

In the matter of the *Commissions of Inquiry Act 1950*

Commissions of Inquiry Order (No.4) 2015

Barrett Adolescent Centre Commission of Inquiry

AFFIDAVIT

Patrick Joseph Vidgen of 100 George Street, Brisbane, Queensland, Chief Operating Officer of the Department of the Premier and Cabinet states on oath:

Preliminary

1. I refer to the Commission's Requirement to Produce Documents directed to David Stewart, Director-General of the Department of the Premier and Cabinet (**the Department**) dated 15 September 2015 which is **Exhibit A** to my accompanying affidavit sworn today (**the Requirement**).
2. Mr Stewart has not been in Brisbane, and has been in regional Queensland, from 14 November 2015, and is not expected to return until 19 November 2015. As the Chief Operating Officer, at Deputy Director-General level, with responsibility for all corporate and governance issues for the Department on behalf of the Director-General, I am the proper officer to swear this affidavit on behalf of the Department in Mr Stewart's absence.
3. I am informed and I verily believe that a draft of this affidavit was provided by email to Mr Stewart today for his review and consideration. I am informed by Mr Stewart that he has read my affidavit and agrees with the material contained therein.

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~~A.J.P., C.Dec.~~, Solicitor


AFFIDAVIT OF PATRICK JOSEPH VIDGEN

On behalf of the State of Queensland

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4. The purpose of this affidavit is to describe the procedures the State has put in place to enable the disclosure pursuant to the Requirement to the Commission of:
- (a) Cabinet documents; and
 - (b) documents affected by parliamentary privilege.

Cabinet documents

5. The general rationale for public interest immunity so far as Cabinet documents are concerned is to not compromise the confidentiality and frankness of Cabinet deliberations, and in that way it supports the Westminster convention of responsible government which makes Ministers individually and collectively responsible to the Parliament for their administration of the Government.
6. However, the State's position in relation to commissions of inquiry under the *Commissions of Inquiry Act 1950* (Qld) has mostly been not to assert public interest immunity in respect of Cabinet documents which would otherwise be required to be produced to the commission. The rationale for that position is that the State should support the operation of inquiries which it has established. Nevertheless, the general rationale for the immunity may require on occasion that the immunity be asserted.
7. Consistently with the conventions relating to access to Cabinet documents of previous governments and the Cabinet Handbook, the Department, in consultation with the Cabinet Secretary, has implemented the following process in previous commissions and in the present Commission:
- (a) in relation to documents of the present and previous Australian Labor Party governments, the Department, in consultation with the Cabinet Secretary, will seek the approval of the Premier to produce the documents to the Commission

on the basis that the Commission does not publish these documents or that the State will be notified and heard prior to publication;

- (b) in relation to documents of previous Liberal National Party, National Party or Liberal-National coalition governments, the Cabinet Secretary will seek the approval of the Leader of the Opposition to produce the documents to the Commission on the basis that the Commission does not publish these documents or that the State will be notified and heard prior to publication;
 - (c) if such approval is given in either case, the State will not assert public interest immunity in respect of the relevant documents but disclosure of the documents to the Commission will be on the basis that the Commission does not publish these documents or that the State will be notified and heard prior to publication; and
 - (d) if such approval is not given in any case, the State will not produce the relevant document.
8. A formal request to progress the above process was received by the Department from Crown Law on 5 November 2015.
9. The Department has already sought the approval of the Premier in relation to Cabinet documents that would otherwise be responsive to the Requirement.
10. The Cabinet Secretary has already sought the approval of the Leader of the Opposition in relation to Cabinet documents that would otherwise be responsive to the Requirement.
11. Once those approvals have been obtained the documentation can be provided immediately to Crown Law. I expect that this will occur on or before 27 November 2015.

Parliamentary privilege

12. In a similar way, the State has in recent commissions of inquiry sought to facilitate the production of documents that are affected by parliamentary privilege where possible.
13. However, I am informed and I verily believe that there have been varying legal opinions about the way in which parliamentary privilege affects the disclosure of documents to commissions of inquiry, and particularly about whether parliamentary privilege may be waived and if so how and by whom. Consequently, the procedures adopted in recent commissions of inquiry have varied.
14. I am informed and I verily believe that in some commissions of inquiry such as the Queensland Floods Commission of Inquiry, the Legislative Assembly has made resolutions waiving parliamentary privilege generally in relation to the subject-matter of the inquiry.
15. I am informed and I verily believe that in other instances such as the Racing Commission of Inquiry, the consent was sought of the individual members (including Ministers) by or for whom particular documents were prepared.
16. I am informed and I verily believe that the Department is seeking further advice in relation to those matters. However, in order to enable the most expeditious possible disclosure to the Commission in this case, the Department has implemented the following process. The process is based on advice from the Clerk of the Parliament, Mr Neil Laurie. Mr Laurie is available to brief the Commission in relation to matters of parliamentary privilege if required. Mr Laurie provided such a briefing to Commissioner Margaret White QC in respect of the Queensland Racing Commission of Inquiry.


17. Based on Mr Laurie's advice and on experience in those inquiries in which the latter process was used, the Department has implemented the following process for this Commission:
- (a) in relation to any particular notice to produce, relevant documents will be produced, excluding any documents affected by parliamentary privilege;
 - (b) in relation to documents affected by parliamentary privilege, the Department will seek the consent of the serving or former member by or for whom the document was prepared;
 - (c) that will involve the Department's officers showing the serving or former member the actual documents for which their consent is being sought;
 - (d) if the member consents, the Department or other relevant agency will produce the document to the Commission, noting the restrictions on the use which can be made of the document by virtue of s 8 of the *Parliament of Queensland Act 2001* (Qld); and
 - (e) if such consent is not given in any case, the State will not produce the relevant document.
18. A formal request to progress a process with respect to those documents the subject of parliamentary privilege held by the Department was received from Crown Law on 6 November 2015.
19. The Department has now contacted the former Premier Mr Newman twice to seek his urgent consent in accordance with the above process.
20. The Department will contact other relevant members, particularly the former Minister for Health, Mr Springborg, in accordance with this process as soon as documents

affected by parliamentary privilege are identified by the Crown Solicitor and provided to the Department for this purpose. The consent of the serving or former members will be sought immediately thereafter.

21. I am informed and I verily believe that the Department's experience with previous commissions of inquiry is that serving or former members are sensitive to considerations of timeliness. I am informed and I verily believe that they generally respond within a week or so, although the Department ultimately has no control of that.
22. I am informed and I verily believe that for previous commissions of inquiry, issues of parliamentary privilege have been undertaken on a rolling basis, as relevant documents were identified in response to successive requirements. Thus, the Department will apply this process not only in relation to the Requirement and other requirements from other State agencies, but also in relation to any future requirements.
23. As the Commission is aware, the Department coordinates the State's instructions to the Crown Solicitor in representing the State before the Commission. Accordingly, the Department will apply the process set out above in relation to documents held not only by the Department but also by any other State agency. I am informed and verily believe that the Department has informed all State agencies, Children's Health Queensland Hospital and Health Service (HHS), West Moreton HHS, Metro South HHS and Metro North HHS of the above process.

All the facts sworn to in this affidavit are true to my knowledge and belief except as stated otherwise.

Sworn by Patrick Joseph Vidgen on)
 18 November 2015 at Brisbane in the)
 State of Queensland in the presence of:)


 A Justice of the Peace, C. Dec., Solicitor