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THE HONOURABLE MARGARET WILSON QC, Commissioner

MR P. FREEBURN QC, Counsel Assisting

MS C. MUIR, Counsel Assisting

IN THE MATTER OF THE COMMISSIONS OF INQUIRY ACT 1950

COMMISSIONS OF INQUIRY ORDER (No. 4) 2015

BARRETT ADOLESCENT CENTRE COMMISSION OF INQUIRY

BRISBANE

2.00 PM, THURSDAY, 19 NOVEMBER 2015

Continued from 12.11.15

DAY 4

RESUMED

[2.00 pm]

5 COMMISSIONER WILSON: Good afternoon, everyone. Can I take the appearances first please?

MR P.A. FREEBURN QC: Commissioner, Freeburn, initials P.A. Queen's Counsel. I appear with MS MUIR of counsel as Counsel Assisting.

10 COMMISSIONER WILSON: Thanks, Mr Freeburn.

MS E. WILSON QC: Commissioner, Wilson, initial E. of Queen's Counsel. I appear with my learned friends N. KEFFORD and J. CRAWFORD and we represent the State of Queensland and we are instructed by Crown Law.

15 COMMISSIONER WILSON: Thanks, Ms Wilson. Who's next?

MR D.W. DIEHM QC: Commissioner, Diehm, D-i-e-h-m, initials G.W. of Queen's Counsel. Instructed by Avant Law for Dr Anne Brennan.

20 COMMISSIONER WILSON: Thank you.

MR A.W. DUFFY: Commissioner, my name is Duffy, D-u-f-f-y, initials A.W. Counsel instructed by Ashurst Australia for Dr William Kingswell.

25 COMMISSIONER WILSON: Thanks, Mr Duffy.

MR DUFFY: Thank you, your Honour.

30 MR B.I. McMILLAN: Commissioner, my name is McMillan, initials B.I. Counsel instructed by Gilshenan and Luton Legal Practice. I appear on behalf of Deborah Rankin, R-a-n-k-i-n.

35 COMMISSIONER WILSON: Thank you.

MR G.R. MULLINS: Commissioner, my name is Mullins, initials G.R., instructed by Shine Lawyers. I appear on behalf of Ms Olliver, Ms Pryde and Ms Wilkinson.

40 COMMISSIONER WILSON: Thank you.

MR R. O'REGAN: Commissioner, my name is O'Regan, initial R. I am instructed by McCullough Robertson and I appear on behalf of the Honourable Lawrence Springborg MP.

45 COMMISSIONER WILSON: Thank you. Anyone else? No. Yes, Mr Freeburn.

MR FREEBURN: Commissioner, there is – I might leave it to Ms Wilson to read the material.

5 MS WILSON: Yes, Commissioner. There is a number of affidavits that have been provided to the Commission, if I can read those.

COMMISSIONER WILSON: Would you read them slowly? I have to give them exhibit numbers, I'm told.

10 MS WILSON: Certainly. I read an affidavit of Helen Judith Freemantle, a Deputy Crown Solicitor at Crown Law.

COMMISSIONER WILSON: That will be exhibit 00005.

15

EXHIBIT #00005 ADMITTED AND MARKED

COMMISSIONER WILSON: Yes.

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MS WILSON: I read an affidavit of James Robert Watterston, the Director-General of Department of Education and Training.

COMMISSIONER WILSON: That's exhibit – I will just say the number 6.

25

EXHIBIT #00006 ADMITTED AND MARKED

30 MS WILSON: I read the affidavit of Michael Walsh, the Director-General of Queensland Health.

COMMISSIONER WILSON: Exhibit 7.

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EXHIBIT #00007 ADMITTED AND MARKED

40 MS WILSON: I read the affidavit of Patrick Joseph Vidgen, Chief Operating Officer of the Department of the Premier and Cabinet. Commissioner, I note that there are two affidavits.

COMMISSIONER WILSON: Exhibits 8 and 9.

45

EXHIBITS #00008 TO 00009 ADMITTED AND MARKED

MS WILSON: I read the affidavit of Liza Carroll, Director-General of the Department of Housing and Public Works.

5 COMMISSIONER WILSON: Exhibit 10.

EXHIBIT #00010 ADMITTED AND MARKED

10 MS WILSON: I read the affidavit of Michael Hogan, Director-General of Department of Communities, Child Safety and Disability Services.

COMMISSIONER WILSON: Exhibit 11.

15 **EXHIBIT #00011 ADMITTED AND MARKED**

20 MS WILSON: I read the affidavit of James Andrew Murphy, the Under Treasurer of Queensland Treasury.

COMMISSIONER WILSON: Exhibit 12.

25 **EXHIBIT #00012 ADMITTED AND MARKED**

30 COMMISSIONER WILSON: Does anyone else have any material? No. Mr Freeburn.

MR FREEBURN: Commissioner, the purpose of today's hearing is to revisit the compliance with the Commissioner's notices to produce documents. A week ago on 12 November you directed that there be discussions between officers of the Crown Law and their Counsel and Counsel Assisting the Commission and Commission staff. Those discussions were to commence at the latest by 4 pm on Monday this week. You also directed that there be a realistic plan provided by 4 pm on Wednesday, that is, yesterday. I can tell the Commission that a meeting occurred on Monday and took a quite considerable amount of time, more than three hours. Material has been received from the department including realistic plans.

40 COMMISSIONER WILSON: You mean all of the departments or just some?

MR FREEBURN: Pretty well all of the departments.

45 COMMISSIONER WILSON: Thank you.

MR FREEBURN: Much has happened in the past week and we acknowledge that Crown Law and its client departments have worked hard this past week. And I need to tell you a little of the progress that has been made. In doing so, I am going to put aside for a moment the Queensland Health and the Department of Education and
5 Training. And I will tell you, Commissioner, about some of those other government departments.

The Director-General of the Department of Housing and Public Works has sworn an affidavit and that's one of the affidavits that's mentioned today that Ms Wilson has
10 read. And that affidavit seems to be – is to the effect that their searches for documents are complete and that all relevant documents have been provided to Crown Law. And Crown Law have sworn – that is, Ms Freemantle has sworn – that the material will be available to the Commission by 22 November 2015 which is this
15 Sunday.

The Director-General of the Department of Communities, Child Safety and Disability Services also says that all relevant documents are now with Crown Law and Crown Law says those documents will be available on Sunday – or by Sunday. The Under Treasurer says that the Treasury documents have been supplied to Crown
20 Law and will be supplied by Sunday.

The Director-General of the Department of Premier and Cabinet is away. In his absence, the Chief Operating Officer has sworn an affidavit. The position with that department is that documents not the subject of any privilege claim have been
25 provided to the Commission. Approvals have been sought to produce documents the subject of public interest privilege by 27 November which is next Friday. Just this morning the Commission received a substantial number of Cabinet documents and documents the subject of Parliamentary privilege or the subject of a claim of Parliamentary privilege are presently in a process – a priority procedure. That
30 procedure was put in place by Crown law on 6 November and the process is now underway.

I should mention the Queensland Mental Health Commission, they have completed their disclosure. The Children's Hospital and Health Service is all complete except
35 for the emails of three employees which will be provided on Sunday.

Commissioner, today documents have been received by the Commission from the Department of Science, Information Technology and Innovation. That's the department that controls state archives. The documents are non-compliant with the
40 Commission's protocol but we understand they will be provided in compliant form shortly.

Can I now turn to education and health – education first. The Director-General of the Department of Education and Training has provided a detailed affidavit. For
45 today's purposes I needn't go into the detail of that affidavit. Suffice it to say four things. The first is that 100 or so documents from the department estimated to be relevant will be provided by Monday of next week. USBs were provided to Crown

law on 17 November. Those USBs contain 19,000 and 8,000 documents respectively. They comprise staff emails. Crown Law is unable to estimate the timeframe for provision of the relevant documents from that tranche of documents but will provide an update by 23 November which is next Monday.

5

COMMISSIONER WILSON: So both the 19,000 and 8,000 are emails?

MR FREEBURN: Yes.

10 COMMISSIONER WILSON: And they have been restored but they simply haven't been sifted by Crown Law.

MR FREEBURN: That's right.

15 COMMISSIONER WILSON: Thank you.

MR FREEBURN: That's as we understand the affidavit. But the Education Department has also provided – sorry, has a further 40 email accounts that will be provided to Crown Law on 11 December 2015. The timeframe for getting those –
20 the relevant documents from those email accounts to the Commission is unknown. But, as I understand it, it has been expedited. Other than this material, the department documents will be provided to the Commission by Sunday, 22 November.

25 The Department of Health, if I can deal with that now – as we understand the position from the affidavits, the Director-General of the Department of Health has provided a very detailed affidavit. The vast majority of non-email documents will be provided by this Sunday. The principal problem is – are, again, the emails. And if I
30 can try and explain, Commissioner, the – what precisely the problem is in lay terms. Many of Health's millions of emails need to be restored. That is, they need to be reconstructed and put in a modern, readable form. Until that happens, that is, until the restoration process is complete, the emails cannot be searched. The restoration process is, as we apprehend it, a lengthy process involving an obsolete email system – that's actually the Director-General's words – and obsolete equipment.

35

The restoration process involves the restoration of millions of emails so that then searches can be carried out for the relevant ones. Those searches are carried out by means of search terms, and that reduces the number of emails which are then required to be examined by Crown Law. As the affidavit shows, so far 14 terabytes
40 of material – of email data has been restored. That took many months. And another 14 or so terabytes are yet to be restored. To assist the process, earlier this week, the Commission staff have identified those email accounts which should be given priority. There are 14 priority email accounts. And we understand that 10 of those priority email accounts are in the restored 14 terabytes. We understand that the
45 priority accounts will be delivered to the Commission by 10 January.

COMMISSIONER WILSON: When you say that 10 of the priority accounts are in the restored 14 terabytes, are they able to be identified as blocks within those terabytes or are they just anywhere in the terabytes?

5 MS WILSON: They can be identified by the name.

COMMISSIONER WILSON: Thanks.

10 MR FREEBURN: So the balance of the four priority emails will, as we apprehend it – as we read the affidavit – be delivered by 24 January. The Commission staff, I should say, are satisfied that Crown Law and the departments are applying considerable resources to this process. The process is now proceeding as fast as humanly possible. Unfortunately, the fact is that because of the restoration process, even the email accounts for important witnesses are still seven weeks away. That is, 15 it seems, Commissioner, to be a reality that has to be accepted.

The next question is what becomes of the non-priority email accounts. If the department and Crown Law were to proceed to restore all of those emails it's estimated that a further 40 weeks will be involved, that is, 28 August next year. And 20 the costs of that exercise are likely to involve millions of dollars. The fact is that against that is this fact: these days, much of the business of government is conducted by email. And there is no easy access to the emails of the Health Department and to some extent the Education Department. Ultimately, Commissioner, it will be necessary to assess whether that exercise is worth the cost.

25 There are competing interests. The first is the requirement that this Commission have access to all relevant documents. The second is the public interest in ensuring that the Commission's work and its report is not hindered or compromised by incomplete information. And the third is the cost of restoring these documents and 30 then processing millions of documents may well be disproportionate. There are no easy answers. The best way forward, in our submission, is for representatives of the Commission and Crown Law and the Department of Health to meet in the next week or so and make a realistic assessment of whether non-priority emails are worth extracting and also whether there are other means by which the material can be 35 obtained.

COMMISSIONER WILSON: Well, is it an all or nothing situation, or do you anticipate it will be possible to identify some of these non-priority accounts as more 40 likely to contain information than others?

MR FREEBURN: There is that process of identifying the prospect that there may be a very confined group of documents which can be obtained through the restoration process, but there may also be alternatives. And one example that I've discussed with Ms Wilson is the accreditation documents. They may be in the possession of a 45 Commonwealth body or accessible by other means. There may be hard copies of some categories of documents available somewhere.

COMMISSIONER WILSON: Taking them as an example, are they thought to be in this collection of emails rather than the collection of documents which is to reach the Commission by Sunday? Or don't you know?

5 MR FREEBURN: They are unlikely to be in the collection to reach the Commission by Sunday.

COMMISSIONER WILSON: Thank you.

10 MR FREEBURN: So I've discussed with Ms Wilson the idea of meeting and endeavouring to perform what I can in a shorthand way say is a cost/benefit analysis. There is some, it's fair to say, some interest in the idea. So, Commissioner, the recommended orders that we would make as Counsel Assisting would be these. The issue of compliance with the notices be adjourned to a date to be fixed and that the
15 Commission, Crown Law and the Department of Health be directed to meet to attempt to assess the competing interests and costs involved in restoring the non-priority emails. And I should perhaps add and also to look at alternative means of extracting the relevant documents. Those are my submissions.

20 COMMISSIONER WILSON: Thanks, Mr Freeburn. Ms Wilson.

MS WILSON: Thank you, Commissioner. Before I embark upon more specific submissions in relation to a number of matters, can I just make this general statement that – on behalf of the state. And that is this: that the State has dedicated significant
25 resources across the relevant areas of government to fully comply with the Inquiry's request to produce information within the deadlines required. That the nature and chronology of the scope of requests to fully comply translates into approximately 300 million documents and emails. That process of discovery of this information for the relevant agencies is one of a highly manual nature requiring the physical
30 extraction of individual documents in many instances. That this naturally then transmits into another highly manual disclosure process to be undertaken by Crown Law to ensure the documents ultimately provided to the Inquiry are relevant, appropriate and fulfil the Inquiry protocol requirements.

35 Cumulatively, these issues are having substantial resource impacts across the relevant government agencies including Crown Law. The State is aware that despite its full commitment and prioritisation of the work required to support this Inquiry that the estimated timeframes for full compliance it has communicated to the Inquiry exceeds the period for which the government has initially commissioned the Inquiry.
40 In terms of – just – there is – I have today filed on behalf of the State a number of affidavits that in detail address a number of issues and provide timeframes.

If I can just add just a bit more context to a number of those timeframes that I think should properly be put on the record and that is this: as you know, Commissioner,
45 from reading the material that there is a number of – a significant number of documents in what is called Ringtail. Ringtail is an IT service provider that is providing assistance to Crown Law to be able to get the documents down to a

manageable form. For example, in regards to Health there was over one million documents provided to Crown Law initially. Then search terms are applied and then that can come down to a subset of 300,000 or so and then lawyers will have to look through that and review those to find what documents would be relevant in terms of the Terms of Reference. And then those documents are then placed back into Ringtail to get them document management protocol compliant.

In that process, you will see from Ms Freemantle's affidavit that by going through that process there a number of documents would be identified as attracting parliamentary privilege or cabinet privilege. These documents will again – a sweep has to be taken of these documents to pull those documents out and then the process needs to be undertaken as set out in Ms Fremantle's affidavit to be able to undertake that process. That the process of manually going back through those documents is going to be begin today if not – tomorrow – today or tomorrow.

UNIDENTIFIED SPEAKER: It's commencing today.

MS WILSON: It's commencing today. And then after that sweep is done then the process as set out in Ms Freemantle's affidavit has to be undertaken and then once that has been undertaken we then need to allow FTI, that is, the service provider of Ringtail about three working days to enable protocol compliance.

Now, in terms of the emails it has been separated out in terms of Health and Ms Freemantle's affidavit into tranche 1. And tranche 1 is the 10 emails that are – or will be with Crown Law very soon or if are not at Crown Law that immediate work can be done on to start that process that I have described.

COMMISSIONER WILSON: I take it you mean 10 accounts, not just 10 emails.

MS WILSON: Ten accounts – well, 10 email accounts – the names.

COMMISSIONER WILSON: I wish it were just 10 emails.

MS WILSON: No, no, there's a little bit more than 10 emails, Commissioner. If only. And Ms Freemantle in her affidavit has estimated with all of the assumptions built in that she has set out that we have to allow seven weeks for that process to occur. That should be fairly put as seven working weeks. It needs to be appreciated that Christmas will probably fall within that.

COMMISSIONER WILSON: Now, does seven working weeks relate to the 14 prioritised accounts?

MS WILSON: No. Seven working weeks relates to the 10 email accounts that are ready to go.

COMMISSIONER WILSON: I see.

MS WILSON: There has to be some further de-archiving in relation to four other email accounts and the estimate provided there by Ms Freemantle, based on – with all the assumptions built in is that that would be another – an additional two weeks after that seven working weeks. Commissioner, it won't be that in seven weeks or
5 after that seven weeks period has taken place that you will get all the emails. Of course, there will be rolling disclosure as these emails come through and we can provide them to the Commission.

10 One other factor that has to be built into the emails – into processing the emails is that we need to add one week of a procurement process from the outset to be begin this process.

COMMISSIONER WILSON: So that procurement hasn't taken place yet?

15 MS WILSON: No, it hasn't. To begin that procurement process you really need to know the quantum about what you're dealing with. Could you excuse me one moment, Commissioner. That the current contract that is with Ringtail is for three months and that allows up to 10 terabytes of data to be uploaded. And to give some context of what a terabyte is, in the Director-General's affidavit – the Director-
20 General of Queensland Health – he described one terabyte is 4.5 million books consisting of 200 pages each. So the current contract is up to 10 terabytes. It is expected that undertaking this process a new contract will have to be entered into.

25 COMMISSIONER WILSON: I thought technology was supposed to have revolutionised communication. I suppose it has.

MS WILSON: This has been a very difficult process, Commissioner. A very difficult process, indeed. In terms of the suggestion by Counsel Assisting any suggestion of where parties can sit down in a room and talk about issues is always a
30 good suggestion.

COMMISSIONER WILSON: Well, do you think that there's a reasonable prospect that some good progress would be made?

35 MS WILSON: I think – I couldn't say that but I think that we can sit down in a room and we can discuss the issues that are clearly facing us.

COMMISSIONER WILSON: All right.

40 MS WILSON: Just if I could have one moment. Thank you, Commissioner. Those are my submissions.

COMMISSIONER WILSON: Thanks, Ms Wilson. Mr Diehm, do you want to say anything?
45

MR DIEHM: No, Commissioner.

COMMISSIONER WILSON: Mr Duffy?

MR DUFFY: No, thank you, Commissioner.

5 COMMISSIONER WILSON: Mr McMillan?

MR McMILLAN: No, thank you.

COMMISSIONER WILSON: Mr Mullins?

10

MR MULLINS: No, Commissioner.

COMMISSIONER WILSON: Mr O'Regan?

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MR O'REGAN: No, Commissioner.

COMMISSIONER WILSON: Do you have anything in reply, Mr Freeburn?

MR FREEBURN: No, Commissioner.

20

COMMISSIONER WILSON: I can see that very considerable effort has gone into progressing this matter since it was before the Commission at its hearing last week. I'm pleased to see that some progress has been made but I'm nevertheless very concerned at how far there is still to go. The major ongoing areas of concern seem to be a number of documents other than emails still to be supplied by Health (I understand that those documents or at least a large part of them will be supplied this weekend) and in addition to those documents, emails to be provided by both the Health Department and the Education Department.

25

30

As I observed a moment ago, I thought technology was supposed to have revolutionised communication and to have done so for the better. I'm wondering whether it is for the better. It's the pervasive force of email as a means of communication that seems to be the root of the problem here. As I understand it, every staff member in these departments would have had his or her own email account. And what is communicated by email these days and, indeed, has been over the last 10 or more years, is much more extensive than two- or three-line messages. What used to be lengthy letters, reports, consultants' advice – all manner of documents are sent by email. But the impression I have is that the development of systems for archiving email communications has not kept pace with email's takeover of the communication system as the preferred medium. And the problem does seem to have been compounded by the great speed and frequency of changes in technology.

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I should place on the record yet again that the Commission has sought documents – perhaps that's an old-fashioned term, but everyone involved with the Commission knows that by that we mean recorded communications, including emails. It has sought documents of various categories. And there doesn't seem to have been any

dispute as to the potential relevance of what the Commission has sought except in one fairly minor respect, which resulted in a compromise.

5 In response to the Commission's request, the Health Department has identified a very large number of email accounts that potentially contain relevant documentation. But those accounts have to be restored before they can be searched for relevance. Once restored, they have to be transmitted to Crown Law, where they have to be sorted further and then transmitted to the Commission. To anyone looking on, the projected timeframes for complete compliance must be startling. The Commission has
10 identified email accounts which ought to be given priority, in its view. It seems that some of these had, in fact, already been restored, but they still have some distance to go before they travel through Crown Law and then to the Commission.

15 I accept the submission of Mr Freeburn, with which I think Ms Wilson has largely concurred, that there seems to be a need for some cost/benefit analysis in the allocation of resources beyond the prioritised accounts. There needs to be some exploration of possible alternative sources for some of the information that's sought. There may need to be some further prioritisation of categories of documents.

20 I will, as submitted by Counsel Assisting the Commission, formally adjourn the issue of compliance with the notices to produce to a date to be fixed. And I will direct that on or before Thursday, 26 November there be a meeting of representatives of the Health Department, the Crown Solicitor's Office and the Commission to discuss the issues I have just been considering, as well as strategies for containing the volume of
25 email material still to be restored while not unduly compromising the Commission of Inquiry and strategies for obtaining at least some of the documents which have been sought cooperatively from alternative sources.

30 Is there anything else any counsel wishes to raise with me? Mr Freeburn?

MR FREEBURN: No. Thank you, your Honour.

COMMISSIONER WILSON: Ms Wilson.

35 MS WILSON: No, Commissioner.

COMMISSIONER WILSON: Mr Diehm.

40 MR DIEHM: Commissioner, in terms of the proceedings of the Commission, one of the difficulties that – and it is only one of the difficulties with the issues being discussed here gives rise to is, of course, the delay in the proceedings which has multiple effects upon - - -

45 COMMISSIONER WILSON: Can you keep your voice up.

MR DIEHM: I'm sorry – which has multiple effects on multiple different parties in various ways, including those who are witnesses before the Commission or who are

to be witnesses before the Commission who may have their lives put on hold somewhat with respect to arrangements that they need to make or not make with the uncertainty as to when the hearings are going to be taking place. So on behalf of my client though it is of, no doubt, interest to others as well, it would be appreciated if
5 there was some possibility of at least what can be ruled in and what can be ruled out in terms of when hearings may be able to take place.

COMMISSIONER WILSON: I perfectly understand the position of the parties. It very difficult for me to give you a realistic timetable. At the commencement of the
10 Commission, it was hoped that the hearings could be held during November. Then they were pushed out to mid-November to mid-December. And all that I'm currently able to say is clearly they will not start before the end of November. And I think there is an unlikelihood they will start before Christmas. But I have to bear in mind that at the moment our deadline is still 14 January.

15 I feel under no constraint in saying on the record that these matters have been flagged to the Attorney-General. In fact, the emerging situation was flagged late last month, but there has been no response yet – no formal response in terms of whether the date for the report will be altered. In saying that, I'm not suggesting that the
20 communication from the Commission has not been taken seriously. I do understand it is receiving anxious consideration, but there is no outcome yet. That's all I can say.

MR FREEBURN: Thank you, Commissioner.
25

COMMISSIONER WILSON: Does anyone else wish to say anything? Very well. Would you adjourn, please.

30 **ADJOURNED**

[2.41 pm]