



**CORONERS COURT  
OF NEW SOUTH WALES**

<b>Inquest:</b>	Inquest into the death of Levai
<b>Hearing dates:</b>	3 – 5 June 2019
<b>Date of findings:</b>	5 July 2019
<b>Place of findings:</b>	State Coroners Court, Lidcombe
<b>Findings of:</b>	Magistrate Harriet Grahame, Deputy State Coroner
<b>Catchwords:</b>	CORONIAL LAW – manner and cause of death, death of child, multiple reports to the Department of Family and Community Services (FACS) and the NSW Police Force, whether responses adequate
<b>File number:</b>	2013/157777
<b>Representation:</b>	<p>Dr P Dwyer, Counsel Assisting, instructed by Mr D Yang, Crown Solicitor's Office</p> <p>Mr M Fordham SC, instructed by Ms E Hourigan, Maddocks for the Department of Family and Community Services</p> <p>Mr M Spartalis, instructed by Ms M Panos, Norton Rose Fulbright for the Commissioner of Police</p> <p>Mr P Madden, instructed by Mr K Madden, Walter Madden Jenkins for Constable Douglas Murphy, Leading Senior Constable Christopher Barone, Senior Constable Steve McCartney and Sergeant Darren Murray</p> <p>Mr B Haverfield, instructed by Mr K Madden, Walter Madden Jenkins for Senior Constable Paul Fitzpatrick, Constable Paul Pieper and Senior Constable Joseph Zuzek</p>

<p><b>Findings:</b></p>	<p><b>Identity:</b> The deceased person was Levai</p> <p><b>Date of death:</b> Levai died on 21 May 2013</p> <p><b>Place of death:</b> He died at 5a/83–85 Mulga Road, Oatley, NSW</p> <p><b>Cause of death:</b> He died from blunt force head injury with bilateral acute subdural haemorrhage, hypoxic/ischaemic encephalopathy, brain swelling and brain herniation.</p> <p><b>Manner of death:</b> He died from an injury inflicted by Kodi Maybir at approximately 6.30am on 20 May 2013. He was left unconscious and untreated until he was last seen alive at about 11.30pm.</p>
<p><b>Recommendations:</b></p>	<p><b><i>To the Commissioner of the NSW Police Force</i></b></p> <ol style="list-style-type: none"> <li>1. That consideration be given to developing guidelines to advise police officers on the appropriate way to conduct sensitive interviews of children to obtain their version of events and to check on their welfare following an allegation of child abuse and/or neglect. The guidelines should adopt the position that, except in exceptional circumstances, a child who is the subject of allegations child abuse and/or neglect should be examined and/or interviewed away from the alleged offender(s).</li> <li>2. That consideration be given to reviewing the adequacy and appropriateness of the policies and training materials relating to the defence of lawful correction under s. 61AA of the <i>Crimes Act 1900</i> (NSW).</li> <li>3. That consideration be given to including the following in the training curriculum for students completing the Constable Education Program:</li> </ol>

	<ul style="list-style-type: none"><li>a. a training scenario based on the circumstances surrounding the concern for welfare call on 31 March 2013 relating to allegations of child abuse and neglect of Levai; and</li><li>b. the circumstances in which it is appropriate for police to examine and/or interview a child who is the subject of child abuse allegations away from their parents or caregivers; and</li><li>c. Information about the defence of lawful correction under s. 61AA of the <i>Crimes Act 1900</i> (NSW) and the circumstances in which it would or would not apply.</li></ul> <p>4. That consideration be given to developing a mandatory continuing education package in relation to responding to allegations of child abuse and neglect that includes:</p> <ul style="list-style-type: none"><li>a. a training scenario based on the circumstances surrounding the concern for welfare call on 31 March 2013 relating to allegations of child abuse and neglect of Levai; and</li><li>b. Information about the defence of lawful correction under s. 61AA of the <i>Crimes Act 1900</i> (NSW) and the circumstances in which it would or would not apply.</li></ul> <p>5. That consideration be given to amending the Community Service Report questionnaire that is included in the COPS events to include questions on the following topics:</p> <ul style="list-style-type: none"><li>a. The potential risk posed by new partners; and</li><li>b. The risk for families who are transient.</li></ul>
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**Non-publication orders**

1. The deceased person be referred to as “Levai” and pursuant to section 74 of the Act, a non-publication order is made with respect to the deceased person’s surname.
2. Pursuant to section 74 of the Coroner's Act 2009 (Act), a non-publication order is made with respect to the identity and identifying information of any children or young people including, but not limited to, the following individuals:
  - a. [REDACTED]
  - b. [REDACTED]
  - c. [REDACTED]
  - d. [REDACTED]
  - e. [REDACTED]
3. Pursuant to section 74(1)(b) of the Act a copy of the Internal Child Death Review Report prepared by the Serious Case Review unit, Department of Family and Community Services (FACS) in relation to the death the subject matter of this inquest (Report) is not to be published within the meaning of section 73 of the Act.
4. The Court notes that a copy of the Report will be supplied to the parties given leave.
5. That pursuant to section 74 of the Act that a non-publication order is made with respect to the following information:
  - a. information regarding the child protection histories of [REDACTED];
  - b. information regarding allegations of domestic violence between [REDACTED];
  - c. information regarding allegation of domestic violence between [REDACTED]; and
  - d. information regarding allegations of sexual abuse committed against Levai [REDACTED]

	<p>6. That pursuant to section 74 of the Act a non-publication order is made over the fact that [REDACTED] [REDACTED] received a certificate pursuant to section 128 of the <i>Evidence Act 1995</i> (NSW) in the trial of Kodi Maybir.</p> <p>7. That pursuant to section 74 of the Act a non-publication order is made over the name [REDACTED] [REDACTED]</p>
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## Introduction:

1. Levai was described by his aunt as having been a beautiful, happy, smiling boy. He loved car cartoons, dinosaurs and transformers. He enjoyed a variety of games such as snap, playing with balls and running around the house with his siblings. Despite learning difficulties, Levai had grown to love school and had become very proud of his recent achievements. Levai's early life had been somewhat disrupted and not without problems, however he was loved and cared for by the people around him.
2. Levai was only seven years old when he died on 21 May 2013, as a result of blunt force head injury. Recent head injuries included a fracture to the rear of the skull and subsequent subdural haemorrhage, a fracture to the left temple, significant bruising around the left and right temporal areas and a bruise to the bridge of his nose. The forensic pathologist who examined Levai after he died also noted a large range of injuries all over his body which were clearly associated with child abuse. There were so many marks, that it was impossible to record them all.
3. These injuries were inflicted over just a few months, during which time Levai's every day existence degenerated into a kind of nightmare. The injuries that caused Levai's death were inflicted by Kodi Maybir, a man who had formed a relationship with Levai's mother, Kayla James. Mr Maybir began to abuse Levai very soon after the relationship with Ms James commenced. Ms James also assaulted Levai on various occasions in the last months of his life and was often present when he was violently abused by Mr Maybir.
4. As the investigation into his death proceeded it became clear that Levai had been immobile and struggling to breathe since the morning of 20 May 2013. Medical attention was not sought until the following morning when Levai was discovered cold and unresponsive. At that point Levai was well beyond help.
5. On 20 November 2013, Ms James and Mr Maybir were both charged with Levai's murder and other child abuse related offences. On 31 March 2015, Kayla James pleaded guilty to manslaughter relating to her gross negligence in failing to obtain medical assistance for Levai and other child abuse related offences. The murder charge was withdrawn and her sentence for manslaughter was reduced because she pleaded guilty and gave evidence against Mr Maybir. Ms James was sentenced by Harrison J in the Supreme Court to an aggregate sentence of imprisonment for 14 years with a non-parole period of 10 years and 6 months. Ms James's earliest release date is 20 May 2024.<sup>1</sup>

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<sup>1</sup> *R v KJ* [2015] NSWSC 767.

6. Mr Maybir pleaded not guilty. He made up a number of stories to explain Levai's injuries. Firstly, he told police that the boy had fallen off a pogo stick. Then that he had fallen off a large instant coffee tin, on which he had been forced to balance as a punishment. Finally he came up with the story he told at his trial in the NSW Supreme Court, that he had accidentally thrown Levai on the floor whilst "play wrestling".<sup>2</sup>
7. On 19 November 2015, after a seven-week trial, a jury convicted Mr Maybir of the murder and 13 other charges of assaulting and "recklessly wounding" Levai over a 10-week period, and of producing "child abuse material". Some of the most powerful evidence came from hours of video recovered from Ms James's mobile phone, and from a computer on which the pair recorded themselves browbeating Levai, getting his siblings to hit him, battering him with a spatula and a wooden plank. At trial, Ms James told the court that Mr Maybir, who describes himself as a Christian hip-hop artist, had bizarre "boot camp" parenting ideas. Ms James described falling under his influence like a member of a cult.
8. On 4 March 2016, Mr Maybir was sentenced by R A Hulme J to an aggregate sentence of imprisonment for 42 years with a non-parole period of 31 years and 6 months. Mr Maybir's earliest release date is 20 March 2045, when he will be at least 61 years old.<sup>3</sup>
9. R A Hulme J said that Mr Maybir's versions of events at trial were "outrageous and transparent lies in cowardly attempts to avoid responsibility". His Honour found that the exact way that the blunt force trauma causing Levai's fractured skull and bleeding to the brain occurred "remains a complete mystery".<sup>4</sup>
10. R A Hulme J described months of "cruel, degrading and inhumane" abuse. He said that Mr Maybir remains "completely unrepentant with no acknowledgement of the enormity of his inhumane conduct".<sup>5</sup>
11. The tragedy of Levai's death goes well beyond the cruelty inflicted upon him by Mr Maybir and Ms James. While other family members and members of the wider community tried at times to get Levai assistance in the lead up to his death, their calls went largely unheeded. Government agencies entrusted with the care and support of vulnerable children failed to adequately protect Levai. Nanette James, Levai's aunt eloquently told the inquest, "This has been a really hard time for our family due to the catastrophic failures of these Departments.

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<sup>2</sup> *R v Maybir (No 8)* [2016] NSWSC 166 at [81].

<sup>3</sup> *R v Maybir (No 8)* [2016] NSWSC 166 at [125].

<sup>4</sup> *R v Maybir (No 8)* [2016] NSWSC 166 at [9].

<sup>5</sup> *R v Maybir (No 8)* [2016] NSWSC 166 at [110], [117].

All of the Departments that are involved failed miserably and any time that anyone tried, nobody listened. As a community we are only as strong as our weakest link and we all need to try ...and save these kids because these kids are vulnerable and at high risk and if we can't stick together to try and at least make this system better, more kids are going to die this way. ...we are the family that are paying the price and have to live with this forever that our [Levai] is no longer here. Nothing is going to bring him back, but I really do hope that lessons are learnt and that we can try to make it better.”<sup>6</sup>

12. Levai's death continues to cause profound grief to members of his family and their community. Their pain is immense and ongoing. I offer my sincere thanks to family members who attended and gave evidence during this painful inquest. Their courage and generosity is commendable. It is clear that they have approached these difficult proceedings in the genuine hope of preventing other children from suffering a similar tragedy in the future. I respect their resolve in the face of great personal suffering.

### **The role of the coroner**

13. The role of the coroner is to make findings as to the identity of the nominated person and in relation to the place and date of death. The coroner is also to address issues concerning the manner and cause of the person's death.<sup>7</sup> A Coroner may also make recommendations in relation to matters that have the capacity to improve public health and safety in the future.<sup>8</sup>
14. In this case there is no dispute in relation to the identity of Levai, or to the date, place or medical cause of his death. For this reason the inquest focused on the manner and circumstances of Levai's death and on questions about whether his death could have been prevented.
15. The inquest focussed primarily on the response of NSW Police and of the Department of Family and Community Services (FACS) in the face of these disturbing events. The criminal process took a number of years to conclude, during which time the coronial investigation was suspended. The ensuing years have been a period of great change, particularly for FACS. For this reason it has been necessary to carefully examine the policy developments that have occurred in the relevant agencies in the years since Levai's death in an attempt to understand what changes, if any, may still be necessary. Levai's family had already gone through the pain of criminal proceedings. They understood and supported the limited focus of this inquest.

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<sup>6</sup> Nanette James Transcript 4/6/19 page 26, line10 onwards

<sup>7</sup> Section 81 Coroners Act 2009 (NSW).

<sup>8</sup> Section 82 Coroners Act 2009 (NSW).

## **The evidence**

16. The court took evidence over two days and heard final oral submissions from the parties on the third day. The court also received extensive documentary material in 12 volumes. The material included witness statements, audio and video recordings, photographs and policy documents.
17. A list of issues was prepared before the proceedings commenced. It included the following:
  1. Was the response by police at the Bulli Beach Tourist Park on 31 March 2013 reasonable and appropriate in the circumstances and did police comply with all relevant policies and procedures that existed at the time?
  2. Was the response to the concern for welfare calls on 8 March 2013 and 27 March 2013 reasonable and appropriate in the circumstances and did police comply with all relevant policies and procedures that existed at the time?
  3. Was the response by Family and Community Services to the child at risk reports in relation to Levai reasonable and appropriate and in accordance with any policies and procedures that existed at the time?
  4. Do FACS and the NSW Police Force adequately take into account the risk posed by new de-facto partners when creating risk of harm reports or in responding to child at risk reports?
    - a. Do FACS and the NSW Police Force make enquiries in relation to de facto partners when there is an allegation of child abuse?
    - b. If those enquiries reveal that the de facto partner has a history of domestic violence and/or child abuse, how does that affect the creation of a child at risk report or the response to a child at risk report? Are the procedures in this respect adequate and, if not, why not?
  5. Are the procedures for communication and information sharing between the relevant agencies adequate?

## **Background**

18. Levai [REDACTED] was born on 23 June 2005 at Westmead Hospital. His parents Kayla James and Lance [REDACTED] had met the previous year. He was healthy, loved and well cared for by both his parents with help in particular from his

mother's extended family. His maternal aunt (by marriage), Nanette James reported "he was a good, happy, bright child and did not appear to have any behavioural problems or medical issues". The family lived in a house at Toongabbie.

19. On [REDACTED], Levai's baby sister was born. The family was by then living in a unit in Harris Park. Money was scarce, but their extended family, including Nanette James would often bring over fresh fruit, vegetables and meat. Around this point the extended family began to notice that Levai's speech was difficult to understand and that he often required directions to be repeated. His younger sister was achieving her developmental milestones at a rate much faster than Levai.
20. In 2008, Ms James became pregnant again. Her relationship with [REDACTED] had been deteriorating over the years and by 2008 it was 'on and off'. On [REDACTED], Levai's baby brother was born at Westmead Hospital. The family continued to live at Harris Park, but the relationship between Ms James and [REDACTED] broke down shortly after the birth and Ms James kept custody of the three children.
21. [REDACTED] soon moved to Perth to be with a new partner and in September 2012, he moved to New Zealand. He did not see or speak to Levai after moving to Perth.
22. According to Levai's aunt, Nanette James, when [REDACTED] left, the state of Ms James's living conditions deteriorated. Again extended family tried hard to help and they took responsibility for trying to keep the house clean and providing fresh food.
23. Around this time Ms James commenced a relationship with a man who was significantly younger than her. The relationship did not last and was characterised by ongoing violence. Ms James moved between various family members' houses throughout western Sydney and during this time Levai went to multiple schools.
24. In the first half of 2011, Ms James and her children were living at her father's house in Ingleburn and Levai attended Ingleburn Public School. His kindergarten teacher (until June 2011), Belinda Clarke reported that he was quietly spoken and difficult to understand. Levai was identified as having difficulties with numeracy and literacy and was provided with a support teacher who assisted him for 30 minutes each day. It was suspected that Levai had an intellectual disability and the school recommended that Levai have a formal assessment for his hearing and vision.

25. Ms Clarke reported that on a few occasions his uniform was untidy and that he did not appear to have lunch. She spoke with Ms James about these issues and noted that she was a quiet person who was unsure as to what normal standards were in regards to Levai.
26. Levai left Ingleburn Public School when Ms James moved the family into her mother's house and for a while he attended Toongabbie Public School. His teacher, Alexis Cootes reported literacy and numeracy difficulties and suggested to Ms James that Levai see a speech therapist. She nominated him as a candidate for a year one reading support program. Levai was able to understand simple instructions, but often became frustrated and teary when he was unable to achieve what was asked of him. Ms Cootes told police investigators that Levai often came to school with soiled clothing and she felt that he lacked educational support at home.
27. Later in 2011, when Ms James moved to her brother Francis James and his sister-in-law Nanette James's house at The Ponds, things significantly improved. Subsequently Levai began attending John Palmer Public School, where Ms Susanne Lakeman was his teacher. She identified that Levai was unable to count to ten or write whole words. He could only write the 'L' in his name. She notified the District Guidance Officer, Ruth Bruce and involved a support teacher. Ms Bruce conducted a variety of tests on Levai and concluded that he had a moderate intellectual disability. He was found to be in the 0.1 to 2 percentile band for all of the tests conducted.
28. As a result of the testing conducted by Ms Bruce, it was determined that Levai should attend a school with additional support. A place was found for him at Riverstone Public School, where he started in June 2012. He was placed in the class of Indira Reddy, who had spent 21 years teaching special education at the school. Ms Reddy reports that Ms James was interested in Levai's education and was seeking assistance in improving Levai's skills and motivation towards his education. He made friends with his peers and settled into the school well. Nanette James told the court that Levai loved his new school. He was "really excited" and often proud of himself and his new achievements.<sup>9</sup>
29. Nanette James described the relationship between Ms James and Levai at this time as positive. She stated "she could relate to Levai, she was a good mum. She was a young mum, but she was a good mum. We supported her in the areas that she needed support. She loved her kids. She really loved her kids."<sup>10</sup>

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<sup>9</sup> See evidence of Nanette James, Transcript 4/6/19 page 7, line 3 onwards

<sup>10</sup> Nanette James Transcript 4/6/19 page 7, line 14 onwards

Nevertheless, it is clear that Levai's learning difficulties made him somewhat vulnerable and sometimes shy with people outside the family.

30. On 18 January 2013, Ms James met Mr Maybir, an event that was to trigger a terrible and rapid spiral downwards for Ms James and her children. On 18 January 2013, Ms James went with mutual friends to the studio where Mr James lived and worked. She spent the majority of the evening talking to Mr Maybir. A friendship between the pair quickly turned into a relationship and Ms James began adopting some of Mr Maybir's extreme religious views, quoting Bible verses on her Facebook page. She was not known to be religious prior to this.
31. On 24 January 2013, less than a week after meeting him Ms James moved into Mr Maybir's music studio at 5a/83-85 Mulga Road, Oatley. This was a business that he had acquired some years earlier with two other friends, in order to record music. It is now clear that the studio was not fit to live in, especially with young children. When NSW Police took a video of the facility after Levai's death, it showed that although the main room of the studio was neat and tidy, there was no proper bedding, no toilet or showering facilities, limited kitchen or food preparation facilities, and unusual religious writings and graffiti all over the walls.
32. In their interviews at various points in the criminal investigation, both Mr Maybir and Ms James said that the children wore nappies during the day so they would not have to take them to the external toilets and raise suspicion amongst neighbouring businesses that children were living there. They cleaned the children on top of a doona cover and had a bucket full of nappies and urine. As a result, Mr Maybir said the studio smelt.
33. Ms James became very secretive about where she was living. She told Nanette James that she was staying at her friend's house, and she denied living at the studio to friends. One of Ms James's friends became concerned about Ms James's relationship with Mr Maybir and the fact that the children were living in the studio. She voiced these concerns to Ms James, telling her to return to her brother's house. Ms James's response was odd and out of character. She said "There are subliminal messages in cartoons that effect children when they grow up".
34. Another friend was concerned for the children because there were no toilets in the studio and they were apparently eating take away all the time. He told Nanette James about his concerns and she began making enquiries into Mr Maybir.

35. On an unknown date between 13 February and 18 February 2013, Ms James returned to Nanette James's home, collected her belongings and left. Her move to the Oatley studio was complete.
36. Nanette, her husband and other family members tried to contact Ms James on many occasions from this point onwards by telephone, text message and through Facebook. Nanette wanted to contact Ms James because she had such significant concerns for the children. Nanette also commenced reaching out to authorities that she hoped would assist her in getting support for the children.

### **Engagement with the Department of Education**

37. Levai's attendance at school became extremely poor during the start of the 2013 school year, coinciding with the commencement of Ms James's relationship with Mr Maybir. Detective Sergeant Trent Power suggested that the reason for this is likely to be two-fold. Firstly, it is suggestive of a deliberate attempt by Mr Maybir to isolate Ms James from her family and other support structures. Secondly, as time progressed it may have been a strategy to conceal the numerous injuries Levai suffered.
38. Levai and his sister only attended twelve days of school in 2013, with many of these being partial days only. One of the days was a swimming carnival, which Ms James and Mr Maybir attended. Mr Maybir was introduced to school staff as Ms James's partner. Neither child attended school beyond 14 February 2013.
39. On 11 March 2013, Ms James contacted [REDACTED], where Levai and his sister had been attending. This was in response to a number of attempts [REDACTED] had made to contact Ms James in relation to the children's attendance, which had dropped to about 50 per cent. This was markedly different to the previous year when Ms James was living with her brother, Francis James and her sister-in-law, Nanette James.
40. On this occasion Ms James told [REDACTED] that the reason the children had not been going to school was that they had been molested by their [REDACTED]. These allegations which centred around a game which apparently involved playing with a "purple snake" were repeated at various times over the following weeks. We now know this was a falsity created by Mr Maybir to isolate Ms James from her family. It was also a strategy used later by Mr Maybir to deflect police attention from himself. Ms James told [REDACTED] that she planned to enrol the children at Oatley West Public School. [REDACTED] made an appointment to meet Ms James on 13 March 2013 so she could collect school work for the children to complete while they were absent from school.

41. In line with Department of Education and Training (DET) policy, [REDACTED] [REDACTED]. In turn, [REDACTED] made a report to FACS as per the DET's responsibility as a mandatory reporter. [REDACTED] also contacted the principal of Oatley West Public School and informed her of the pending enrolment, special needs of Levai and the reported sexual abuse.
42. Ms James did not attend the appointment on 13 March 2013, however arrived at the school a few days later with Mr Maybir and the children. [REDACTED] spoke with her about the sexual assault not having been formally reported and offered to sit with Ms James as she rang FACS. Ms James declined, because she said she needed to catch a train soon. She told [REDACTED] that she was planning to go to Hurstville Police Station. Ms James was provided with information about refuges in the Hurstville area by the school counsellor. She was also given school work for the children.
43. Ms James did not attend Hurstville Police Station (or any other police station) to report the alleged abuse. The enrolment officer at Oatley West Public School, Kathryn Golledge, said that Ms James contacted the school on an unknown date and enquired about enrolling her two children as she was about to move into the area. Ms Golledge gave her information about the school and Ms James agreed to come into the office to complete the enrolment process. She did not attend or contact the school again.
44. On 20 March 2013, [REDACTED] contacted the principal of Oatley West Public School, who advised her that Ms James's children had not enrolled. [REDACTED] made several unsuccessful attempts to contact Ms James between 14 March and 21 March 2013, after which she completed an application to the Western Sydney Region Home School Liaison Program where the case was allocated to Andrew Garland.
45. Mr Garland submitted a "whereabouts request" to Kogarah Joint Investigation Response Team (JIRT) on 25 March 2013. In an email on 26 March 2013 to the Sydney Region Student Support Coordinator (Craig Cleaver), the coordinator of the Western Sydney Region Home School Liaison Program (Ian Kirk) provided the address that Ms James's children were staying at as 24 Mulga Road, Oatley (the wrong address). In this email, he also requested a police check on the welfare of the children.
46. The court carefully examined the attempts made by the Department of Education and individual teachers to support and protect Levai. Numerous

attempts were made to reach out to Ms James and the relevant authorities. The court is not critical of the Department of Education's response.

### **Reports to FACS and NSW Police**

47. Nanette James told the court that she commenced contacting both NSW Police and FACS almost as soon as Ms James and the children left her house.
48. Nanette James stated that she initially called Hurstville police to let them know that family were concerned about Ms James and the children and what was happening at the studio with Mr Maybir. She said that police told her that they needed an address, which she did not have at that stage. Nanette gave them Kodi's name but misspelt it with a 'C' at the time. The police told Nanette James that they could find no Codi from Oatley. She told them that she would try to find an address for Mr Maybir and "get back to them."
49. Nanette James then contacted FACS to make a report, however she was unable to provide the dates of birth for the children and was apparently advised that a formal report could not be taken in those circumstances. She was asked to ring back when she had more details.
50. Nanette James went on a holiday to New Zealand for a week from 19 February 2013 and was then required to deal with a death in the family on her return. Nevertheless she told the court that she called FACS on numerous occasions during this period. She stated "I would have called them at least three times a day. I was in the middle of a ...Tangi [Maori death tradition] for my cousin who had been murdered. So I was trying to deal with that and I was also calling FACS to try and find out where my nephews and niece were and Kayla was and giving them that information".<sup>11</sup> Even more alarming was the fact that during this period Nanette was seeking assistance from caseworkers and case managers who were involved in managing the care of the foster children in her own care. She told the court that she spoke to these workers many times and was told to "keep calling the FACS Helpline". Nanette James explained her frustration to the court, "I told them that the Helpline kept telling me that I need more information, youse are right here in front of me, why can't you help me, youse are FACS, youse are right here and I keep getting told the same thing."<sup>12</sup>
51. I accept Nanette James's evidence that she made numerous earlier attempts to get help which have not been captured in the written records available.

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<sup>11</sup> Nanette James Transcript 4/6/19 page 14, line 27 onwards

<sup>12</sup> Nanette James Transcript 4/6/19 page 15, line 8 onwards

### **7 March 2013**

52. The first recorded report that Nanette James made to FACS was on 7 March 2013.<sup>13</sup> She gave the names and birth dates of all of the siblings and said that she was concerned that Ms James had moved out of her home to an unknown location to live with Mr Maybir who she had only known for six weeks. Since moving out Ms James had no contact with her family and had made allegations that her children had been abused by their [REDACTED]. She was concerned that Mr Maybir was "grooming" the children and described Ms James as protective but "naive". Mr Maybir had allegedly claimed that he was a social worker and used to work for Community Services. He had also allegedly threatened to have people "get" the maternal grandmother. Ms James explained that she had called the NSW Police, however they could not undertake a welfare check for the children because there were no specific known concerns and the new address of the family was not known. The Helpline screened the report as non-ROSH and closed the contact.
53. On reviewing this record, Ms Romeo, Director of the Joint Child Protection Response Program (JCPRP), who conducted a comprehensive survey of the material was of the view that this call had been wrongly categorised and should have been screened as a ROSH report. She identified a number of concerns including the potential risk of a new partner entering a family and the sexual abuse allegation. Ms Romeo stated that it appears there was no attempt to look up Mr Maybir's history on the FACS system, something which could have been done.<sup>14</sup>

### **8 March 2013**

54. Nanette James called FACS again on 8 March 2013. She had made some further enquiries using Ms James's Facebook page and she identified the correct name as 'Kodi Maybir' and the business as 'Seventy Seven Records'. She had been told by Ms James's friends that the studio was located at 24 Mulga Road, Oatley, above Liquor Land, and she subsequently passed this information onto FACS.
55. This address for 'Seventy Seven Records' was incorrect, however the description of the address is accurate (although it is a differently branded liquor outlet). Nanette James advised that the children were living in a music studio with unknown amenities and that mutual friends had indicated that drugs (mainly marijuana) were being smoked in the same room as the children and that Ms James "was always stoned".

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<sup>13</sup> Exhibit 3

<sup>14</sup> For discussion of this point see Ms Grace Romeo, Transcript 4/6/19, page 35, line 25 onwards

56. FACS advised Nanette James to call the Police again and request a welfare check because drugs in the home “was a police matter”. The Helpline screened the report as ROSH, and assessed that it required a less than 10 day response. The case was transferred the report to St George Community Service Centre (CSC).
57. Unfortunately as became clear during the investigation, even though a ten day response was required, no person ever visited the family. The report did not go to the allocation meeting until 21 March 2013, by which time there was also a JIRT report in response to the sexual abuse allegation. The practise at the time meant that the CSC suspended its response until JIRT completed its investigation. This meant that any additional issues that had been raised to the CSC were left unexamined. Ms Romeo stated that this unfortunate practise was abandoned in March 2014.<sup>15</sup> The change was part of developing a more holistic assessment process.
58. The police radio dispatch system 'CAD' indicated that Nanette James did indeed contact Police at around 10am on 8 March 2013 and the information provided included that she was the sister-in-law of the mother of three children that live at Seventy Seven Records, 24 Mulga Road, Oatley. Nanette James apparently reported concerns that the three children were being exposed to drugs. The message was recorded under the category "Concern 4 Welfare".
59. As a result of that call, on 8 March 2013, Leading Senior Constable Christopher Barone and Probationary Constable Murphy of Hurstville Local Area Command attended Mulga Road at 10:47am. According to Probationary Constable Murphy, 24 Mulga Road, Oatley was a house and there was no one home. He indicated that at this point further information was provided by police radio that the location was above a liquor store.
60. It is not known where the information about the liquor store came from as it is not recorded in the CAD and was not broadcast on VKG. It is most likely that either Leading Senior Constable Barone or Constable Murphy was in contact with police at Hurstville Police Station, who in turn spoke with Nanette James. She had knowledge of this (reported via the friends of Ms James) as she had reported to FACS earlier that day that they were living above a 'Liquor Land'.
61. As a result of the additional information, Leading Senior Constable Barone and Probationary Constable Murphy made inquiries at the liquor store (The Bottle-O – Oatley West Liquor at 79/81 Mulga Road, Oatley). They were then able to identify 83-85 Mulga Road as the correct location. They spoke to a business

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<sup>15</sup> Ms Grace Romeo, Transcript 4/6/19, page 38, line 20 onwards

owner within the commercial complex, Kevin Roberts who identified the music studio. Mr Roberts told police that he had seen children dressed in school uniform coming from the studio however he had no information as to whether they were being exposed to drugs. He only commented that they recorded loud rap music there.

62. Police knocked on the door to the studio and waited for about two minutes but no one answered. Further inquiries were made with two employees of another neighbouring business (Nulife Antenna Service). Police were apparently advised, "they're usually pretty quiet and they keep to themselves. I don't think they're involved in drugs. It gets loud sometimes and they record some pretty strange music from time to time though".
63. Leading Senior Constable Barone and Probationary Constable Murphy left the studio at 10:58am. The entire process took 11 minutes. Police said they met with the shift supervisor, Senior Sergeant Robert Stark in the vicinity of the original address, 24 Mulga Road, Oatley, and told him the outcome. According to Probationary Constable Murphy, he told them that they would have to go back to the studio to follow up the information.
64. There are no records to suggest any police returned to the address or made further inquiries that day. Leading Senior Constable Barone and Probationary Constable Murphy did not return to the studio during their shift, which concluded at 6:00pm. Probationary Constable Murphy did not contact Nanette James with the outcome of the inquiries because he assumed others would follow up and do so. He had no conversation with Leading Senior Constable Barone or Senior Sergeant Stark as to what would occur.
65. Leading Senior Constable Barone is no longer a police officer. Senior Sergeant Stark has retired from the New South Wales Police Force. He was spoken to on 25 November 2016 and indicated he had no recollection of speaking with Leading Senior Constable Barone or Probationary Constable Murphy.
66. Sergeant Stephen Boyling was the second supervisor for this shift. He performed station supervisor duties and also indicated that he has no memory of the events.
67. A document titled "Supervisors Synopsis Hurstville" was completed by Senior Sergeant Stark for the day shift (6:00am–6:00pm) on 8 March 2013. This document outlines the tasks that were passed onto that shift, tasks to be passed onto the following shift, a shift summary and other details. There is no record of police having attended Mulga Road or passing on a request to follow up the concern for welfare in relation to Levai and his siblings.

68. While it is not known whether anyone was inside the studio at the time police attended, they were certainly there throughout the day. At 11:34am, both Ms James and Mr Maybir were inside the studio speaking with Ms James's mother on the telephone in relation to the "purple snake" sexual abuse allegations. Mr Maybir filmed that conversation and can be heard instructing Ms James about what to say. Further video evidence proved that they were at the studio between 11:50am and 12:40pm when Mr Maybir filmed seven videos (48 minutes) interviewing Levai and his brother about the "purple snake" allegations, a suggestive interview where Mr Maybir appears to be encouraging the children to report a form of sexual abuse by their [REDACTED]. Mr Maybir becomes frustrated when the children fail to do so. Additional videos of the children playing are recorded at 4:32pm and 4:52pm.
69. No event was recorded in relation to the attendance at the studio. If an event is not created as a result of police attending any given incident, police are required to justify this within the CAD system. In this instance, Probationary Constable Murphy has written, "bona fides checked. See below. Attended location. No persons found at the location". He completed this entry at 1:04am. There is no information in the CAD relating to the fact 24 Mulga Road, Oatley was an incorrect address and that the studio was in fact correctly located at 5a/83-85 Mulga Road, Oatley. There is no easily searchable New South Wales Police Force record of the correct location of the studio or where Ms James's children were likely to have been staying in March 2013. The CAD was verified by Sergeant Gary Keir on 11 March 2013.
70. A Child/Young Person at Risk event should have been created, the address should have been recorded and the information provided by Nanette James should have been assessed by the New South Wales Police Force Child Wellbeing Unit. Their assessment would have identified the fact that further visits were required to assess the welfare of the children.
71. It is difficult to know what would have occurred had police attended the studio and seen Levai and his siblings. The videos depicting Levai on this date (nine in total) do not show any clear injuries, however due to the poor lighting in these videos this is not a definitive record. Dr Brouwer reports that many of the injuries found at autopsy were historical, so it may well be that bruising was visible on this date.
72. If the attending police had been suitably curious, the living environment coupled with the complaint that had been made by Nanette James, should have prompted at the very least, a Child/Young Person at Risk notification.
73. Although an exact date cannot be determined, shortly after police attended the studio, Mr Maybir moved Ms James and the children into his mother's house in

Woodpark. While they were living at that house Levai was severely beaten (16 March 2013) by his siblings under the direction of Mr Maybir. Mr Maybir also assaulted the boy. These assaults are recorded on video and it is obvious Levai is severely injured, possibly sustaining broken ribs, which are later seen by Dr Brouwer at autopsy.

74. Mr Maybir and Ms James moved back to the studio on 17 March 2013.
75. On 24 March 2013, Mr Maybir decided they could not stay at the studio any longer, telling his friend Tureif Hourani that Ms James's family were threatening him, that there had been complaints about children being around the business and that "people were after him". There is no evidence to suggest any of this is correct other than that police attended on 8 March 2013 and that there was an incident with the Highway Patrol the previous day. In any event, Mr Maybir moved Ms James and the children to Sydney Tourist Park in Miranda and they stayed in a tent until 29 March 2013.

### **13 March 2013**

76. FACS received a third report on 13 March 2013, this time from the Department of Education. A staff member called the Helpline to report that they had spoken to Ms James about Levai's sister missing fifteen days of school. Ms James told the staff member that she was moving and had just found out that the children had been "molested" by her [REDACTED]. Ms James had apparently agreed to enrol the children at a local school.
77. The Helpline determined that the information did not meet the threshold for sexual abuse because the meaning of "molested" was unclear and the children's father was reported to live in New Zealand. There appears to have been a misunderstanding at the Helpline that the alleged perpetrator of abuse was the children's father, who lived in New Zealand, instead of the [REDACTED]. The Helpline screened the report as non-ROSH and transferred the contact to St George CSC. FACS records indicate that the FACS worker who took the call considered that the case appeared to be at the lower end of risk given there was no prior history on the database that suggested Ms James or Mr Maybir had a chronic drug problem or had caused harm to children previously.
78. On 14 and 15 March 2013, St George CSC spoke with NSW Police who advised that Ms James was listed as residing in Toongabbie, Queensland, and that her last contact with the Police was in 2011. Police stated that the address provided to them by Nanette James was not valid and a welfare check could not be carried out. It appears that the exchange of information with other agencies was limited to obtaining a location for the family rather than two way

communication with the Department of Education and Police about the known risks for the children. While the Police were asked about Ms James's address the CSC did not explore the possibility that Police knew Mr Maybir's address or family contact details. FACS should have provided Police with information about school non-attendance and the alleged sexual assault of the children to ensure that if Police proceeded with a welfare check, they would not just focus on drug use on the premises

#### **14 March 2013**

79. The fourth recorded complaint to FACS came on 14 March 2013, when it was reported that Ms James had told the caller from the Department of Education that she would make a statement to Police about the sexual assault of Levai, and his siblings by their [REDACTED]. Ms James stated that the children had spoken about playing the "purple snake game" with their [REDACTED]. Ms James had said that she was staying in the Hurstville area, but did not want to provide an address because she was worried that her family would locate her and take the children. The Helpline screened the report as ROSH, assessed that it required a less than 10 day response and transferred the report to the JIRT Referral Unit ("JRU"). On 15 March 2013, the report was assessed by JRU as meeting the criteria for sexual abuse and the report was accepted and transferred to Kogarah JIRT on 18 March 2013.

#### **15 March 2013**

80. The fifth report on 15 March 2013 came from a caller connected with the Department of Housing after Ms James asked for assistance. She said she had been moving between Rouse Hill, Blacktown and Oatley, "couch surfing" with friends. Ms James was described as being upset and alleged that her children were sexually abused by their [REDACTED]. Ms James said she intended to speak with Police and FACS, however the following day she decided against contacting the Police because it would be "too much for her children to handle". The Helpline screened the report as non-ROSH and the report was ultimately transferred to Kogarah JIRT.
81. St George CSC discussed the case at a weekly meeting on 21 March 2013. A summary of the previous child protection reports for the children was provided on the weekly meeting form. The current investigation by Kogarah JIRT was also highlighted and a decision was made to await the outcome of the JIRT investigation and discuss the case at the next weekly meeting on 27 March 2013. When that meeting occurred on 27 March it was noted the outcome of the JIRT investigation was still pending.

## **27 March 2013**

82. On 27 March 2013, a staff member from the Department of Education and Training contacted Hurstville Police Station and spoke to General Administrative Support Officer Dufty (a civilian). As a result, a CAD incident was created, outlining the following information,
- "Inf (informant) is from Dept of Comm Services and Education. Levai and his sister (who was named) moved into the area with their mother. Children have not been enrolled in local school and Dept Education are concerned for the welfare of children. Can POL (police) please check they are A/A (above address- 24 Mulga Rd, Oatley) and check welfare - please contact INF (informant) with outcome" (sic).
83. The CAD was given the category of 'Concern 4 Welfare'.
84. As a result, Senior Constable Joseph Zuzek and Constable Steve McCartney of Hurstville LAC attended the scene at 11:36am. They were unable to locate 24 Mulga Road, Oatley. Senior Constable Zuzek canvassed 28 and 30 Mulga Road along with 20 and 22 River Road. He spoke to two residents who were unable to provide any useful information. Constable McCartney conducted a similar canvass across the road. They left the scene at 11:48am.
85. Senior Constable Zuzek and Constable McCartney were both unaware that Leading Senior Constable Barone and Probationary Constable Murphy had attended the same address on 8 March 2013 and were able to locate the correct address above the liquor store further down the road at 83–85 Mulga Road, Oatley.
86. The canvass finished approximately 100 metres from the studio at 83–85 Mulga Road, Oatley. This may seem like a close distance, but given the vague information provided to Senior Constable Zuzek and Constable McCartney, they were limited in the enquiries they could make. They were not privy to the information provided to Leading Senior Constable Barone and Probationary Constable Murphy on 8 March 2013 that the studio was above a 'Liquor Land', nor were they aware these police had ever attended the location. Had the earlier job been properly recorded on the COPS system, the investigation of Senior Constable Zuzek and Constable McCartney may not have been hindered by this error.
87. Constable McCartney contacted the informant, and told her that the location did not exist. He advised her to contact police if additional information was obtained and informed the shift supervisor that the address did not exist.

88. No event was completed in relation to the incident. Constable McCartney finalised the CAD incident by writing a bona fides check that read: "Location does not exist. Canvas neighbours for possible location of YP's (young person's). No info acquired. Called and left message with inft (informant) to advise outcome. Nil adverse". This was completed at 6:11 am on 28 March 2013. The CAD was verified by Sergeant Boyling on 28 March 2013.
89. A Child/Young Person at Risk event should have been created. Whilst an event may have held limited information, it would have allowed the information to be assessed by the Child Wellbeing Unit. In this instance, the Child Wellbeing Unit would have been able to identify the concerns of reported sexual abuse, failure to attend school, and transience, allowing them to send the report to Hurstville LAC for additional investigation. If attending police on 8 March and 27 March 2013 had both completed Child/Young Person at Risk events, there would have been a further two reports of the concerns held by various parties that would have been available to those charged with assessing what level of concern should be held for children.
90. At this point in time, Mr Maybir had moved Ms James and the children away from the studio to Sydney Tourist Park in Miranda, probably in a bid to avoid police attention. Even if Senior Constable Zuzek and Constable McCartney had located the correct address in Oatley the family would not have been there and no information would have been immediately available to them as to where they were.

### **31 March 2013 – Bulli Beach Tourist Park**

91. On 29 March 2013, Mr Maybir moved Ms James and the children to Bulli Beach Tourist Park, travelling from Miranda. They again stayed in the tent.
92. A group of three families stayed in an adjacent camp site over the Easter long weekend and observed the dynamics of what they thought to be a family. They witnessed prolonged abusive behaviour towards Levai. This included, but is not limited to:
- being locked outside the tent in wet clothing for several hours after defecating in his pants;
  - watching the rest of the family eat while he was given no food;
  - Mr Maybir hitting him violently on the back with a stick while he was on the beach;
  - Mr Maybir making him run back and forth on the grass area near the tents. When he fell over through exhaustion, Mr Maybir picked him up and punched him in the face;

- Levai being hit with a plastic spatula by both Mr Maybir and Ms James, including around the torso area;
  - Levai being thrown across the tent by Maybir;
  - Levai requested of one camper that he be held up to a tap to assist him in drinking water because he had not had any. A camper commented that Levai drank an extraordinary amount of water for someone his size. The camper said “it was like he hadn't had a drink all day”.
93. The abuse and assaults the campers had witnessed consumed their holiday to the point where one of them, ██████████ decided to approach Mr Maybir and Ms James. On reflection, he decided instead to inform authorities. On 31 March 2013, he reported what the group had seen to the park manager, Ronald Linsley.
94. Mr Linsley says he was told by ██████████ that “the people behind us, the eldest child was belted with a spatula for wetting the bed. It was over discipline. After this he was sitting on a chair outside the tent for a few hours”. Mr Linsley advised them to contact police. ██████████ took this advice and spoke with Constable Bradley Streeting at Wollongong Police Station about 11:15am, providing his name and phone number.
95. Senior Constable Streeting said, in his statement, that ██████████ told him that the young child had been left outside of the tent the family was staying in for about an hour. He said that the young child had soiled himself and that the parents had smacked and hit the small child with a wooden spoon after the incident.
96. As a result of this conversation, Senior Constable Streeting created CAD message 183334-31032013 at 11:18am, which says:
- “Informant is camping at Bulli Beach Tourist Park. Has witnessed a family severely neglecting their 5yo child. Would like to see police and will meet them at reception of the park. The park manager is aware of the situation. Further details known to station staff.”
97. Senior Constable Streeting recorded this message under the category “Check B/Fides (bona fides)”. The radio operator upgraded the message to “Concern 4 (for) Welfare” at 11:20am. This upgrade occurred despite the radio operator not knowing the additional information about the child being hit with a wooden spoon, only what was written in the CAD message.

98. Senior Constable Streeting reports he later contacted the police who had acknowledged the message and gave them the additional information relating to the child being hit with a wooden spoon.
99. At 11:35am, Senior Constable Paul Marriott and Senior Constable Michael Brown of Wollongong LAC attended Bulli Beach Tourist Park. The radio operator had indicated that [REDACTED] would be waiting for police at the reception area but when police arrived he was not there. Senior Constable Marriott and Senior Constable Brown requested the receptionist contact the manager. During this conversation with the receptionist a "hold up alarm" in Helensburgh was broadcast by police radio. Either Senior Constable Marriott or Senior Constable Brown indicated to the radio operator, "Our informant is not here. We'll make our way to Helensburgh and come back later".
100. It was a false alarm and Senior Constable Marriott and Senior Constable Brown returned to the Bulli Beach Tourist Park. At 12:17pm, one of them said to police radio, "we're five minutes away from Bulli Tourist Park. Can you contact the informant and get him to meet us at the office again?"

101. At 12:19pm the radio operator said,

"I tried the informant at the tourist park and there was no answer. Apparently the park manager is also aware of the situation if you could just see him at reception".

The operator has also recorded this in the CAD log at 12:19pm, writing "No answer on infts (informants) mobile".

102. Senior Constable Marriott and Senior Constable Brown arrived at 12:23pm and spoke with Mr Linsley. He showed police the campsites of [REDACTED] and his family and friends, as well as Mr Maybir, Ms James and her children. There was no one there for police to speak to but they inspected the tent that they were staying in, noting that it was in good condition and there was bedding, clothing and equipment inside. Senior Constable Marriott instructed Mr Linsley to contact him if any of the parties returned to their campsites. They left at 12:38pm.
103. At about 5:00pm, Levai approached one of the campers, Leon Brodar in the toilet block and asked Mr Brodar to hold him up to the tap so he could have a drink. Mr Brodar said, "Levai drank an extraordinary amount of water for someone his size. It was like he hadn't had a drink all day". Mr Brodar then bought Levai back to his tent and gave him two juice poppers and some chocolate eggs, which he consumed incredibly quickly. Mr Brodar became concerned that Levai had not eaten the entire time he had been there and took

a photograph of him on his mobile phone. The photograph,<sup>16</sup> available to the trial court and to this inquest, clearly depicts a lump between Levai's eyes and another on the right side of his forehead. Some of the campers also observed bruising around his upper arms and torso.

104. Senior Constable Marriott stated that he had not heard back from anyone at Bulli Tourist Park towards the completion of his shift, so he passed the incomplete job onto the night shift station supervisor, Sergeant Murray. Sergeant Murray subsequently passed the job onto Senior Constable Fitzpatrick and Probationary Constable Pieper. They attended Bulli Beach Tourist Park at 19:31, with the radio operator creating a CAD message.

105. On their arrival, Senior Constable Fitzpatrick and Probationary Constable Pieper were introduced to [REDACTED] by Mr Linsley. Reports of what [REDACTED] told police differ.

106. Senior Constable Paul Fitzpatrick says the following:

"He ([REDACTED]) told us he had called earlier about a family who had been severely neglecting their child. He had been verbally abusive and at one point had hit the eldest child with a spoon. He also had him running laps and was really pushing him. The abuse was that bad that at one point he almost went over and stepped in as it was just over the top. He has kids and you don't treat kids like that. The kid was made to stand outside the tent for an hour".

107. He acknowledged in his evidence at the trial of Mr Maybir that [REDACTED] told them of an incident in the tent involving Mr Maybir grabbing the deceased which he did not include in his statement.

108. Probationary Constable Pieper says the following:

"He ([REDACTED]) had witnessed a six year old boy being abused by his parents ... made to stand out the front of the tent for about one hour that by his parents as punishment for something he had done ... the child was being hit with a wooden spoon and thrown across the tent by the parents. The male witness was going to intervene but decided to let park management know and contacted police".

109. [REDACTED] says he told police on the night about all of the abuse he later put in his statement, including allegations of serious assaults such as Mr Maybir punching Levai in the face.

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<sup>16</sup> Exhibit 2

110. Mr Linsley heard the conversation, and subsequently provided a statement that said "██████████ repeated the same story to the police that he had told me earlier. ██████████ said, 'The people behind us, the eldest child was belted with a spatula for wetting the bed. It was over discipline. After this he was sitting on a chair outside the tent for a few hours.'"
111. Both Senior Constable Fitzpatrick and Probationary Constable Pieper indicated that ██████████ wished to remain anonymous. What is clear is that he was very upset by what he had seen and was keen to provide the information to NSW Police and for Police to act. There is CCTV of this conversation, which lasts for three minutes. It is clear ██████████ speaks for the majority of the time and at times is using his hands to demonstrate his point. He is agitated and engaged with the officers. At times he moves his hands around his body.
112. A review of Senior Constable Fitzpatrick and Probationary Constable Pieper's notebooks show no details of what ██████████ was explaining. The only reference to his information was made in Probationary Constable Pieper's notebook:
- "Police received reports that the 5 yo child was left outside tent for 2 hrs because he had defecated in his pants then was smacked Levai on the hand by his mother this occurred about 10:00am" (sic).
113. These notes were not made at the time, but several hours later, and they do not include the exact conversation had with ██████████. This is the only record of a three minute conversation. Detective Sergeant Power indicated that if precise notes had been taken, police could have used this version in a domestic violence investigation even if ██████████ had refused to provide his name. His details were readily available on the CAD message, meaning that he could be issued a subpoena to attend court if this was required. The lack of detail and care taken with this complaint is a clear missed opportunity in the protection of Levai.
114. After speaking with ██████████, Senior Constable Fitzpatrick and Probationary Constable Pieper approached the tent and spoke briefly with Levai and then with Mr Maybir and Ms James. Senior Constable Fitzpatrick says Mr Maybir was reluctant to supply an address and went on to claim that he did not have an address. He conducted a name enquiry with police radio on Mr Maybir at 7:48pm. This check revealed Mr Maybir was wanted in relation to an alleged breach of an Apprehended Violence Order. The radio operator described it as "a telecommunications matter on the 26 of February 2013. Sort of a bit of a technical breach of AVO it relates to". The radio operator was unable to provide any other information to Senior Constable Fitzpatrick, who asked for a caged

police vehicle to attend their location to convey Mr Maybir back to the police station.

115. As Senior Constable Fitzpatrick was speaking with Mr Maybir, Probationary Constable Pieper spoke with Ms James. He asked whether Mr Maybir was the father of the children. In his statement he says Ms James told him, "No he is just a good friend of mine who has been helping me out for the past eight weeks." In his notebook he recorded, "Mother POI 2 (person of interest) and boyfriend POI 1 have been in a relationship for 8 weeks". Senior Constable Fitzpatrick recorded Mr Maybir as Ms James's partner.
116. While they were waiting for the caged vehicle to arrive, Probationary Constable Pieper says that he informed Ms James and Mr Maybir "about an allegation of child at risk". He does not outline in his statement what this allegation was. Senior Constable Fitzpatrick simply says, "S/C (sic) Pieper had been speaking with the mother and explained why we were there".
117. Probationary Constable Pieper states that he asked Ms James what had happened. It is unclear whether Mr Maybir was present for this conversation. The following is what Probationary Constable Pieper recorded in his statement, with a much briefer version recorded in his notebook:

"James said words to the effect of, 'My son Levai had done a poo in his pants and taken them off and hidden them in the bag of clean clothes. I smacked him on the hand and stood him outside of the tent while I cleaned up the mess he had made. When I found the dirty pants I smacked him again on the bottom with a black egg spatula'. I said words to the effect of, 'What did your friend Kodi doing at the time (sic)?' James said words to the effect of, 'Just prior to that Kodi had grabbed Levai by his right arm and thrown him about four or five feet across the tent because he was angry with what he had done'."

118. The event created by Probationary Constable Pieper to report the assault upon Levai (E98525701) reports the version of James slightly differently to his notebook or statement. In the narrative of this event he reports "POI 2 (James) stated she became angry with the child for trying to hide his dirty pants and smacked the child on the thigh area with a egg flipper (sic)".
119. Senior Constable Fitzpatrick later asked Mr Maybir whether he had thrown Levai, to which he said,

"I didn't do that. He soiled himself and tried to hide it by putting his dirty clothes in with the clean clothes. We were both yelling at him and I might have grabbed him just to pull him away because he was making a mess".

120. Senior Constable Fitzpatrick asked to see Levai. Police then spoke to him in front of Ms James and Mr Maybir. However, neither Senior Constable Fitzpatrick nor Probationary Constable Pieper make any record of the questions they asked or the responses they received from Levai.. One of the campers, Belinda Comer, reports hearing them ask Levai, "Did they hit you?" She then saw Levai motioning to various parts of his body. Using torches, they examined his arms, chest, back, legs and buttocks and reported seeing no injuries.
121. In his remarks on sentencing, R A Hulme J said:
- "Two officers attended during the evening of 31 March 2013 but gave evidence that they saw no injuries. I accept the evidence of the campers, supported as it is by a photograph of Levai with at least one and possibly two lumps on his forehead".<sup>17</sup>
122. The jury found Mr Maybir guilty of assault occasioning actual bodily, with evidence presented to them that the injuries seen in the photograph had occurred that day when Levai when was punched in the face by Mr Maybir.
123. During the trial, the police officers were both asked by the Crown prosecutor whether this was the ideal setting to thoroughly examine Levai for injuries. Probationary Constable Pieper admitted it was not, due to the fact it was dark, conducted under torch light and in the presence of the mother. He said that it was conducted in this manner as they were concerned about allegations being made about them by the parents if they were to take Levai into the office area and examine him under proper lighting.
124. If these concerns were genuinely held, health resources such as the Ambulance Service of NSW could have been utilised or a trained female officer could have been brought to the scene.
125. Senior Constable Fitzpatrick gave evidence at trial that they used two torches and looked very closely for injuries. He denied it would have been more appropriate to use the office area, suggesting he could not leave Mr Maybir in the tent with the other children given the allegations that had been made. His response indicates his confused thinking in this regard.
126. The injuries seen on Levai's forehead in the photograph taken by Mr Brodar earlier in the day were not reported, nor were any of the historical injuries later seen by Dr Brouwer.

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<sup>17</sup> *R v Maybir (No 8)* [2016] NSWSC 166 at [48].

127. Senior Constable Fitzpatrick escorted Mr Maybir to the front of Bulli Beach Tourist Park as they waited for the caged police vehicle. Senior Constable Fitzpatrick said to him,

“There must have been something in it for people to call us. They were pretty adamant about it and one bloke said he nearly came over and had a shot at you. So it must have been pretty bad”.

128. As they continued to wait, Mr Maybir told them they were staying at the caravan park as the children had been sexually assaulted by Ms James's [REDACTED]. This had not been reported to police according to Mr Maybir.

129. Senior Constable Miller and Constable Sasagi arrived and escorted Mr Maybir back to Wollongong Police Station. He was served paperwork associated with a Field Court Attendance and was taken back to the Bulli Beach Tourist Park.

130. While Mr Maybir and Senior Constable Fitzpatrick were gone, Ms James also told Probationary Constable Pieper about the alleged sexual assault of the children by her [REDACTED]. She later disclosed the same information to Senior Constable Fitzpatrick and indicated they did not have specific plans beyond their weekend booking. She also told Senior Constable Fitzpatrick that Mr Maybir had thrown Levai across the tent.

131. As a result of the information about their accommodation, Senior Constable Fitzpatrick made arrangements with Mr Linsley for the entire family to be housed in a cabin. This occurred free of charge until they left on 2 May 2013.

132. Probationary Constable Pieper also advised his supervisor, Sergeant Murray and Detective Senior Constable Barnett of what had occurred.

133. Senior Constable Fitzpatrick reports that a decision was made for detectives not to attend as the children were not in any immediate danger and the sexual assault enquiries could be made the following day.

134. On reviewing all the material, Detective Sergeant Power indicated that this entire incident should have been considered as a domestic violence incident. Although the initial CAD message does not identify the fact it is a domestic violence incident, the attending police should have quickly identified this and applied the appropriate policy, investigative procedures and recording mechanisms.

135. There is absolutely no justification for delaying action on the suggestion that what had occurred may have been lawful correction. However, it appears to have clouded the judgment of officers who were present. Ms James told the

police officers that Mr Maybir had thrown Levai across a tent, which could not be reasonably construed as lawful correction. Ms James also told the officers that she hit Levai with a spatula out of 'anger'. Acting out of anger is distinctly different from hitting a child for the purpose of lawful correction. Even if that defence was incorrectly considered, it should have been recorded in COPS.

136. Detective Sergeant Power said that there was ample evidence to support criminal charges if a thorough investigation had occurred.
137. If they were not confident of the available evidence to support an arrest, an Apprehended Violence Order (AVO) would have been justified on the available information. This would have been in line with NSW Police policy of taking proactive measures to keep victims safe and prevent further violence against them. An AVO would most likely have prevented Mr Maybir from being able to approach Levai.
138. The Wollongong LAC Investigations Manager, Detective Senior Sergeant Kelly notes in his statement that since May 2013 a local policy has been implemented whereupon all 'Child at Risk - NO ROSH' events required direct consultation between the officer in charge and the shift supervisor (Sergeant). The supervisor would then add an additional narrative assessing the NO ROSH determination and the Duty Officer (Inspector) would be responsible for quality reviewing this determination. This allows senior police to make decisions about instances concerning child welfare and is good policy.
139. Senior Constable Fitzpatrick arranged with Mr Linsley for Mr Maybir, Ms James and her children to be housed in a cabin within the caravan park, where they stayed until 2 May 2013. It is clear that Levai was severely abused during this time. The "Mr Miyagi" punishment is filmed during this time, which shows Levai badly injured. He was also beaten by Ms James and Mr Maybir with a wooden plank, causing deep lacerations on his buttocks which became infected. Both Mr Maybir and Ms James were both convicted of wounding in company for this assault. The significant decline during this time is in fact shown by comparing a still image taken from the "Mr Miyagi" video on 20 April 2013 against a school photograph in early February 2013.
140. There is no doubt that the investigation of this incident represents a very significant lost opportunity in keeping Levai safe. The fact that holiday makers were prepared to contact the police about a family they had not previously met shows their very high level of concern. The complaint should have been treated with the utmost seriousness. The child should have been spoken to away from the alleged abusers. A contemporaneous photograph shows evidence of injury. It is impossible to reconcile that photograph with an appropriate examination of the boy having taken place that evening.

**31 March 2013**

141. The sixth report to FACS, on 31 March 2013 was from Police [REDACTED]. FACS reported that Police saw Levai and observed that he had no injuries and advised the Helpline that there were no concerns about the children physically. They had intended to serve Mr Maybir with papers (the nature of the papers is not known to Community Services) but became involved in a discussion about the alleged sexual abuse of the children by the [REDACTED]. Ms James confirmed this allegation and said she had not reported this yet but was happy to work with Police or JIRT. Police negotiated another weeks accommodation at the caravan park for the family, but noted that after this time the family would be homeless. The Helpline screened the report as ROSH, assessed that it required a less than 72 hour response priority and transferred the report directly to Kogarah JIRT. There was also a report to their Child Wellbeing Unit on 1 April 2013.
142. This characterisation by NSW Police amounted to serious underreporting of the true story. It was only after Levai's death that FACS became aware that people staying at the same caravan park as the family had witnessed physical abuse, and injury, as well as psychological abuse and neglect of Levai.
143. While the overall determination in the 'Child/Young Person at Risk' incident recorded in E53193589 (sexual assault report, [REDACTED]) is one of Risk of Significant Harm (ROSH) due to the sexual nature of the complaint, [REDACTED] answers 'No' to the question "Do you know of any relevant current Apprehended Violence Orders?" (question 4) in the Community Service report. This response is given despite the fact Mr Maybir was arrested at the scene for a breach of AVO involving his ex-wife, and his children were listed as 'persons in need of protection'. This information was not included in the narrative. This information may have been important for child protection experts reviewing the event and assessing its level of urgency.
144. The inadequacies in the report aside, FACS did not visit the family within the 72 hours response time frame specified. Given that the family, who had been fairly transient, was confirmed to be at the Bulli Beach Tourist Park, this was a good opportunity for a face-to-face visit. It appears that the manager of casework at Kogarah referred the matter to the manager at Wollongong, who initially refused to take it. The opportunity to interview Levai and his siblings and to offer a holistic assessment was lost. Kogarah JIRT eventually negotiated with their police counterparts and the matter was accepted by Wollongong JIRT.

However, by the time Wollongong CSC became involved, the opportunity was lost as the family had moved on again.

***Joint Investigation Response Team (“JIRT”)***

145. On 15 March 2013, Detective Senior Constable Intongchuay of the Kogarah Child Abuse Squad (“CAS”) was allocated as the Officer in charge of the investigation into the allegations of sexual abuse of the [REDACTED] children. This investigation was commenced as a direct result of the report made by the DET, not by a report by Ms James or Mr Maybir. In fact, neither Kayla James nor Kodi Maybir reported the alleged abuse to police until Mr Maybir was arrested in Bulli.
146. A new entry was created for the children, using the (incorrect) address of 24 Mulga Road, Oatley supplied by Nanette James to the DET and FACS. When this was created they were not armed with the information police had discovered on 8 March 2013 (that the children were in fact living at 5a/83-85 Mulga Road, Oatley).
147. On 18 March 2013, Detective Senior Constable Intongchuay unsuccessfully attempted to contact Ms James in an effort to commence her investigation. A message was left for Ms James, which she did not return.
148. Detective Senior Constable Intongchuay transferred to Wollongong CAS on 1 April 2013. After the incident at Bulli Beach Tourist Park on 31 March 2013, JIRT records indicated that Mr Maybir, Ms James and her children had moved out of the zone covered by Kogarah and into the Wollongong area. Conveniently, that allowed the case to be transferred back to Detective Senior Constable Intongchuay on 3 April 2013.
149. On that same date, Detective Senior Constable Intongchuay contacted Bulli Beach Tourist Park and left a message with office staff for Ms James to contact her. On 5 April 2013, a further text message was sent to Ms James to make contact.
150. On 8 April 2013, Detective Senior Constable Intongchuay made contact with Ms James and explained the investigative process, which Ms James appeared to understand. Ms James told her that she was supportive of the process but said finding permanent accommodation was her priority.
151. Detective Senior Constable Intongchuay made further unsuccessful attempts to contact Kayla James by phone on 9 April, 30 April and 2 May 2013.

152. Detective Senior Constable Intongchuay spoke with a relative of Ms James on 3 May 2013, who indicated Ms James had lost her mobile phone. She was asked to get Ms James to contact Wollongong CAS. Ms James left a message that same date for Detective Senior Constable Intongchuay with a new mobile number. She received a further message on 6 May 2013, which had a different phone number.
153. Detective Senior Constable Intongchuay reached Ms James by phone on 7 May 2013. Ms James told her that they had relocated to Brisbane as they were unable to find housing in New South Wales. Ms James was informed that the investigation would be suspended unless she chose to report it to the equivalent of FACS in Queensland. The case was subsequently suspended.
154. After the Levai's death, the case was transferred back to the Kogarah CAS, where Detective Senior Constable Kelly became the officer in charge and attempted to determine if the other siblings had in fact been the subject of sexual abuse. Her investigation found insufficient evidence to support criminal proceedings and in fact led her to believe the offences did not happen, with the children being manipulated by Mr Maybir.

#### **6 May 2013**

155. A seventh report was received by FACS on 7 May 2013 relating to concerns that Levai and his sister were not attending school. The Helpline screened the report as non-ROSH and transferred the contact to Wollongong CSC on 11 May 2013.
156. Detective Senior Constable Intongchuay emailed Wollongong CSC, Wollongong JIRT and the Education CWU again on 7 May 2013 after speaking with Ms James. Ms James said she had relocated to Queensland in an attempt to locate housing after being unsuccessful with Housing NSW. Detective Senior Constable Intongchuay described Ms James as "very vague and evasive and refused to provide specific details on the exact location". Ms James was happy for the investigation into the sexual assault allegations to be suspended, stating that her priority was housing and that the children "seemed fine". Detective Senior Constable Intongchuay confirmed with Countrylink that Ms James had travelled to Queensland with the children and Mr Maybir.

#### **7 May 2013**

157. On 7 May 2013, three weeks before Levai's death, the eighth report was received by FACS. This was another desperate plea from Nanette James to intervene. She said that when Ms James separated from Levai's father, she would go out with new partners and spend all her money, leaving family to care

for and feed the children, and allegedly used marijuana in front of the children. Nanette was worried that Ms James met Mr Maybir and they moved in together a week later, querying whether Mr Maybir could have put "ideas" in the children's head about sexual abuse given there had been no prior sexualised behaviours. Other concerns included that Mr Maybir was not allowed contact with his own son, the children were living in a business studio and exposed to adult substance abuse.

158. The Helpline screened the report as non-ROSH and transferred the contact to Wollongong JIRT.
159. On 9 May 2013, Wollongong JIRT recorded that the family had moved to Queensland and Ms James did not want to proceed with the investigation at this point. No further JIRT action could be taken although it was highlighted that the "family may require further assessment given the current contact reports, lack of housing, no schooling and family relocating has meant the family's current risk and needs have not been assessed." On the same day Wollongong JIRT contacted Wollongong CSC and asked if the matter would be transferred to interstate liaison for follow up by the Queensland Department of Child Safety. An email on 20 May 2013 indicates that the Wollongong JIRT worker had unexpectedly taken leave and the plan had not been transferred to the CSC.
160. On 21 May 2013, FACS received reports about Levai's death that day.

### ***Kodi Maybir***

161. There was relevant information about Mr Maybir which could have been obtained by NSW Police and FACS when investigating the risks to Levai and his siblings. In particular, further investigation into his relationship with his former partner and children would have assisted in providing relevant background. Speaking to his former wife, for example, who had an enforceable AVO against Mr Maybir at the time of Levai's death, may have been instructive.
162. Mr Maybir had been previously married to [REDACTED], whom he had met at Hillsong Church, Waterloo in 2004. There is information from [REDACTED] to the effect that he performed at the church as a rapper, but was asked to leave after using the Hillsong name to publicise his own music. Police later obtained information from the church to the effect that they placed Mr Maybir under particular scrutiny because he was dating [REDACTED], who was on their leadership program and that may be the reason he left the church in 2005.
163. Mr Maybir was possessive and controlling towards [REDACTED]. He became physically violent with her for the first time when she was in year 12, pulling her

school bag from her back. She reports a number of other physical alterations in the early years of their relationship that were not reported to police at the time.

164. The pair was married on 6 July 2007 and had a number of children. They were living in Penshurst. Mr Maybir was using alcohol and drugs heavily, his religious views grew increasingly extreme and he would often be violent towards [REDACTED].
165. It was at this time Mr Maybir became a leader on children's camps conducted by CampWerx, a non-denominational Christian organisation who operated outreach programs for children whose parents were in gaol. Some of the fundamental 'boot camp' ideas that he took to the extreme with the Levai and his siblings were developed here with high school aged children. These were self-styled programs he created through various movies he watched.
166. After the birth of their second child, Mr Maybir began assaulting [REDACTED] regularly and taking her phone from her when she tried to ring the police. Mr Maybir was also violent towards the children, physically assaulting them when they cried. He would use cruel and degrading punishments such as locking the children in a dark room; leaving them all day in dirty nappies; driving in the direction of telegraph poles before swerving away at the last minute; and hitting them with wooden rulers and plastic kitchen utensils.
167. As his drug use escalated he became increasingly violent within the home. One instance was reported to St George Police. On 23 November 2011, [REDACTED] called Police claiming Mr Maybir had assaulted her. On their arrival she said they had had a verbal argument and Mr Maybir had prevented her from leaving by blocking the door. [REDACTED] did not relay any fears to police. No further action was taken. A non-ROSH (Non Risk of Significant Harm) report was made in relation to the children. It is mandatory for a report assessing the risk to children be made when police attend a domestic violence incident.
168. After quitting various jobs the family were forced to move into [REDACTED] parent's house in to save money. The physical abuse of the children continued here.
169. On 17 July 2012, [REDACTED] and Mr Maybir separated and Mr Maybir moved out of [REDACTED] parent's home into the studio. After his initial attempts of reconciliation were rejected, Mr Maybir became increasingly abusive in his messages and phone calls to [REDACTED]. St George Police became involved on multiple occasions.
170. On 10 August 2012, [REDACTED] called police claiming Mr Maybir kept coming onto her property. He attended [REDACTED] house before she arrived home for

a prearranged access visit with the children and refused to leave when asked. [REDACTED] requested that a record be made of the incident. She held no fears although said Mr Maybir was unpredictable. No further action was taken. A non-ROSH report was submitted.

171. On 25 August 2012, [REDACTED] attended Kogarah Police Station to apply for an AVO. She included the above incidents in the statement she provided, however she also included that Mr Maybir had held her by the throat against the wall during the incident on 23 November 2011. She did not previously report this assault out of fear. Mr Maybir had also sent over 200 text messages to her despite requesting him not to contact her. She reported that he had an aggressive and uncontrollable personality that scared her, leaving her with fears for the safety of herself and her family. Constable Murdoch made an urgent AVO application to Parramatta Local Court, which was declined, due to the fact the most recent incident had occurred on 10 August 2012. A non-urgent AVO application was made to be heard on 13 September 2012 at Kogarah Local Court.
172. On 29 August 2012, [REDACTED] attended Kogarah Police Station after receiving a further text message. Police deemed it non-threatening and gave her advice to seek orders through the Family Court in relation to Mr Maybir accessing the children. [REDACTED] believed the dates in the AVO were incorrect.
173. On 3 September 2012, [REDACTED] contacted police reporting that Mr Maybir had picked up their son from day care without her permission, they had argument, Mr Maybir was no longer answering his phone and she held fears for her son. There were no Family Court orders in place to prevent Mr Maybir from picking him up. He presented to the police station and police held no fears over the safety of [REDACTED]. No further action was taken.
174. On 5 September 2012, [REDACTED] contacted police reporting an argument between [REDACTED] and Mr Maybir. [REDACTED] reported that she had agreed to go for a drive with Mr Maybir (with the children asleep in the back seat) to discuss their relationship. The conversation escalated into an argument and they returned home to [REDACTED] house. When she tried to take her son out of the car Mr Maybir has driven the car forward about one metre to prevent her. He then dragged her into the car where she hit her head. Mr Maybir was arrested, however no action taken due to conflicting versions being provided. An urgent AVO was applied for, granted and served on Mr Maybir.

175. From September 2012 through to February 2013, ██████████ reported multiple breaches of the AVO by contacting through telephone calls or texts. These were all dealt with after he was in custody for Levai's murder.
176. Background checking within FACS's own system should have shown Mr Maybir's problematic history with his own children, with multiple incidents of reported domestic incidences and child at risk reports. This should have increased his risk rating when linked to Ms James's children but that checking does not appear to have taken place.
177. ██████████ provided police with a telling insight about Mr Maybir when she stated,
- "Kodi was very smooth around other people and could say the right things to convince them to be on his side. He was very passive aggressive and controlling and would get people to do things for him, however most relationships he had with other people would be very short term and usually end in an argument at the end of the relationship".
178. A former friend of Mr Maybir's, Selina Sann, reports a similar thought and says that Mr Maybir was "very good at talking and he could talk his way out of anything". Detective Sergeant Power noted that Mr Maybir could appear charming when he is not being challenged. He described him as a compulsive liar and effective actor.

### ***Date and cause of death***

179. The investigation showed that from the outset of the relationship between Ms James and her boyfriend Mr Maybir, in January 2013, Levai was the victim of ongoing neglect and physical and emotional abuse. This was primarily instigated by Mr Maybir, but carried out by both Mr Maybir and Ms James. The more isolated Ms James was from her family, the more serious the abuse became.
180. At approximately 6:10am on 21 May 2013, Levai was found dead in his bed at Mulga Road, Oatley by his mother, Ms James. It was accepted by a jury that Levai suffered a significant head injury inflicted by Mr Maybir at about 6:30am on 20 May 2013. Levai was then left unconscious and untreated. He was last seen alive about 11:30pm.
181. Giving evidence at his trial in return for a reduction in her sentence, Ms James said she had come under the influence of her partner's "bizarre" Christian philosophy, allowing him to punish her child violently and inflicting similar punishments herself. Her infatuation with and submission to Mr Maybir was

described as "cult-like". Prior to meeting him, the evidence showed that she was a caring mother who enjoyed spending time with her children.

182. A number of the punishments are recorded on a mobile phone video, either by Mr Maybir or Ms James, including one incident in which the boy's siblings were ordered to take turns hitting him in the stomach and the face. On other occasions Levai was also forced to run laps, crouch on the floor with his arms outstretched for hours on end, and repeatedly spanked, slapped and punched.
183. He was often denied food and water, forced to sit outside in cold weather without warm clothing and on one occasion forced to eat his own faeces.
184. It is abundantly clear that Nanette James, Levai's aunt was justified in her concerns about Levai and his siblings. Even though she was not aware that Levai was being subjected to ongoing physical abuse, Nanette James sensed something was deeply wrong. She was concerned because of Ms James's past behaviour in break ups, her drug issues, her bizarre behaviour moving in with Mr Maybir within a week of meeting him, and what she had heard about his past history and the living conditions of the children. Those concerns were passed on to FACS and to NSW Police. Those concerns were repeated by Ms James on a number of occasions. It is little wonder that she feels betrayed by the systems that should have kept Levai safe.

#### **Was the response from NSW Police adequate in all the circumstances?**

185. NSW Police was asked to review the adequacy of its response to the reports made to it by people concerned with the welfare of Levai and his siblings.
186. There were a number of mistakes identified in relation to the way information was shared both internally and with other agencies throughout the course of police involvement with Levai and his family from March 2013 up until his death. In my view they each represent a missed opportunity to protect the boy.
187. Detective Chief Superintendent Rodney Smith, the Principal and Commander of the NSW Police Academy at Goulburn, stated that after the correct address was found on 8 March 2013, the Computer Aided Dispatch system (CAD) message should not have been closed until contact had been made with the family and the welfare of the children actually determined. He stated "police should have updated the CAD message with the correct address and if unable to re-attend during their shift, handed the CAD message back for re-allocation."<sup>18</sup> He also pointed out that the creation of a full Computerised Operational Policing System (COPS) event would have created "an indelible record" of the parties involved. This could have meant that the correct address

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<sup>18</sup> Statement of Detective Superintendent Rodney Smith, Exhibit 1, Volume 12, Tab 281 [23]

was easily searchable in the system. Detective Sergeant Power, the officer in charge of the investigation suggested the best way to have recorded the relevant information, including the correct address, was to have created a Child/Young Person at Risk event, which would have clearly indicated a further visit was required.<sup>19</sup>

188. The attempt to visit the family on 27 March 2013 in response to a further complaint was hindered by a lack of correct information stemming from the earlier visit, which should properly have been in the hands of investigating police. This caused the complaint to be “written off” because the location “does not exist.” Even if the family were no longer in residence this complaint clearly needed further investigation, which it did not receive. By this stage, other agencies had information which could properly have been shared had an original Child/Young Person at Risk event been created.
189. Detective Chief Superintendent Smith gave detailed evidence which outlines the changes that have subsequently been made to police training modules in relation to the proper use of the both the COPS and CAD systems. I am satisfied that since 2014 the information and training offered is both more comprehensive and more practical in this regard.<sup>20</sup> Given the importance of these tools in modern policing, this change of emphasis is welcomed.
190. Clearly the most significant lost opportunity occurred when police were called to the Bulli Beach Tourist Park on 31 March 2013. In my view there were significant defects in the police approach including, a failure to identify and put into practice NSW Police policy in relation to an allegation of domestic violence, a failure to adequately record contemporaneous notes of a complaint of serious child abuse, a failure to interview a young child in an appropriate manner away from the alleged abuser, a failure to appropriately physically examine a child (or have the child appropriately examined) after a serious physical assault complaint had been made, a failure to properly interrogate the police information system adequately to understand the nature of the outstanding charge against Mr Maybir, a failure to understand the defence of lawful correction to such a degree that it clouded the proper consideration of the allegation under investigation, and a failure to make the most basic inquiries or canvass of the scene. There was a fundamental failure of curiosity in relation to what was going on.
191. I do not intend to recount each of these failings in detail. However, it is clear that the allegation was not taken seriously enough or given proper attention by the officers who attended. The very fact that a stranger had interrupted his holiday to inform police of his concerns about a child, he did not previously

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<sup>19</sup> Statement of Sergeant Trent Powers, Exhibit 1, Volume 1 Tab 7 [80]

<sup>20</sup> See Statement of Detective Superintendent Rodney Smith, Exhibit 1, Volume 12, Tab 281 [10-22]

know, is extremely telling and should have raised a red flag. I have viewed the video footage of [REDACTED] conversation with police and am satisfied that he was agitated and is likely to have expressed grave concern. That another resident took that same child back to his tent to feed and care for him is also extremely significant. At that time Mr Brodar also took the photograph<sup>21</sup> which in my view clearly shows an injury. The only reason to take such a photograph was for the purpose of recording evidence. Had police properly canvassed the scene that night or even the following day, they may well have found other witnesses ready to cooperate with the investigation.

192. Unfortunately the fact remains that the police completely missed the serious nature of the event that they were called to investigate. Rather than characterising it as a domestic violence incident, and in accordance with NSW Police policy take a pro-active approach, they appear to have been distracted by the separate allegation of sexual abuse and confused by the defence of lawful correction.
193. I accept that Mr Maybir was a consummate liar and manipulator. It is likely that he was able to charm and convince the officers of the seriousness of the sexual abuse allegation in an attempt to deflect attention away from proper consideration of the specific allegation they had been called to the park to investigate. It certainly seems that the sexual abuse allegation became the centre of ongoing police concern, to the detriment of other potential issues. It is interesting that although Police were appropriately concerned about the family's lack of accommodation and took practical action, their transience did not ring more significant alarm bells. Neither did the fact that Mr Maybir, the alleged offender was a recent de facto partner and had a history of domestic violence in his last family. It may be that these issues could usefully be the subject of further police training.
194. It should be noted that NSW Police quite properly conceded some of the shortcomings in the investigations police undertook in relation to Levai. These include in relation to information and complaint management, note taking and in relation to the characterisation of the complaint made on 31 March 2013. It was specifically conceded that the photographic evidence of the bump on Levai's forehead is inconsistent with a proper examination having been conducted.<sup>22</sup>
195. I remain disturbed by the suggestion that the defence of lawful correction had any part to play in this investigation. I accept that [REDACTED] told police that Mr Maybir had punched Levai in the head and that the child had visible injuries that evening. However, it should be also be stated that even on the more minimal

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<sup>21</sup> Exhibit 2

<sup>22</sup> See letter from Norton Rose Fulbright, Volume 12, Tab 283.

account recorded by the attending officers, there was no proper basis to consider the defence a barrier to a proper investigation.

196. Detective Chief Superintendent Smith stated that he was confident the concept of what he called “lawful chastisement” was adequately taught to officers at Goulburn. He also thought it likely that when considering their response to the situation at Bulli Beach Tourist Park, the officers’ judgement “might have been clouded by the fact that that was delivered to them as a defence and based on what they saw perhaps it clouded their judgement.”<sup>23</sup> I was not reassured by Detective Chief Superintendent Smith’s analysis of the basis of the error on the night nor with his production of the current resources provided to police on the topic. In my view it is an area of instruction that would benefit review.
197. Overall, I accept Detective Sergeant Power’s characterisation of the police investigation on 31 March 2013 as “poor”<sup>24</sup>. His statement sets out in some detail a chronological account of other lost opportunities and provides a balanced account of police action in this case.
198. Detective Chief Superintendent Smith characterised the investigation on 31 March 2013 as “less than adequate.”<sup>25</sup> After the reviewing what occurred in light of the training provided to police officers today he stated “It would appear as though there may have been elements of physical abuse, neglect and psychological abuse present when the officers attended Bulli Caravan Park on 31 March 2013 and that the teaching on domestic violence now would require officers placed in similar circumstances to give consideration to whether they should exercise their powers to remove the child if they consider that there is a risk of significant harm to the child.”<sup>26</sup> It is clear that the officers present at the Park on that day made no such assessment.

### **Was the response of FACS adequate in all the circumstances**

199. In reviewing FACS response to Levai’s death, the court had access to the Child Death Review Report, comprehensive statements of Paul Vevers, Deputy Dupty Secretary, Housing, Disability and District Services and Emergency Management and comprehensive statements and oral evidence of Grace Romeo, Director of the Joint Child Protection Response Program (JCPRP), previously known as JIRT.
200. After Levai’s death, a thorough review was completed by FACS, and the Ombudsman, to determine what could and should have been done better.

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<sup>23</sup> Transcript Detective Superintendent Smith 4/6/19, page 83, line 6 onwards

<sup>24</sup> Transcript Sergeant Power 3/6/19, page 72, line 41

<sup>25</sup> Transcript Detective Superintendent Smith 4/6/19., page 78, line 25

<sup>26</sup> Statement of Detective Chief Superintendent Rodney Smith, Exhibit 1, volume12, Tab 281 [51]

**FACS Child Death Review Report**

201. [REDACTED]

202. [REDACTED]

203. [REDACTED]

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

[REDACTED]

**Ombudsman's Report**

205. Similarly, the Ombudsman's report raised concerns regarding the failure of FACS to obtain a clear picture of the risk of harm to Levai and his siblings. In particular, the concerns related to the failure to assess Mr Maybir using the New Partners and New Household Members Practice Tool, the failure to consider and investigate the reports of physical abuse made on 31 March 2013,

and the response to the family's transience, which appeared to be focused primarily on determining the location of the family and thus which CSC held responsibility.

### ***Evidence of Grace Romeo***

206. Ms Romeo gave comprehensive evidence about various changes that have been made to FACS' policies and procedures as well as to aspects of staff training directly relevant to the decisions made.
207. In 2018, JIRT was renamed to JCPRP. Ms Romeo explained in her second statement that the change reflected the commitment by the partner agencies for a "multi-disciplinary child focused" approach. Significantly, all three partner agencies now have the responsibility to ensure that their policies, training and practice reflect the principle that the safety, welfare and wellbeing of children is paramount.
208. FACS have also implemented a new NSW Practice Framework which according to Ms Romeo has "facilitated a shift in organisational culture towards a focus on child-centred practice and increased engagement with children, carers and other agencies". Nine days of intensive training have been provided to staff in the CSCs and JCPRPs in the New England, Sydney, Hunter and Central Coast districts with skills-based training to be provided to the remaining districts in 2020.
209. Ms Romeo recognised that the absence of a holistic assessment of the risk to Levai and his siblings was one of the main failures in this case. In her oral and written evidence, she outlined the various changes made to ensure that there is a holistic assessment of all child protection concerns. First, the Joint Local Planning and Response (LPR) Procedures are being revised. The LPR Procedures set out a structured process which is used to facilitate an effective and coordinated tri-agency response to matters that are accepted by the JCPRP. Accordingly to Ms Romeo, there was a "missed opportunity to holistically review Levai's matter" as a result of the lack of casework planning. Ms Romeo indicates that by the end of 2015, the LPR system became electronic and CSCs are now able to view the contents of the LPR for specific children in the KiDS database. This has improved the flow of information between the JCPRP and CSCs.
210. Secondly, in 2014 the Sibling Case Coordination policy was implemented. This policy applies when more than one FACS unit are dealing with a family at any point in time. The policy requires the unit to attend a Pre-Assessment Consultation and determine the most appropriate unit to provide ongoing casework for the family. Following the implementation of this policy, matters

referred to the CSCs are no longer suspended pending the finalisation of a JIRT/JCPRP investigation.

211. Thirdly, a Supervision Policy for Child Protection Practitioners was implemented in 2018. The policy requires that complex casework decisions and matters be brought to a group supervision meeting attended by the caseworker, the Manager Caseworker, a casework specialist, a psychologist and where relevant, any service provider who is engaged with the family. The process aims to ensure that a variety of views are heard on complex matters and that a holistic decision is reached. Training has been provided to all CSC and JCPRP staff on the new model of supervision. Ms Romeo indicates that “it is FACS’ view that families are safer under this model”.
212. Finally, policies have been implemented to promote holistic assessments of child protection concerns. These policies have been complemented by training from the Office of the Senior Practitioner.
213. At the time of Levai’s death, the New Partners and New Household Members practice tool was in place to support caseworkers to assess the risk to children when a new adult entered the household. Despite this, FACS did not conduct checks of Mr Maybir or assess him using the practice tool. A new practice guidance was developed in 2016 to assist practitioners and includes a requirement for caseworkers to conduct a risk assessment when they have reason to believe a new adult has joined a child’s household.
214. During Ms Romeo’s evidence, concerns were raised in relation to the adequacy of the training provided to FACS Helpline staff in relation to the risk posed by a parent’s new partner. In response, FACS indicated that the Office of the Senior Practitioner is currently developing a practice package to develop child protection practitioners’ knowledge and understanding of the potential risk that a parent’s new partner may pose for children in the household. A variation of that package will be developed specifically for FACS Helpline staff to ensure that they recognise the importance of such information for assessment and screening decisions, and to ensure that any relevant child protection history for a new partner is investigated and examined. It is anticipated that the package will be finalised in August 2019.
215. Ms Romeo also gave evidence about recent resource changes which assist in providing better oversight and management of caseloads. Since 2015, there has been a significant increase in JIRT staff with the appointment of 1 Director, 40 Caseworkers, 4 Managers Casework and 7 Casework Support positions.

***Evidence of Paul Vevers***

216. Mr Vevers provided two statements outlining the various changes that have been made to Housing NSW following Levai's death.
217. Prior to 2013, Housing NSW operated as a separate and distinct agency within the Human Services Cluster. Mr Vevers indicated that the most significant change was the merger of Housing NSW with FACS and this recognised that "housing is a vital element of support to vulnerable families and that therefore there should be greater integration of housing and community services". By combining these agencies under a single management structure, the relevant managers are able to coordinate and deploy the resources and skills of the formerly separate agencies to ensure that services are provided and issues are considered in a "more holistic manner". Mr Vevers also said that the merger has made communication between housing and community services easier.
218. In oral evidence, Ms Romeo also indicated that the merger was a positive change. She said that FACS Housing now operates out of many CSCs and as a result, there are opportunities for stronger relationships and collaboration to ensure holistic outcomes for vulnerable families.
219. Mr Vevers also outlined changes to the training provided to FACS Housing staff. In 2018, FACS partnered with TAFE to provide all of its Housing Client Service Officers (CSOs) with a Certificate IV in Social Housing (known as "LEAP training"). The LEAP training includes topics relating to mandatory reporting, communicating information on children at risk, working with clients with complex needs, "disengagement", information sharing under chapter 16A of the *Children and Young Persons (Care and Protection) Act 1998* and an anonymised case study with questions based on Levai's case. It is expected that all 700 CSOs will have completed this training by November 2019.
220. Further, all new CSOs are required to attend a 5-day induction course that provides information on mandatory reporting and recognising abuse and harm. The "Keep Them Safe" online course has also been reviewed and now includes modules on "disengagement", information sharing and an anonymised case study based on Levai's case.

### **The need for recommendations**

221. I have carefully considered the need for recommendations in this matter. I am satisfied that FACS have made a number of important changes which may help guard against the recurrence of the failures seen in this matter. Cultural change is slow, but the refocus on a holistic assessment process is a positive beginning.

222. In relation to police conduct I retain significant concerns. While it is somewhat tempting to believe that the inadequate investigation on 31 March 2019 was an isolated mistake, the failure is likely to be more far reaching. In my view a number of further training needs and gaps were identified during the evidence. I note that NSW Police have indicated that they will consider the recommendations proposed.

## **Findings**

223. The findings I make under section 81(1) of the Coroners Act 2009 (NSW) are:

### ***Identity***

The person who died was Levai.

### ***Date of death***

He died on 21 May 2013.

### ***Place of death***

He died at 5a/83-85 Mulga Road, Oatley, NSW.

### ***Cause of death***

He died from blunt force head injury with bilateral acute subdural haemorrhage, hypoxic/ischaemic encephalopathy, brain swelling and brain herniation.

### ***Manner of death***

He died from an injury inflicted by Kodi Maybir at approximately 6.30am on 20 May 2013. He was left unconscious and untreated until he was last seen alive at about 11.30pm.

## **Recommendations pursuant to section 82 Coroners Act 2009**

224. For the reasons stated above, I make the following recommendations to the Commissioner of the NSW Police Force:

1. That consideration be given to developing guidelines to advise police officers on the appropriate way to conduct sensitive interviews of children to obtain their version of events and to check on their welfare following an allegation of child abuse and/or neglect. The guidelines should adopt the position that, except in exceptional circumstances, a child who is the subject of allegations child abuse and/or neglect should be examined and/or interviewed away from the alleged offender(s).

2. That consideration be given to reviewing the adequacy and appropriateness of the policies and training materials relating to the defence of lawful correction under s. 61AA of the *Crimes Act 1900* (NSW).
3. That consideration be given to including the following in the training curriculum for students completing the Constable Education Program:
  - a. a training scenario based on the circumstances surrounding the concern for welfare call on 31 March 2013 relating to allegations of child abuse and neglect of Levai; and
  - b. the circumstances in which it is appropriate for police to examine and/or interview a child who is the subject of child abuse allegations away from their parents or caregivers; and
  - c. Information about the defence of lawful correction under s. 61AA of the *Crimes Act 1900* (NSW) and the circumstances in which it would or would not apply.
4. That consideration be given to developing a mandatory continuing education package in relation to responding to allegations of child abuse and neglect that includes:
  - a. a training scenario based on the circumstances surrounding the concern for welfare call on 31 March 2013 relating to allegations of child abuse and neglect of Levai; and
  - b. Information about the defence of lawful correction under s. 61AA of the *Crimes Act 1900* (NSW) and the circumstances in which it would or would not apply.
5. That consideration be given to amending the Community Service Report questionnaire that is included in the COPS events to include questions on the following topics:
  - a. The potential risk posed by new partners; and
  - b. The risk for families who are transient.

## **Conclusion**

225. The court accepts that there are no simple solutions to the violence Levai faced. Nevertheless his family and community members were trying to raise concerns and they were not heard.

226. It is appropriate to offer thanks to Detective Sergeant Trent Power, the officer in charge of the criminal and coronial investigation. He has shown compassion and sensitivity to towards the family over the many years these proceedings have been on foot. His duties have been undertaken with great skill. He is an officer worthy of sincere commendation. It is not always easy to expose the mistakes of one's peers and he has approached these proceedings with enormous integrity.

227. I thank those assisting me, Dr Dwyer, Ms Berry and Mr Yang for their hard work and dedication in preparing this matter for inquest.

228. Finally, once again I offer Levai's family my heartfelt condolences.

229. I close this inquest.

Magistrate Harriet Grahame  
Deputy State Coroner  
5 July 2019  
NSW State Coroner's Court, Lidcombe