



Transcript of Proceedings

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THE HONOURABLE TIMOTHY FRANCIS CARMODY SC, Commissioner

MS K McMILLAN SC, Counsel Assisting
MR M COPLEY SC, Counsel Assisting

IN THE MATTER OF THE COMMISSIONS OF INQUIRY ACT 1950
COMMISSIONS OF INQUIRY ORDER (No. 1) 2012
QUEENSLAND CHILD PROTECTION COMMISSION OF INQUIRY

BRISBANE

..DATE 17/07/2012

..DAY 1

WARNING: The publication of information or details likely to lead to the identification of persons in some proceedings is a criminal offence. This is so particularly in relation to the identification of children who are involved in criminal proceedings or proceedings for their protection under the *Child Protection Act 1999*, and complainants in criminal sexual offences, but is not limited to those categories. You may wish to seek legal advice before giving others access to the details of any person named in these proceedings.

THE COMMISSION COMMENCED AT 9.59 A.M.

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COMMISSIONER: This Commission of Inquiry was established on the 1st of July 2012 by Order in Council and is the fulfilment of a Government policy commitment to improve and strengthen Queensland's Child Protection Services to better help vulnerable children and their families. The inquiry is essentially tasked with reviewing and revising all policy, financial and operational aspects of Queensland's child protection industry and charting a new roadmap for the next decade. A written report with affordable and deliverable recommendations, capable of providing more effective and efficient outcomes, is to be given to the Premier by the 30th of April 2013.

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I have been appointed Sole Commissioner by the Governor in Council. Katherine McMillan of Senior Counsel and Michael Copley of Senior Counsel have been briefed by the Crown to act in the role of Senior Counsel assisting the Inquiry.

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Ms McMillan has a distinguished career in the area of family law, where she has appeared on behalf of the independent children's lawyer. She has also practiced in the areas of child protection, adult guardianship, human rights, professional disciplinary matters, inquests and alternative dispute resolution.

Mr Copley was a Crown Prosecutor in the Office of the Director of Public Prosecutions for 10 years and is well-known as one of the most experienced and able criminal appeal advocates in the State. He joined the private bar 12 months ago, where his practice has primarily involved criminal defence work.

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Ms Julia Duffy is the Executive Director of the Commission and will act as its official Solicitor, including for the purposes of service.

Ms Anne Edwards has been appointed Research Director.

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The work of the Commission will be supported by a multidisciplinary team of lawyers, police, researchers and policy officers and will work together to answer the questions asked of us. Research, legal and other team members will be coopted or recruited from within the public service where possible, but when specialist skills or independent of government services are called for, they will be outsourced on an "as needs" basis for discrete areas and limited periods.

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The chief purpose for this preliminary hearing is to outline what the Inquiry has been asked by the Government to do, to establish how I intend going about conducting the business of the Inquiry and to make procedural directions or rulings and decide any applications for leave to appear before the Inquiry. I'm going to ask the Associate now to read the Order in Council into the record.

ASSOCIATE: Commissions of Inquiry Act 1950. Commissions of Inquiry Order (No. 1) 2012, Total Provisions: 1

1. This Order in Council may be cited as a Commission of Inquiry Order (No. 1) 2012.
2. This Order in Council commences on the 1st of July 2012. Appointment of Commission.
3. Under the provisions of the Commissions of Inquiry Act (1950) the Governor in Council be by [indistinct] Honourable Timothy Francis Carmody of Senior Counsel from the 1st of July 2012 to make a full and fair Court Inquiry into an open and [indistinct] of Queensland's Child Protection System with respect to: 10

- (A) Reviewing the process of implementation of the recommendations of the Commission of Inquiry into child abuse of children in [indistinct] institutions of the Court Inquiry and protecting children and inquiring into abuse of children in foster care [indistinct] Commission of Inquiry. 20
- (B) Reviewing Queensland legislation about the protection of children, including the Protection Act (1999) and all relevant parts of the commission of children and young people and Children and Guardian Act (2000).
- (C) Reviewing the effectiveness of Queensland's current Child Protection System in the following areas:

- (i) Whether the current use of available resources across the Child Protection System is adequate and whether the recent resources should be used more efficiently.
- (ii) The current Queensland Government, whilst for children and families in Child Protection System, including the appropriateness of the level of and support for frontline [indistinct]. 30
- (iii) Tertiary child protection intervention, [indistinct] service standards, decision-making, frameworks and child protection Court and Tribunal processes and,
- (iv) Transition of children through and exiting the Child Protection System.

- (D) Reviewing the effectiveness of the monetary investigation, oversight and complaint mechanisms for the Child Protection System and identification of ways to improve oversight of public confidence in the Child Protection System and, 40
- (E) Reviewing the adequacy and appropriateness of any response of and action by Government to allegations, including any allegations of criminal conduct associating with Government responses into historic child sexual abuse in youth detention centres.

4. Accept that the Inquiry is not to have regard to the following matters: 50

- (A) Recommendation 39 of the full Inquiry.
- (B) Any matter that is currently the subject of a judicial proceeding or proceeding before an Administrative Tribunal or Commission, including but not limited to, a Tribunal or Commission established under the Commonwealth Law or is, as the date of this terms of reference, the subject of police,

coronial misconduct or disciplinary investigation or disciplinary action.

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(C) The appropriateness or adequacy of:

(i) Any settlement of a claim arising from any event or remission or,

(ii) The rights to damages or compensation by an individual or group arising from any event for remission or any decision made by any Court, Tribunal or Commission in relation to a matter that was previously the subject of a judicial proceeding or a proceeding before a Tribunal or Commission or,

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(iii) Any Queensland Government redress scheme, including its scope, eligibility, criteria, claims and/or payments of any kind made to any individual or group arising from any event or remission for any past event that, as the date of these terms of reference is settled, compromised or resolved by the State of Queensland or any of its agencies or instrumentalities and,

(D) The operation generally of youth detention centres, other than those matters relating to historic child sexual abuse in youth detention centres identified at paragraph 3D of these terms of reference, including but not limited to, the progress of implementation of recommendations 5 to 15 inclusive of the full Inquiry relating to the operation of youth detention centres.

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Commission to Report

5. Directs the Commissioner make full and favourable report and recommendations of your full-set subject matter of Inquiry and translate the same to the Honourable, the Premier, by 30 April 2013.

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Commission to make recommendations

6. In making recommendations, the Commissioner will chart a new roadmap, Queensland Child Protection System over the next decade. The recommendations should take into consideration the interim report of the Queensland Commission of Audit and the fiscal position of the State and should be affordable, deliverable and provide effective and efficient outcomes.

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Recommendations should include:

(A) Any forms to ensure that the Queensland Child Protection System achieves the best possible outcomes to protect children and support families.

(B) Strategies to reduce the over-representation of Aboriginal and Torres Strait Islander children at all stages of a Child Protection System, particularly out-of-home care.

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(C) Any legislative reform is required and,

(D) Any reforms to improve the current oversight, monetary and complaints mechanism of a Child Protection System.

Application of Act settled.

Provision of the Commissions of Inquiry Act (1950) shall be applicable for the purposes of this Inquiry, except for

section 19C, authority to use listening devices.

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Conduct of Inquiry.

8. The Commissioner may hold public and private hearings in such a manner and in such modifications as may be necessary and convenient made by the Governor in Council on the 28th of June 2012.

COMMISSIONER: Thank you. The Commissions of Inquiry Act largely leaves decisions about such matters as how to make full and careful inquiry including what, when, where and how Inquiry proceedings are conducted and which information gathering tools and methods are most appropriate to my discretion. The Commissioner is mindful, however, of the explicit instruction in the Order in Council appointing the Commission to be as open, inclusive and accessible to the public as the nature and the subject matter of an Inquiry permits.

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Experience has shown that Commissions of Inquiry that work in secret or behind closed doors for lengthy periods, no matter how hard or well-intentioned, tend to lose public confidence, support and participation in their activities, hence the authority to sit at any time and in any place for the purpose of exercising any inquiry, power or function and the usual practice of examining witnesses with relevant information, knowledge or experiences on oath or affirmation in public.

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Sitting in the open is primarily done to inform the community what the Inquiry is doing, to broaden and add value to the debate, for testing and ensuring the trustworthiness of information that might be relied upon in making findings or recommendations and to encourage reluctant potential witnesses to come forward, to either corroborate or contest other evidence or provide fresh information of their own. However, adopting public adversarial-based procedures, like a Court, is not always the most appropriate or efficient method of investigation. They can deter apprehensive informants or witnesses and are prone to damage reputations and sometimes breach confidences or even prejudice the integrity of the investigations. Public hearings are also time-consuming and costly.

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Accordingly, in discharging its functions, this Inquiry pays to inform itself about relevant matters in a range of different ways, including public examination of witnesses; closely examining departmental records; issuing information or discussion papers for comment; conducting interactive online forums; consulting with acknowledged experts in relevant fields and peak representative bodies from around the State; listening to stakeholders in urban, regional, rural and remote areas, including those in indigenous communities in the Cape and elsewhere; and when appropriate, conducting confidential interviews and holding in camera hearings.

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Obviously the age or sensitive nature of the evidence of some witnesses may require anonymity or nonpublication to protect

their identity and privacy. However, because community inclusion and involvement in this Inquiry is seen as being so integral and vital to its ultimate success, anyone and everyone with a genuine interest in making a meaningful contribution to the debate is invited and encouraged to cooperate with and actively participate in the Inquiry. After all, our remit from the Executive is to reveal and make recommendations about how public money is spent and allocated on protecting children against unacceptable risks of harm.

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There are many ways of being part of the Inquiry process, including making formal and informal submissions, orally or in writing, providing information about relevant issues or sharing personal experiences, identifying strengths and weaknesses in the system and making complaints or raising grievances, but also giving credit where it's due. The best source of information about the child protection Commission of Inquiry is its website, which is www.childprotectioninquiry.qld.gov.au.

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It provides members of the public with guidance on how to make your submission and with other information about the inquiry. Ms McMillan?

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MS McMILLAN: Good morning, Mr Commissioner. I appear and appointed by as senior counsellor assisting you with Mr Haddrick as my junior. Mr Commissioner, in 2010/11 Queensland spent just over 695 million dollars across the child protection system. This represents an increase of 11 per cent in direct economic terms from the previous year and increases of varying degrees have been recorded in each financial year for at least the last six years.

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More tragically, however, the ongoing human impact and the incalculable hidden social costs associated with child abuse and neglect, in addition to the overall financial burden include - and these are just the most obvious - long-term drug and alcohol abuse, mental illness, poor health, homelessness, juvenile delinquency, adult criminality and incarceration.

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While notifications and substantiations are currently down slightly on historical levels the number and corresponding rate of children admitted to a care and protection order of some variety rose from 3,998 in 2006/7 to 4,353 in 2010/11 and corresponding rate of children in out of home care increased from 5,972 in 2000 to some 7,602 in 2011. By contrast, the number of prisoners currently incarcerated in this state is 5,527.

There is understandable widespread concern that despite the considerable and increasing resource commitment to child protection the number of children under the formal care of the state continues to rise. The overrepresentation of Aboriginal and Torres Strait Islander children at all points of the child protection system is a matter of grave concern and is the focus of specific mention in the inquiry's recommendations.

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In Queensland, indigenous children were six times more likely to be the subject of a substantiated notification than nonindigenous children. Indigenous children were also nearly nine times more likely to be subject to a protection order or an out of home care in Queensland. Although comprising only six per cent of the total population in Queensland's children aged between zero and 17 years, 37 per cent of all children in out of home care on 30 June 2011 were either Aboriginal or Torres Strait Islander.

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How to arrest and reverse these alarming trends is one of the many important issues the inquiry is called upon to examine. In making reform recommendations that are affordable, deliverable and provide for the best possible and most effective and efficient outcomes the commission is directed to chart a new road map for Queensland's child protection system over the next decade.

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A key challenge for the inquiry would be finding ways of developing and redirecting resource investment and integrated prevention strategies, early intervention programs and

intensive family support services to gradually reduce overall demand for and reliance on for tertiary services.

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Another waiting matter for the commission to grapple with will be the practical content and reasonable limits of the relevant concept of unacceptable risk in the child welfare context. The grim reality is in an imperfect world is that no element or stage of life is completely risk free. Sadly, for some especially vulnerable infants and their older siblings, instead of being a safe haven the home itself can be a dangerous, unpredictable, even frightening place at times and their parents do not provide appropriate safe guards or the minimum acceptable standard of care.

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Vulnerability or being at risk of some form of harm is a natural and familiar aspect of the human condition, but not all degrees of risks or consequences are the same for all of us. The difficulty is accurately assessing and effectively managing risk so as not to do any real harm. Misjudgments can have dire consequences. That is why sound prudential cautionary decision making principles and frameworks are so crucial in a child protection setting, the paramount issue consideration when difficult choices have to be made is always what option is in the overall best interest of the child concerned. As the establishment of this inquiry recognises the important search for the best interest base solution for a myriad of complex problems associated with child welfare issues has never been more demanding and pressing, one that it is right now.

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There will rarely be a simple or single answer. In a realm where there are no fixed rules or pre-set determinants, honest and informed minds can reach equally reasonable and legitimate but completely opposite conclusions based on the same body of evidence without being demonstrably right or manifestly wrong.

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Safety concerns will rightly have a key, if not decisive influence, on the resolution of the best interest issue, but it's a mistake to think that there are not wider interests of the child to be promoted and protected when making best interest determination. Often the likelihood and magnitude of one kind of potential detriment of taking proposed protected actions has to be balanced against the possibility of an even greater harm or alternatively a superseding benefit in not taking it.

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The removal of a child from the family should presumably be seen as a temporary safety net in times of unresolved crisis as such a serious step considered a last resort when all other drastic measures either have been tried and failed or are not viable. That's one of the most vexed questions the inquiry must do its best to satisfactorily answer is whether and how a child assessed at an unacceptable degree of risk can be kept safely in his or her own home instead of being subjected to the inevitable distress and emotional trauma of being removed indefinitely and perhaps in some situations needlessly or prematurely from an otherwise meaningful and valued family relationship in State care.

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For those who are properly taken out into out of home care, the focus should shift to transition and exiting as soon as reasonably safe and suitable so the children do not become needlessly institutionalised, losing important emotional connections with family, friends and relatives and their ability to form proper attachments is not compromised. May it please the commission.

COMMISSIONER: Thanks, Ms McMillan. Yes, Mr Copley?

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MR COPLEY: Mr Commissioner, I have been appointed by the Crown as senior counsel assisting this commission of inquiry. I appear with my learned friend Mr Simpson who has also been appointed by the Crown as counsel assisting the commission. Our children are the next generation of Queensland adults. They are our future parents, workers and leaders. The government shares responsibility for protecting them. They are not necessarily equally with their parents, their wider family and the community.

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The parental role, of course, is a primary and pivotal one, however, the family has always been regarded as the cornerstone of society and its importance is explicitly recognised in the Family Law Act 1975 Commonwealth as the natural and fundamental units of society, especially while it is responsible for the care and education of dependant children in various stages of development.

Struggling parents and families need the widest possible assistance and support to cope with the intergenerational or socioeconomic disadvantages that they may face or to overcome acute or other chronic dysfunctions due to environmental factors. Any system, no matter how well designed or operated can always be improved.

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Frontline staff are struggling to cope with the pressure of a heavy statutory intervention case load which last year required investigation of 100 per cent of the 21,655 notifications made to child safety services. Unsurprisingly, this has meant that the percentage of matters responded to and completed within departmental benchmarks remains low.

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This commission will be turning its attention to look at the best way of supporting our frontline staff who are required to make assessments and conduct business in highly charged and stressful situations. It stands to reason that staff who feel adequately supported will provide better outcomes to families than staff who feel unfairly scrutinised or who are required to provide services without appropriate resourcing.

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Within the context of heavy workloads for front line staff there needs to be an investigation of the current case management framework with a view to ensuring that it operates to effectively coordinate and organise services around the needs of individuals and families rather than being constrained by the organisation or perceptions of a series of separate service providers.

The commission needs to be satisfied that each and every one of the core tasks in our system, case screening, assessment, care planning, monitoring and review are operating as they should. Questions that may need to be addressed include: What does an effective case management system look like? Are there more effective case management systems in operation in other jurisdictions either in Australia or overseas? Are case loads too high? Do individual workers have the flexibility and capacity they need to respond to the particular needs of their clients?

With regard to service standards. Child protection services provided by government and non-government organisations are currently governed by a set of service standards, a licensing framework and a quality assurance framework. The Commission will direct its attention to assessing whether these systems operate as they were intended to, or whether alterations are warranted. In particular the Commission will assess whether there are ways to improve these processes so that organisations are providing appropriate and effective services, but are not burdened by onerous reporting requirements that detract from service delivery itself.

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Term of reference 3E are: obliges this Commission to "review the adequacy and appropriateness of any response of, and action taken by government, to allegations including any allegations of criminal conduct associated with government responses into historical child sexual abuse in youth detention centres".

Prima facie this term of reference potentially calls for a forensic examination of how all past State governments have acted in responding to historic child sex allegations in youth detention centres and investigating any alleged criminal conduct associated with such responses.

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The size of the task depends on the sense in which the word "government" is used and whether it refers to the conduct of each relevant department including the Queensland Police Service.

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"Historic child sex abuse" is also a term of uncertain meaning and scope. However, the term of reference does seem to be wide enough to include a reconsideration of obstruction of justice claims, arising from the suspected shredding of evidence given to an inquiry set up in 1990 to investigate allegations of a pack rape at the John Oxley Youth Detention Centre at Wacol.

A submission to the Standing Committee on legal and constitutional affairs in 2004 was critical of, "The extraordinary inaction", of the Queensland Crime Commission, which you then headed in failing to investigate the rape complaints, despite having a standing statutory reference to investigate criminal paedophilia and for not holding a public inquiry into the shredding issue.

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The Commission has also been asked to review the effectiveness of interventions in relation to child protection court and tribunal processes. In particular, for the contribution of the Children's Court and the Family Court to the child protection system and their involvement in identifying and appropriately responding to families in crisis will be a matter of interest.

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Each of these systems and processes operate as components of a broader system, and the interactions between each of these components will be addressed.

Finally the Commission has been asked to review the effectiveness of the monitoring, investigation, oversight and complaints mechanisms for the child protection system with a view to improving public confidence in the system. This will involve review of the systems in place to deal with complaints, as well as reviewing the internal systems in place to ensure a climate of continuous improvement essential to the process. This will also involve a review of the management of individual complaints to assess whether best use is being made of the rich source of information about organisational success that comes in the form of service complaints and requests for case review.

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While basically solutions rather than fault-based, any flaws or failings found along the way will be identified so that lessons can be learned and structures rebuilt on stronger foundations. Thank you.

COMMISSIONER: Thank you, Mr Copley. Before I deal with any applications for authority to appear, I think it's appropriate, in light of term of reference 3E, and its potential scope, and in the interests of the Commission being - actually being, as well as being seen to be, open and transparent, and to promote public confidence its proceedings, that I disclose my prior professional connection with a matter that is apparently within paragraph 3E.

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When I was Queensland's Crime Commissioner the alleged incident at the John Oxley Centre and the possible destruction of evidence given to the so-called higher inquiry, was personally raised with me. Naturally more than a decade later my memory of the leading is vague, but I do recall being provided with a dossier supporting a call for a public hearing into the original complaint and the later shredding, or possible shredding of documents, which I agreed to look at.

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I believe I discussed the matter with the Assistant Crime Commissioner, in line with standard procedure, and having him assess the supporting material.

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The reality is my tenure as Crime Commissioner was going to end, I think, within a fortnight of that meeting, and the QCC's functions and activities were going to be transferred to the newly created Crime and Misconduct Commission, to be headed by Brendan Butler SC. Against that background I will hear any argument or submission from any party about the scope of term of reference 3E and my role in enquiring into it.

Applications for authority to appear before the Commission for the purpose of representing any person or relevant interest will then be heard in order of seniority.

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Does anyone want to be heard on term of reference 3E? Yes, Mr Rofe.

MR ROFE: Good morning, Commissioner. My name is David Rofe R-O-F-E of Queen's Counsel.

COMMISSIONER: Yes, Mr Rofe.

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MR ROFE: I have a little difficulty with E, because the document I have in my brief doesn't seem to reproduce what I've read by - and what I've heard you say. I would be grateful if I could have an up-to-date copy of 3 as it appears now.

COMMISSIONER: All right. I'll be happy to - actually what I'll do is I'll mark the order in council Exhibit 1 and I'll provide you with a copy of it.

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MR ROFE: All right. Thank you, somebody's handed me a - oh, a table of - yes, thank you.

COMMISSIONER: All right. Well, why don't I give you time to read that.

MR ROFE: Yes.

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COMMISSIONER: And I'll move on to hearing applications for leave to appear. I suppose you're first cab off the rank in that too, are you?

MR ROFE: I don't know if I am, or not. However, I do appear for Mr Kevin Lindeberg, who is well known as having for 22 years fought this battle of getting justice for all, and I appear for him.

COMMISSIONER: All right. Could I - I'll come back to you, Mr Rofe, if I may. I'll take other appearances and then I'll come back to you.

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MR ROFE: Yes-----

COMMISSIONER: Yes, Mr Hanger, do you appear?

MR HANGER: Mr Commissioner, under section 21 of the Commission of Inquiry Act, I seek leave to appear with my learned friend Mr Selfridge for the Crown in right of the State of Queensland.

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Section 21 refers to your giving leave to a person - the Acts Interpretation Act defines a person as including an individual and a corporation, and then in section 36 of the Acts Interpretation Act it includes "corporation" as including a body politic. So I seek leave to appear just for the State of Queensland.

COMMISSIONER: And you want leave to appear generally, Mr Hanger?

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MR HANGER: Yes, with Mr Selfridge.

COMMISSIONER: Thank you.

MS McMILLAN: Mr Commissioner, there could be no argument against that given the terms of reference and the unique

position that the Crown have [indistinct].

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COMMISSIONER: All right. Thank you. Mr Hanger and Mr Selfridge, you have leave to appear generally at the Commission of Inquiry when it sits to exercise its functions or powers. Yes, anyone else? Mr Allen.

MR ALLEN: Mr Commissioner, my name is Allen, initials JJ, counsel employed by Legal Aid Queensland. Legal Aid Queensland seeks leave to appear before the Commission. I have an outline of submissions which briefly sets out Legal Aid Queensland's interest as the largest provider of legal services in the child protection system and also details, a limited basis upon which Legal Aid Queensland seeks leave to appear before the Commission with its interest, in particular being in relation to Court and Tribunal processes.

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COMMISSIONER: Yes, thanks, Mr Allen.

MS McMILLAN: Mr Commissioner, again, given the limited nature of the application for leave to appear, and what's contained - I thank Mr Allen for his submissions - connoted in paragraph 6, it would be indeed appropriate for Legal Aid Queensland to have leave to appear in relation to that term of reference, paragraph 3 (c)iii.

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COMMISSIONER: And Legal Aid Queensland's a corporation?

MR ALLEN: It is. It's a corporation pursuant to section 42 of the Legal Aid Queensland Act 1997, Mr Commissioner.

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COMMISSIONER: Thank you. Well, that makes it a person for the purposes of the Commissions of Inquiry Act, so I'll give the Legal Aid Queensland authority to appear before the Commission when evidence is being heard with respect to term of reference in paragraph 3 (c)iii.

MR ALLEN: Thank you, Mr Commissioner.

COMMISSIONER: Thanks, Mr Allen.

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MR HUTCHINGS: Mr Commissioner, I appear on behalf of the Crime Misconduct Commission. I seek leave to appear. My name is Rob Hutchings-----

COMMISSIONER: Yes, Mr-----

MR HUTCHINGS: -----general counsel of the CMC. Mr Commissioner, I have an application for leave to appear that I've provided to Ms McMillan already.

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COMMISSIONER: Yes. Thank you. Yes, Mr Hutchings, do you seek general leave to appear?

MR HUTCHINGS: We do, Mr Commissioner, however, having discussed the matter with Ms McMillan briefly this morning, I'm in your hands. However, it would appear that at least in respect of term of reference 3A and now E, the Crime

misconduct Commission should be heard.

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COMMISSIONER: E because the Crime - well, again, we might just leave that for the moment. I've come back to Mr Rofe about that. I'll certainly give, subject to what you say, Ms McMillan-----

MS MCMILLAN: Well, obviously 3A, and undoubtedly we would welcome any assistance generally from the CMC in terms of our role, and I would undertake naturally to give them any notice of any other matter that might become apparent that they should be appearing and taking part in.

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COMMISSIONER: Are you content with that, Mr Hutchings? I think I will certainly give authority to the Commission to appear when any evidence is being taken or power or a function exercise with respect to term of reference 3A, and otherwise when any evidence is being taken that might involve a CMC interest in a relevant and material way. Are you content with that? Thank you.

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MR HUTCHINGS: Thank you.

COMMISSIONER: Anyone else want leave to appear? Yes?

MR GRUNDY: Commissioner, my name's Graham Bruce Grundy.

COMMISSIONER: Yes, Mr Grundy.

MR GRUNDY: I have submitted an application [indistinct] by e-mail and by post [indistinct] to allow me [indistinct] in relation to the matter 3E.

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COMMISSIONER: 3E. All right. Thanks, Mr Grundy. Is there anyone who wants leave to appear in respect of any other term of reference other than 3E?

MR ROFE: Yes.

COMMISSIONER: Yes, Mr Rofe.

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MR ROFE: We'll be seeking, with respect, that you should recuse yourself from hearing this matter.

COMMISSIONER: 3E or the Commission generally?

MR ROFE: Well, the Commission generally, including 3E though.

COMMISSIONER: All right. So you want to make an application for me to recuse myself because?

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MR ROFE: Your Honour, I would prefer at this stage not to - because we haven't put in writing a claim in this regard.

COMMISSIONER: All right.

MR ROFE: I would like the opportunity to do that within the time that you're going to allow us to put on-----

COMMISSIONER: All right. Well, do you want to make a written submission about that?

MR ROFE: Yes.

COMMISSIONER: Okay. Mr Grundy, I haven't seen your written or e-mailed application for leave to appear, I'm afraid. It hasn't been brought to my notice.

MR GRUNDY: I'm happy to offer it [indistinct].

COMMISSIONER: I'll have a look at it. That's okay. Do you have two, one for Ms McMillan as well, by any chance?

MR GRUNDY: [Indistinct].

COMMISSIONER: Despite our beliefs about one hundred per cent reliability of electronics that's-----

MR GRUNDY: That's life-----

COMMISSIONER: Always seems to be true.

MR GRUNDY: [Indistinct].

COMMISSIONER: Yes, well, I can't explain why it didn't reach me. Thank you. Mr Grundy, have you had the benefit of consulting any of the texts about the principles or the criteria that apply in considering applications for leave to appear before a Commission of Inquiry?

MR GRUNDY: Regrettably, no.

COMMISSIONER: Well, what I might do then, subject to what you say, Ms McMillan - I'll hear what you say first.

MS MCMILLAN: Your Honour - Mr Commissioner, what I was proposing to do was indicate that it's probably premature to rule on this until the other application's heard and determined.

COMMISSIONER: Yes.

MS MCMILLAN: What I can say is we'd welcome the opportunity to speak to Mr Grundy and perhaps converse with him about whether - perhaps what he perceives his needs about being heard could be accommodated within us perhaps calling him as a witness, but I'm happy to have some discussions with Mr Grundy about that.

COMMISSIONER: All right. Because as I said before, there are other ways, perhaps more flexible and more beneficial ways of contributing to the Commission of Inquiry rather - in addition to just having leave to appear. Leave to appear is really restricted to interests that are likely to be adversely affected rather than interests that want to make a contribution to the information fund on the Commission.

So what I might do, Mr Grundy is two things. First, I'll give you some time and I'll provide the relevant principles to you to address them in a further written submission, and then I'll consider your submission once it's complete and then if necessary - and if it's - the decision's clear-cut I'll make a ruling and advise you of the ruling, give you an opportunity to be further heard if you want to, or if it's not clear-cut and I do need some further information from you I'll reconvene and we'll hear your application.

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But because there's been an application for me to recuse myself, which is not to further conduct the inquiry, which hasn't yet been made or determined, and because it relates to term of reference 3E, I think it's best that I don't take any further step in the inquiry until Mr Rofe's had an opportunity to put his argument and have it determined. Thank you.

Yes, Mr Rofe, now, how long do you think you'll need to make your application and how would you like to make it?

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MR ROFE: Today is what - I can have it in by the end of this week.

COMMISSIONER: The end of this week? What, do you propose to do it in writing, or do you want to do it in-----

MR ROFE: In writing-----

COMMISSIONER: Writing-----

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MR ROFE: And leave to orally address.

COMMISSIONER: I'm sorry, what was that?

MR ROFE: And leave to for me to orally address you.

COMMISSIONER: Address your written submission?

MR ROFE: Yes.

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COMMISSIONER: In addition, before it's determined; is that what you want?

MR ROFE: Yes.

COMMISSIONER: All right. Okay. Ms McMillan?

MR ROFE: I'm sorry, your Honour, Mr Commissioner, did you address me?

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COMMISSIONER: No, no, I was just asking Ms McMillan if she wanted to respond in any way.

MS MCMILLAN: We could reconvene the early part of next week if that's amenable to you, Mr Commissioner.

COMMISSIONER: All right. Well, we'll do that. We'll see

what Mr Rofe's submission contains and then we'll take it from there. All right. 1

For those who have authority to or what's sometimes called leave to appear, they're entitled to participate in the proceedings of the Commission, subject to my control, and to such extent as I consider appropriate.

Authority to appear, or be legally represented before the Commission may be withdrawn or made subject to conditions at any time. 10

Those who wish to apply for leave to appear in future, who haven't already done so today, should forward to the Executive Director of the Commission a written application.

Where appearance or representation is clearly justified authority may be granted ex parte and the proposed participant notified. In other cases the Commission may formally reconvene at a time to be advised for further argument before a final decision is made. 20

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The location or public sessions of the Commission will be published on the Commission's website, and as soon as this information becomes available.

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The Commission plans to normally sit Monday to Thursday between 10 a.m. and 4 p.m. with a break for lunch between 1 p.m. and 2 p.m.

Information about proposed future sittings will be posted on the Commission's website. It's anticipated the public hearing proceedings will be live-streamed to the Commission's website and the transcripts will also be later available there.

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I won't say anything else in light of Mr Rofe's proposed written submission, but if anybody else wants to address aspects of term of reference 3E, including my role in further inquiry into it, they should do so in writing or electronically by the close of business this Friday, which is what, 23 July. Failure to do so may mean that any right to object later will be waived altogether-----

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MS McMILLAN: It's the 20th, I think, this Friday.

UNIDENTIFIED SPEAKER: 20th-----

COMMISSIONER: 20th-----

MS MCMILLAN: Yes, is this Friday.

COMMISSIONER: Okay. I'm the only one in the room that doesn't know that-----

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MS MCMILLAN: ----- yes.

COMMISSIONER: All right. We'll adjourn the Commission to a date to be advised. Thank you.

THE COURT ADJOURNED AT 10.45 A.M. TO A DATE TO BE ADVISED.

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