



## SPARK AND CANNON

### 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 INQUIRY ACT 1950

COMMISSIONS OF INQUIRY ORDER (No. 1) 2012

QUEENSLAND CHILD PROTECTION COMMISSION OF INQUIRY

BRISBANE

..DATE 27/11/2012

Continued from 08/11/2012

..DAY 34

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 complaints 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 10.07 A.M.

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COMMISSIONER: Yes, good morning, Mr Simpson?

MR SIMPSON: Yes, for the record, my name is Simpson, initials A.P. I'm counsel assisting this commission.

COMMISSIONER: Mr Simpson. I will take appearances.

MR ROWLAND: Good morning, commissioner. My name is Rowland, initial S, solicitor with Crown Law appearing on behalf of the State of Queensland.

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COMMISSIONER: Mr Rowland.

MS EKANAYAKE: Good morning, commissioner, Ekanayake, initial J, solicitor, ATSIILS.

COMMISSIONER: Ms Ekanayake.

MR CAPPER: Thank you. Capper, initial C, for the Commission for Children and Young People and Child Guardian.

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COMMISSIONER: Mr Capper.

MR SIMPSON: Mr Commissioner, before we start with the witnesses the Aboriginal and Torres Strait Islander Legal Service wish to lodge an exhibit with the commission.

COMMISSIONER: Yes, Ms Ekanayake, has everybody else got a copy of this proposed exhibit? Yes?

MS EKANAYAKE: Commissioner, it's an apology from PeakCare, the body for child protection in Queensland, to the Aboriginal and Torres Strait Islander people in Queensland for past intrusive practices, including the stolen generation and the legacies experienced by current generations following those removal of children. This document should appear on the PeakCare web site and is also to appear in the Courier-Mail.

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COMMISSIONER: Today?

MS EKANAYAKE: I'm not quite certain when it will be appearing in the Courier-Mail. I'm instructed it has already appeared.

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COMMISSIONER: Right. So you want me to be aware of it and to take account of it when I'm reporting. Is that right?

MS EKANAYAKE: Certainly.

COMMISSIONER: It seems unobjectionable to me.

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MR SIMPSON: There is no objection. I believe it was made for the purposes of National Sorry Day so it doesn't directly relate to this commission, but it may be helpful to understand things said by Peak bodies such as PeakCare. 1

COMMISSIONER: And CREATE Foundation.

MR SIMPSON: Yes, you should accept it as an exhibit.

COMMISSIONER: Right. No objection from anybody.

MR ROWLAND: No objection. 10

COMMISSIONER: Thank you. It will be admitted and marked as exhibit 124.

ADMITTED AND MARKED: "EXHIBIT 124"

COMMISSIONER: Yes, Mr Simpson?

MR SIMPSON: Thank you, Mr Commissioner. Mr Commissioner, today you're going to hear from two witnesses and they are witnesses which you might ordinarily class as, say, special witnesses. Parties at the bar table already have a copy of the statements and I understand they have been provided to the commission as well. For the purpose of hearing the evidence from those witnesses I would ask that you exclude the public from the hearing today pursuant to section 15A of the Commissions of Inquiry Act 1950. 20

You are entitled to exclude the public from any sittings of the commission if it is your opinion that it would be in the public interest expedient to do so for reasons connected with the subject matter of the inquiry or the nature of the evidence to be given. Those witnesses today were young people who went through the child protection system and will give evidence from their own particular perspective which is sensitive, has caused them some pain and they wish to give their evidence before you but not in an open forum. 30

They should be regarded as the type of people who would be ordinarily classed as special witnesses and for that purpose I ask that you exclude the public. I ask though that you do allow these classes of people to remain in the commission, they being any commission staff or administrative staff to the commission, those present at the bar table and two support people who are presently sitting at the back of the court, Mr Moore and Mr Green. Those support people are the first witness. 40

COMMISSIONER: Does anyone want to be heard? Okay, but I have to form an opinion that it is in the public interest and the opinion is based on the nature of the evidence to be given which, as I understand it from what you just said, the witnesses are going to recount their experiences from

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their viewpoint and the relationship they had while they were in care with the department. 1

MR SIMPSON: Yes.

COMMISSIONER: They don't want the public - they want me to be aware of this information but not members of the general public because of what, embarrassment?

MR SIMPSON: I believe embarrassment. The issues are particularly very sensitive and personal to them. It may affect their lives moving on from their experiences in the department as adults now. 10

COMMISSIONER: What about the transcript, the identified transcript?

MR SIMPSON: At this stage I would ask that the transcript also be not made for publication, but we will have to revisit that at the end of the evidence, depending on what the evidence is.

COMMISSIONER: Yes, all right. Does anyone want to be heard on the procedure? 20

MR ROWLAND: No, we have no objection to an application like that.

COMMISSIONER: We will play it by ear. I obviously have to balance the openness of the inquiry because its credibility depends on a widespread acceptance within the community that it is balanced in its views and the basis of any views it expresses is sourced in trustworthy evidence and trustworthy evidence is evidence that has been tested, generally speaking, in public by contrary interests. 30

MR SIMPSON: The evidence sought to be led, commissioner, is not sought to be led for the purpose of the truth of the evidence as such, in terms of the empirical truth of it, but for the subjective views of these people and therefore there may be what some people see as gaps in the evidence in certain places. That's not the purpose of why it's being tendered before you. It's being tendered for how those people felt from the experience.

COMMISSIONER: All right. I suppose I could receive that sort of information via a submission, as I often do, and nobody really gets to know about them if they are given on a confidential basis. It's what I intend to do with the information, I suppose, that considerations of fairness to other parties and other interests and to the public at large cuts in. So I will receive the evidence on the basis that the public won't get to see the witness or hear what the witness says in real time and we will leave aside the question of whether the transcript of the evidence depersonalised is to be published or not. 40

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Again my preference always is to share the information I get with the public insofar as I can do that after balancing all relevant considerations. So that is my preference. Exceptions need to be justified. So we will proceed. We will receive the information. When I hear it, I will work out what potential value it might be in terms of usage and then if I plan to use it adversely to the interests of any party, then I think we need to have a further discussion.

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MR SIMPSON: Yes, commissioner.

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COMMISSIONER: Okay. Everyone happy with that?

MR ROWLAND: Yes, and we can just reserve our rights in regards to that and also the publication of the transcript.

COMMISSIONER: Yes, sure. That's right. It is not just a question of - the publication isn't just a one-sided question.

MR ROWLAND: That's right.

COMMISSIONER: I accept that. All right. So I will make the order that the public not be admitted to the hearing room and the exceptions to that direction are commission staff, representatives of agencies given leave to appear and the support people [REDACTED] may stay in the well of the courtroom. Ms Ekanayake?

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MS EKANAYAKE: Could we have the opinion of those witnesses in relation to the publishing on (indistinct) basis or is that something you would need to make a decision on? 1

COMMISSIONER: Well, their preference is relevant, but not preclusive. We'll find out what their position is, but that's one of the factors that I'll balance.

MS EKANAYAKE: What we would support, their views be taken into consideration especially. 10

COMMISSIONER: Yes. Again, it's a factor. That's why I'm holding it in private at the moment out of respect for that. But at the same time - see, people, we labour under dark imaginings that actually don't have - our fears are often rarely realised. So it's a question of what are the risks, what are the benefits, and what are the needs of the witness and the community generally and the commission, and people with interests to be protected? So all those have to be taken into the mix.

[REDACTED] 20

We'll proceed with this witness. I'm just going to say so we find out and then we'll work it from there. Kill the live streaming. Proceedings will be recorded but no publication of the transcript unless I order otherwise.

TRANSCRIPT NOT FOR PUBLICATION

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