicle to attend a meeting and speaks English. From an operational point of view, the grandmother's situation does not fit easily into a structured Departmental environment, which has Monday to Friday, 8.00am to 4.30pm as their core working hours. There is no evidence before the Court which demonstrates that KPP has proven hard to contact, to such an extent that this issue should

disqualify her from consideration as a joint guardian. Further, she has maintained contact even through a contested hearing.

70. One of the main factors pointed to by the Minister's representative as to why they seek a Sole Guardianship Order, is the fact that KPP does not agree with their case plan and their current placement of the child. The fact of a disagreement as between joint guardians will not always mean that the Court will find that the guardians cannot work together. The basis of the disagreement must be considered. The Court must also consider how the guardians work through their differences and whether there is the possibility of greater cooperation in the future.

71. In this case, the basis of the disagreement is linked to one of the key issues which arose at the hearing – the child's Aboriginal identity and education. He is currently placed with non-Aboriginal carers and has been with them since January 2006. There is no reason to doubt the level of care given to NB and his development has not been called into question. He has attended the Congress Aboriginal Child Care Centre which has ensured contact with other Aboriginal children within an Aboriginal agency. The Minister has encouraged and supported this enrolment and the carers have also ensured he attended regularly.

72. KPP has put a compelling case to the Court that the child is at risk of losing his Pitjantjatjara identity unless more is done to keep him in contact with his family, language and country. There is evidence before the Court to find that this may, in turn, lead to health and lifestyle problems in the future. He is already a child with risks of these problems emerging as a consequence of foetal alcohol syndrome. The pressing need for urgent nutritional assistance has abated as a consequence of the work of a series of dedicated people, including medical personnel, Alice Springs Hospital paediatric specialists and staff, carers and Welfare workers. There is still the need for monitoring

and ongoing work in the area of nutrition, but essentially, the situation is stable and there are no immediate medical concerns.

73. He is demonstrating new behavioural challenges which must be addressed. Assessments are being carried out and there is no evidence before the Court that these behaviours are insurmountable.

74. He is about to commence formal education. It is the optimum time for an increase in his cultural education to commence. The suggestion of a tutor for Pitjantjatjara speaking children in care was a positive one. Language classes in Pitjantjatjara could easily be incorporated into his early formal education. Books and tapes are available in that language. KPP could provide valuable assistance on this area as she has had experience working within a school environment. On a less formal level, KPP can provide education in cultural matters, which are difficult to be quantified. Access to family is one way to achieve this. It is conceded that it is not always possible to ensure access is a positive experience for a child (either from a cultural or emotional perceptive).

75. NB's language skills are now at a stage where KPP can add to his education in a positive way. She can speak Pitjantjatjara and English. Subject to any clear evidence from a recognised specialist to the contrary, access to KPP should be regular and as frequent as NB can manage. Professional support may be needed to ensure it is managed as well as possible, but I find access is not enough to ensure NB's welfare is adequately provided for (s 43(7) of the *Community Welfare Act*).

76. I have considered all the material before the Court and I find that KPP has a very positive role to play in NB's life as a joint guardian. Areas of particular importance in this finding are education and religion. I find that the Minister has not satisfied the Court that a Sole Guardianship Order should be made and in particular, I am not satisfied that no other Order will adequately provide for the welfare of NB. I find that unless KPP is a joint

guardian, his welfare will not be adequately provided for. KPP should be actively involved in decisions that affect the child's welfare.

77. I accept that this will mean there may be disagreements as between the guardians. KPP has undertaken to the Court she will work with the Minister and the Department, in the child's best interests (not in those words but I take her evidence to mean this). Any changes in the child's situation need to be carefully carried out and monitored. Even if access proves to be problematic, I am of the view that KPP should be a joint guardian. She has a positive role to play in his welfare and an Order for joint guardianship will best ensure she plays that role and in particular, is one of the decision makers in his life.

78. An Order will be made that the Minister and KPP are joint guardians of the child NB for 12 months. Custody will be at the discretion of the Minister. A review date will be set when the formal Orders are made.

Dated this 23rd day of October 2007.

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STIPENDIARY MAGISTRATE