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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

9.33 AM, THURSDAY, 12 NOVEMBER 2015

Continued from 15.10.15

DAY 3

COMMISSIONER WILSON: Good morning, everyone. Can I take the appearances this morning, first.

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

COMMISSIONER WILSON: Thanks, Mr Freeburn.

10 MS E.S. WILSON QC: Commissioner, my name is Wilson, initials E.S., and I appear today with my junior, MS CRAWFORD, initial J., and we're instructed by Crown Law and we represent the State of Queensland.

COMMISSIONER WILSON: Thanks, Ms Wilson.

15 MR D.B. O'SULLIVAN QC: May it please the Commission, my name is O'Sullivan, initials D.B. of Queens Counsel. I appear with MR O'REGAN of counsel, instructed by McCullough Robertson for the Honourable Lawrence Springborg.

20 COMMISSIONER WILSON: Thanks, Mr O'Sullivan. Who's next?

MR G.W. DIEHM QC: Commissioner, my name is Diehm, D-i-e-h-m, initials G.W., Queens Counsel. I appear instructed by Avant Law for Dr Anne Brennan.

25 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.

30 COMMISSIONER WILSON: Thanks, Mr Duffy.

35 MR B.I. McMILLAN: Commissioner, my name is McMillan, spelt M-c-M-i-l-l-a-n, initials B.I. I'm instructed by Gilshenan & Luton Legal Practice. I appear on behalf of Deborah Rankin, who was granted leave to appear by letter dated 26 October 2015.

COMMISSIONER WILSON: Thanks, Mr McMillan.

40 MS S.B. ROBB: Thank you, Commissioner. Robb, R-o-b-b, initials S.B. I appear instructed by Roberts & Kane Solicitors, acting on behalf of registered nurses Kochardy, Beswick, MacLeod, Young, Richardson, Yorke and Daniel.

COMMISSIONER WILSON: Thanks, Ms Robb.

45 MS ROBB: Thank you.

MR J.M. HARPER: Commissioner, my name is Harper, initials J.M. I appear instructed by Shine Lawyers on behalf of Ms Olliver, Ms Pryde and Ms Wilkinson.

COMMISSIONER WILSON: Thanks, Mr Harper. Anyone else? No. Mr Freeburn.

5 MR FREEBURN: Commissioner, this hearing has been brought on because, as Counsel Assisting, we're concerned about the lack of progress in obtaining documents from a number of government departments. I should read – or tender an affidavit of William David Thompson sworn yesterday, 11 November 2015. It has been supplied to the Commission, and copies have been circulated to the parties.

10 COMMISSIONER WILSON: Everyone has a copy?

MR O'SULLIVAN: Yes.

15 COMMISSIONER WILSON: That will be marked as an exhibit. Yes.

MS WILSON: Commissioner, I read an affidavit under the hand of Louise Maree Syme. It's an affidavit that was sworn last night on 11 November. An original copy has been provided to the Commission and also an electronic copy. I just – I don't believe, though, it has been provided to the other parties.

20 COMMISSIONER WILSON: Does anyone want time to receive a copy and consider it before the matter proceeds this morning?

25 MR FREEBURN: No, Commissioner.

MR DIEHM: No, thank you, Commissioner.

30 COMMISSIONER WILSON: Alright. Well, the affidavit of Ms Syme will be marked as an exhibit.

MS WILSON: And I seek leave to file and read an affidavit of John Patrick Tate that has been sworn this morning, on 12 November 2015. Your Honour, would you like two copies?

35 COMMISSIONER WILSON: Yes, please.

MS WILSON: And we can provide it to the other parties as - - -

40 COMMISSIONER WILSON: Sorry, is there something else?

MS WILSON: No, they're all – that's all the material that I've got, your Honour – Commissioner.

45 COMMISSIONER WILSON: Well, the original of this will be marked as an exhibit. I will in a moment take time to read it. I'll just check that there's no other material from any of the other parties before we go further.

MS WILSON: Thank you, your Honour.

COMMISSIONER WILSON: Mr O'Sullivan, any material?

5 MR O'SULLIVAN: No.

COMMISSIONER WILSON: Thanks. Mr Diehm?

10 MR DIEHM: No.

COMMISSIONER WILSON: Mr Duffy?

MR DUFFY: No.

15 COMMISSIONER WILSON: Mr McMillan?

MR McMILLAN: No, thank you.

20 COMMISSIONER WILSON: Ms Robb?

MS ROBB: No, thank you.

COMMISSIONER WILSON: Mr Harper?

25 MR HARPER: No, thank you.

COMMISSIONER WILSON: That's everyone? Alright. Give me a moment to read this. Ms Wilson, a copy of the exhibit to Mr Tate's affidavit, the report from FTI, was emailed to the Commission shortly - - -

30 MS WILSON: Yes.

COMMISSIONER WILSON: And I have quickly read that.

35 MS WILSON: Yes, an endeavour because of the matter that it was being provided this morning. I instructed that to happen so that the Commission would have some material to read at least before we came in to make this hearing as expeditious as possible.

40 COMMISSIONER WILSON: Thank you very much for that. Alright. Mr Freeburn.

45 MR FREEBURN: Commissioner, I need to explain something about the context of this hearing. 14 and 15 September were the first two days of the existence of this Commission. On those two days the Commission served notices on Crown Law on behalf of seven government departments. They are Queensland Treasury, the Department of Premier and Cabinet, the Department of Communities, Child Safety

and Disability Services, Children's Health Queensland, the Department of Housing and Public Works, the Department of Education and Training and Queensland Health.

5 In each case, the notice issued to those departments was under section 5(1)(b) of the Commissions of Inquiry Act 1950. Each notice required the production of documents relevant to the Inquiry's Terms of Reference. The notices required production of the relevant documents by Monday, 28 September. Those documents are necessary for the Commission to carry out its work. Now, in an inquiry of this
10 kind, one might expect that these notices will require a large number of documents, and therefore they require some significant resources of the departments and Crown Law. I should mention also that the notices are quite specific, in that they addressed categories – specific categories of documents.

15 The problem is that today, more than eight weeks after those notices were served, there are still some significant areas of non-compliance with the notices. Now, I propose to explain by the principal areas of non-compliance and, looking to the future, the need for a proper achievable plan from Crown Law and its client departments. Can I first of all deal with Queensland Treasury. The notice was
20 served on Crown Law on behalf of Queensland Treasury on 15 September 2015, and that notice required compliance by 28 September 2015. An extension on the 28th – an extension was sought until 2 October for all documents except cabinet documents, and until 6 October for cabinet documents. On 6 October a second extension was sought and obtained until 12 October. On 11 October Crown Law said that
25 Queensland Treasury had no documents which were relevant to the notice and the Terms of Reference. There was then a debate between the Commission staff and Crown Law about the notice, and clarification was provided on 12 October.

30 On 6 November the Commission received a letter from the Crown Solicitor, and I will ask for the letter to go up on the screen, if I could. It's the affidavit of Mr Thompson, and it should be exhibit B10, I think.

COMMISSIONER WILSON: It's C10 that has gone up.

35 MR FREEBURN: C10, sorry.

COMMISSIONER WILSON: Is that the one you want, 6 November?

40 MR FREEBURN: Yes. Now, if we can go to the first complete paragraph on page 2 of that document, please. You'll see there that the words are:

With respect to the Department of Premier and Cabinet and Queensland Treasury –

45 I'm focusing for the moment on Queensland Treasury –

5 *we sought instructions particularly in relation to the production of cabinet documents and parliamentary privilege for some additional documents that are to be disclosed by those departments. It will take some time to obtain those instructions, as approval is required at the highest level of government. We will provide an update on the progress of obtaining those instructions on Monday, 9 November 2015.*

10 The Commission hasn't received an update. Only three documents have been supplied by Treasury, and through Crown Law the Department has indicated that there is partial compliance and there are more documents to come.

15 I will now deal with the Department of Premier and Cabinet, which is in a similar position. The original date specified in the notice for compliance was 28 September 2015. On that day Crown Law asked for an extension until 2 October for non-cabinet documents and until 6 October for Cabinet documents. That extension was granted by the Commission. On 2 October some documents were provided, and Crown Law sought a second extension. A third extension was granted on the 6th until the 12th, and then there was a fourth extension until 6 November. And then, again, we come to that same paragraph which speaks of there being some time to obtain instructions and an update, which didn't eventuate.

20 So we're now in the unsatisfactory position with those – that Department that we don't have the update and the time for compliance is "sometime". The documents – I should say that the documents so far supplied do not include cabinet submissions and papers. The position is largely similar with the Department of Communities, Child Safety and Disability Services. There was one extension sought on 28 September, a second on 2 October, a third on 6 October, and a fourth on 2 November. Now, Crown Law contends that as at 6 November, which is last Friday, this Department had complied with the notice, but, as Mr Thompson's affidavit explains, the documents do not include any emails or any project documentation or any correspondence.

25 Children's Health Queensland is in an only slightly different position. The notice was served on 23 September, which is a week later than the others. It required compliance by 2 October. There was actually an earlier notice issued to the board. On 2 October Crown Law supplied some documents and requested an extension until 9 October for the balance. On 9 October Crown Law supplied some further documents, and on the 2nd Crown Law asked for an extension until 6 November. Then, on 6 November, if we can return to that same letter, the second full paragraph – if we just scroll down a little – second full paragraph deals with Children's Health Queensland, the service rather than the board. It probably doesn't matter for present purposes. And you'll see there that the Crown Solicitor writes:

30 *With respect to Children's Health Queensland Hospital and Health Service, it has become apparent today that some additional redactions were required to the board's meeting minutes to remove references to board business which fell outside the Terms of Reference. A copy of all the correctly redacted board*

meeting minutes will be provided today in text-searchable PDF format. A copy of those documents will also be delivered to FTI Consulting today –

5 now, I will pause today to say that FTI Consulting are Crown Law’s IT consultants or document management consultants –

10 *so that full compliance can be achieved in accordance with the document management protocol as soon as possible. The timeframe for production of those documents from FTI Consulting is dependent on the volume of documents provided and can only be determined by FTI Consulting when they have reviewed the volume of documents.*

15 That’s a little concerning, I should say, because obviously the person writing this letter hasn’t determined any timeframes or determined the volume of the documents. And, again, Crown Law say they will provide an update.

20 We’re now in the position where Crown Law have told us there has been partial but not complete compliance by that department. That seems to be the case, because the Commission has received 138 documents from the service and 20 documents from the board, and those documents appear to include very few emails and minimal correspondence. The documents required of the Department of Housing and Public Works follows a similar pattern to the other departments I mentioned. The notice was served on 15 September and required documents by the 28th. There was an extension on the 28th, a second extension on the 6th. On the 27th the Commission wrote, notifying of non-compliance. On the 29th Crown Law sought a third extension to the 3rd, and on the 2nd a fourth extension was sought until the 6th. Now, Crown Law contends there has been full compliance from this Department, but there are no documents relating to Redlands.

30 Now, I need to explain. Redlands – until 2012 Redlands was the – was planned as the replacement for Barrett. That changed in about the middle of 2012. The alternatives to Barrett are directly within the Terms of Reference, and the alternatives are the subject of paragraph 18 of the notice.

35 Can I now deal with the two largest departments in terms of documents. As you’ll appreciate, the largest number of relevant documents will come from Queensland Health, and probably a large bundle of documents will come from the Department of Education and Training. Unfortunately, those two departments – the production from those two departments has proved the most problematic. With the Department of Education and Training, the notice was served on 15 September. There was an extension till the 28th. Second extension was requested and granted on 2 October. Fourth extension was requested and granted on 6 October, and a fourth extension was granted on 2 November until 6 November. The notices issued to Queensland Health followed the same pattern.

45

Last Friday, 6 November, we received the letter that is on the screen. Can I take you, Commissioner, to the first paragraph on page 3 of that letter, which deals with these two departments. First complete paragraph. So there we have:

5 *As you will appreciate, further searches of Queensland Health and Department
of Education and Training records will continue over the coming weeks to
identify any further relevant documents, particularly in relation to the
requirement to produce certain documents from 1983 until the closure of the
Barrett Centre. If additional relevant documents are identified, they will be
10 provided to the Commission as soon as practicable.*

Of most concern in that paragraph are the words “over the coming weeks”. Now, Commissioner, can I mention that there has been a particular problem with emails. If we look at the next paragraph in that same letter, which is dealing with the
15 Department of Education and Training, it confirms that the Department has confirmed that they have reviewed approximately 22,330 emails so far for 17 of the 19 staff members whose files were provided to the Commission on 2 October. At present the department expects that a further one to two days will be required to complete the searches of the remaining emails but that process may take longer. In
20 addition to those 19 email accounts the department has a further 20 email accounts that it has considered reviewing. Confirmation has been obtained today that those email accounts will be de-archived and searched over the coming weeks. So that doesn’t look as if the process is very far advanced.

25 If we can scroll down we see the next paragraph deals with Queensland Health emails and it says:

30 *Queensland Health has provided a detailed update in relation to the de-archiving emails particularly the email accounts that the Commission identified for de-archiving on 30 September 2015. That update is attached. I note that Queensland Health has estimated that the emails accounts the Commission has asked to be prioritised will be completed in roughly an additional four to eight weeks.*

35 Now, I can stop there and say there was an arrangement between Counsel Assisting and Crown Law that certain of the email accounts would be given priority over others and that arrangement was reached on 30 September. Now, here on 6 November, that is, some five weeks or so later the priority email accounts are still not provided and look to be, on this letter, four to eight weeks away. The remainder –
40 the letter continues:

45 *However, the remainder of the de-archiving process will take approximately three to six months to restore the entire 260 accounts that are currently marked for de-archival. As you are aware, Queensland Health has been working on the de-archival of email accounts since before the Commission of Inquiry was commenced. And Ms Syme, who’s from Crown Law, has previously provided*

you with details of that de-archival process and Crown Law can provide that information again if required.

5 Now, I need to say something about the numbers of documents that have been
supplied and the numbers of documents to be supplied and I will concentrate for the
moment on the Department of Health. In a letter the Commission received on 2
November the Crown Solicitor said that after the application of search terms an
original pool of 1.4 million documents had been reduced to 260,000 documents and I
10 note that that's consistent with the material filed today by Crown Law. Whilst that
news is welcome – that the pool has reduced from 1.4 to 260,000 – the problem is
that the Commission has to date received only 6743 documents from Queensland
Health which is roughly – well, certainly less than three per cent.

15 I should say, Commissioner, that it is true that not all of the documents the
Commission will receive will be helpful but until the Commission receives at least a
good portion of the relevant documents it cannot properly isolate the important ones.
Commissioner, can I mention there's a further problem. Many witnesses need access
to the documents held by the various government departments in order to prepare
their witness statements. Some witnesses for this Commission are health
20 professionals who are not employed by Queensland Health. They need access to
documents they had at the time of the relevant events in order to prepare their
witness statements. Others like Mr Springborg also need access to cabinet papers
and department documents in order to prepare sensible statements.

25 In short, the poor progress in complying with the notices is delaying the
Commission. Can I quickly summarise. The position is unsatisfactory because
relatively little progress has been made and, secondly, extensions have been sought
and obtained on the basis of predicted compliance which have not eventuated. Our
concern with any plan for compliance is that it be properly resourced and achievable.
30 Our concern also is that there be some expedition given that the Commission's
currently obligation is to report by 14 January 2016 which is only about eight weeks
away. Those are my submissions.

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

MS WILSON: Thank you, Commissioner. Can I begin my submissions by
providing some context to the matters and challenges which Crown Law and the
departments are faced. These have been not only outlined but thoroughly set out in
the affidavit of Louise Syme. Can I make a number of bullet points before I get on to
40 addressing a number of the issues raised by Counsel Assisting: (1) there has been
significant difficulties for departments to obtain documents. These can be done on
an almost a three-dimensional way looking at (a) the sheer volume (2) the IT
difficulties and (3) looking at – even though Counsel Assisting says the notices are
quite focused – they are – it's a breadth of a notice spanning some 30 years in some
45 and that encompasses documents when there was not – that originated in an era that
was not an IT world and, of course, these documents need to be produced in an era
that is completely run by an IT world.

So we've got the documents in the departments and there has been a helpful and lengthy report, for example, in relation to Queensland Health that is attached to Ms Syme's affidavit of Wednesday 11th which goes through the resources that Queensland Health has dedicated to this task and the difficulties that have to be met.

5 (2) the sheer volume of documents that fell on Crown Law. Those documents are not in the hundreds of thousands. Those documents are beyond one million and more likely two million. They are the documents that have to be then weeded down by search terms to get a core group of documents that then some useful classification can take place. And Ms Syme's affidavit goes through the difficulties and challenges

10 of dealing with such a large volume of documents.

To assist us in this task we have engaged IT software called Ringtail. Ms Syme addresses that in her affidavit. And Ringtail can assist with the challenges of dealing with such a large volume of documents. It can assist with two challenges: (1)

15 dealing with such a large volume of documents and (2) dealing with the challenge to ensure these documents are document management protocol compliant to work seamlessly with the Commission's own dealing system that it has set up. Ringtail, as I say, is a software that assists with the challenges but as can be seen from Ms Syme's affidavit can be regarded as a challenge itself. There have been unforeseen

20 challenges that have popped up and time consuming to get it to working properly. What we are now looking about it at the core documents that is [indistinct] after search terms have been applied is about 300,000 documents and these documents that need to be reviewed by human eyes. The hope and expectation of Crown Law has been to always provide documents to the Commission in a timely manner. When

25 letters have been written by Crown Law stating that they hope that they will get these documents on a certain date, that date has not been plucked out of air and just on a hope and a wish. For example, if we look at the 6 November letter that was signed by the Crown Solicitor which my learned friend, Counsel Assisting, has just taken your Honour to. It talks about the Crown Solicitor on page 1. And if I can take you

30 to that document which, unfortunately, I don't know the number - - -

COMMISSIONER WILSON: Perhaps if it could be put up on the screen again, please. It's the same letter, C10.

35 MS WILSON: At the bottom of that page. In this – sorry, I'll just have to get it up that the Crown Solicitor remains optimistic that Crown Law would largely meet the requirement for disclosure on Friday, 13 November 2015 which my instructing solicitor will find you exactly where that is on that page; the bottom of page 2. Thank you so much. And this is where we say that Crown Law was dealing with a

40 significant volume of documents and that is where an assertion is made that they remain optimistic that Crown Law would largely meet the requirement for disclosure on Friday, 13 November 2015.

Ms Syme's affidavit at paragraph 98 sets this out. And she states that that was her

45 view at the time. At that stage, Crown Law had 26 full-time equivalent staff that were able to work on disclosure of documents through the use of a litigation support service. And she goes through in that paragraph doing some maths going, well,

employees could code documents at an average of 130 documents per hour and by taking it through with a number of resources and staff members available that she calculated that 26 employees could code approximately 78 per cent of the documents outstanding by the deadline of Friday, 13 November 2015.

5

It shows that there was some application of rigour applied to when we said we could meet these. But this has been a moving feast in many ways. And the situation changed. And when the situation did change, Crown Law responded quickly - - -

10 COMMISSIONER WILSON: What caused it to change?

MS WILSON: Well, if we go to paragraph 100 of Ms Syme's affidavit – well, perhaps if we go up to paragraph 99.

15 COMMISSIONER WILSON: Yes.

MS WILSON: And that is where Ms Syme says that it appeared that these figures were based on sound arithmetical estimates. And we go through and she sets out a number of the challenges. And then we go on to 101 when it was discovered that they weren't compliant with the document management protocol, there was experiencing ongoing difficulties with access to our litigation support system and included pages not opening for viewing and the system crashing.

20

I then would also ask your Honour – ask the Commissioner to consider the affidavit of John Tate that was filed this morning and obviously the FTI Technology Barrett Inquiry Report which sets out a number of the difficulties associated with FTI and dealing with the Ringtail software. As of - - -

25

COMMISSIONER WILSON: I read that report fairly quickly. But at least in the view of FTI, the problems don't all rest with FTI - - -

30

MS WILSON: No.

COMMISSIONER WILSON: - - - they rest with the Crown Law office.

35

MS WILSON: And it's getting through those volumes of documents.

COMMISSIONER WILSON: Well, they're critical of the – how long it took to set the system up, it seems. They're critical of the level of experience in dealing with electronic litigation. They're critical of a number of matters.

40

MS WILSON: Well, Commissioner, this has been a learning experience in the sense of dealing with FTI Litigation. Whilst it has been dealt with before in Crown Law in other pieces of litigation, this was the first time that we are dealing with a document management protocol system, as I understand. And it was, as in all commissions of inquiry, you're dealing with a lot of unknowns because a lot of documents are coming in and there were just a lot of unknowns. And Crown Law –

45

as each unknown popped up, Crown Law addressed it, importantly, that when it became apparent that it could not be met by 26 full-time staff, Crown Law responded accordingly. And you will see in the affidavit filed by Louise Syme that this week there has been a hundred legal practitioners working on this matter.

5

COMMISSIONER WILSON: Well, bringing in so many people at the one time may have some inherent problems of its own. But that's a matter for the management of the Crown Law office. The bottom line seems to be this. Early on, the Commission indicated it was willing to receive some documents, if it could have some documents that were not compliant with its document management protocol, put on USB sticks or CDs so that it could get going with its work. Some documents were provided on the understanding that eventually we'd get them in a form that was compliant with the protocol. But if you look at the schedule, which is the last exhibit to Mr Thompson's affidavit, there are lots of documents which have simply never been provided in any form. When is the Commission going to get them? It's got a job to do, and it's got a job to do by the middle of January, and we're now in the middle of November.

10

15

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MS WILSON: Yes. Yes, Commissioner. And if I can just address one matter in Ms Syme's affidavit about this; at paragraph 76 - - -

COMMISSIONER WILSON: Of Ms Syme?

25

MS WILSON: Yes.

COMMISSIONER WILSON: Yes. It's all right. I have that.

MS WILSON: And at probably 76 to 80.

30

COMMISSIONER WILSON: Yes. I've read that.

MS WILSON: Yes. And it – there have been ongoing discussions with Crown Law and the Commission to try to facilitate matters in the most expeditious matter. And in paragraph 80 Ms Syme states that:

35

Junior Counsel confirmed that the Commission would prefer the balance of documents be provided in accordance with the document management protocol.

40

And I think that's where the crossroads of that issue meets.

COMMISSIONER WILSON: But documents were still coming in at the end of last week which were on CDs or USBs, as I understand it.

45

MS WILSON: To the Commission? Could you excuse me for one moment, Commissioner? As I understand it, they were Queensland Health documents that were patient files that would be – that knew that the Commission would want at a –

quickly. And that didn't need to go through the process that has been set up. The Commissioner would see the affidavit of John Tate - - -

COMMISSIONER WILSON: Yes.

5

MS WILSON: - - - and would see there set out some of the statistics about dealing with the documents. I can take you to each of those exhibits or in taking you to parts of the exhibit of the technological report prepared by FTI. The second document is a table, and it refers there to the number of documents that have been processed through Ringtail. Your Honour, "without family" is a single document, and if it's got attachments it's regarded as "with family". At the present – presently there is 109,539 documents still that need for human eyes and lawyers to have a look at. As I understand it, yesterday 70,000 documents were processed through Ringtail – processed by lawyers, and that continues today, as you can see that there has been significant development with the significant resources that have been thrown onto this task. Then those – that number will be reduced significantly, if not extinguished by Friday. There's 179,287 without family on 11 November.

10

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COMMISSIONER WILSON: So - - -

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MS WILSON: By the 12th there was a hundred - - -

COMMISSIONER WILSON: - - - could you put it in simple terms for me, please. What is it you are telling me you expect to be done by Friday – that's tomorrow?

25

MS WILSON: By the end of Friday I would expect, with the current resources that have been placed in dealing with this issue, that the documents – all of that remaining 109,000 documents would be reviewed and be put back – put in Ringtail for it to be made document management protocol compliant.

30

COMMISSIONER WILSON: So will that be the sum total of what's required of the Health Department, or will there still be other things, such as emails, cabinet submissions, etcetera?

35

MS WILSON: Can we put those two – well, as I understand it, there are separate and very distinct problems with archived emails, and we have – that's a problem that no matter how many resources you throw at that, that can't be – that can't be – that can't be resolved quickly.

40

COMMISSIONER WILSON: But, Ms Wilson, the fact that emails were going to have to be de-archived was something that had obviously come to the Health Department's attention and they were doing something about even before this Commission formally started. It's common knowledge from other Commissions that email evidence can be of critical importance, so this should never have been sidelined, if that is what happened.

45

MS WILSON: Can I just - - -

COMMISSIONER WILSON: I really want to know what resources are being put into emails and when the Commission is going to receive them.

5 MS WILSON: If I can just refer to my learned junior. If we can – I can refer your Honour to paragraph – page 130 of the exhibits of Ms Syme, and this is a report by Colin McCririck, M-c-C-r-i-r-i-c-k, the chief technology officer.

10 COMMISSIONER WILSON: Sorry, I think I must have the wrong document. You said page 130, and I've got here a letter from Department of Health to the Commissioner of Inquiry for the attention of Louise Syme. Is that what you mean?

MS WILSON: That is the document, yes, Commissioner.

15 COMMISSIONER WILSON: Okay. For the sake – for the record, I'll indicate it's never come to me before.

MS WILSON: I think that it was – I think that it was asked to be done for this very hearing.

20 COMMISSIONER WILSON: I see. Thank you.

MS WILSON: And so that it could be attached to Louise Syme's affidavit so that the Commissioner could be aware of the issues.

25 COMMISSIONER WILSON: Thank you. Now, what do you want me to look at?

30 MS WILSON: There are two issues about that. The GroupWise emails that go back some time – that will take some time to be able to de-archive them and present them to the Commission.

COMMISSIONER WILSON: What does "some time" mean?

MS WILSON: Well, within three months.

35 COMMISSIONER WILSON: From today?

MS WILSON: For all – three months from today for all of them.

40 COMMISSIONER WILSON: So that's a month after the Commission winds up.

45 MS WILSON: But the Outlook, which goes back to 2000 and 2014, that's very easy. That won't take – that won't take much time at all, and I'm instructed that that actually has been done. What we have been doing, though, to try to reduce that time is that we've been – as the Counsel Assisting has stated, we've been talking to Counsel Assisting to find which email accounts are more of a priority than others, because if you – as I understand it, if you do – if you go right through all of the email accounts and try to de-archive everything, that would be a large process which would

take a significant amount of time. But if we can do focused attack, so to speak, on individual email accounts, then that will reduce that time.

5 COMMISSIONER WILSON: Ms Wilson, what you're telling me still doesn't come down to tin tacks of what is going to be done when.

MS WILSON: If I can then take you – if we look at page 134 and paragraph 12, I think that probably gives more clarity.

10 COMMISSIONER WILSON: It might give clarity, but it's not a satisfactory response, with respect.

15 MS WILSON: Your Honour, I – we can – we can again try to look at this in some other way to get a more satisfactory response, but this is the advice that we've been given.

20 COMMISSIONER WILSON: Well, if I can't be satisfied at the end of the hearing this morning that a realistic plan can be put in place which we start – which will start to be implemented immediately, bearing in mind what is required of the Commission to prepare a report and to do so by mid-January, there will have to be a further hearing and there will have to be some affidavit evidence by the people to whom these notices were addressed as to what they say about it, the directors-general of the departments. Because it's – with respect, it's just not satisfactory at the moment. Crown Law is acting as the agent for a number of principals. I'm still not hearing
25 from those principals. I'm hearing only from officers in Crown Law as to what they say they – the problems they have are. But it doesn't really respond to the outstanding obligations of these various directors-general.

30 MS WILSON: Commissioner, can I address the issue of Queensland Health, and if I can go back to – let's just pick up one of these issues at a time. If I can look at the matters of Queensland Health, and I've taken you to the statistical report that has been provided of how many documents have been reviewed and how many are outstanding. And if I can go – that was on the second exhibit of John Tate's, and
35 then there's the third exhibit, which refers to when they can get these documents, which are the documents of Queensland Health to the Commission, and in a document-compliant form, then they will - - -

40 COMMISSIONER WILSON: When can they get them in any form? That's what I'd like to know.

MS WILSON: Well, we can get them in any form - - -

COMMISSIONER WILSON: When can we have these emails in any form?

45 MS WILSON: Well, you can't get – with respect, we can't provide the emails until they've been de-archived.

COMMISSIONER WILSON: And that's going to take months.

MS WILSON: Well, no, a priority – if we can – as said in paragraph 11 of that statement, four to eight weeks. If we can make it more four weeks - - -

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COMMISSIONER WILSON: So we're now going up to almost Christmas Eve.

MS WILSON: Well, on the four weeks it'll be in mid-December.

10 COMMISSIONER WILSON: Everyone knows that once all of the documents are provided, there will need to be time for analysis of them at the Commission end. The parties all need time to prepare for the hearings. The hearings have been, perhaps optimistically, estimated to take four weeks. When does the timeline end? How do we get to 14 January?

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MS WILSON: Commissioner, I can only present the difficulties that we faced and how we've addressed them.

COMMISSIONER WILSON: Okay.

20

MS WILSON: And in terms of the bulk of the documents that are in – that are being reviewed – they will be provided in a document management protocol-compliant form according to Ringtail by 21 November.

25 COMMISSIONER WILSON: So - - -

MS WILSON: You know, and I hate to say the difficulties that can suddenly arise that can make that date change, but that is the external advice that we have been provided – is that the documents can be provided with the Health documents that are presently being reviewed – of the 300,000 documents – Health documents that have been – that are being reviewed in the document management protocol-compliant form by 21 November. That is the advice that we've received. Now, in terms of the other question, which is another batch that we're looking at of Parliamentary privilege, there is a process being undertaken in relation to that. I understand that process has begun and - - - 1

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COMMISSIONER WILSON: When did it begin?

MS WILSON: There was a process - - -

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COMMISSIONER WILSON: When did the process begin?

MS WILSON: Well, certainly on 9 November, there was a request from Crown Law.

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COMMISSIONER WILSON: Today is the 12th – only three days ago. Is that what you're telling me?

MS WILSON: Yes. They are my instructions, Commissioner. And we've heard back from the Department of Premiers this morning that they urgently – they appreciate the urgent attention and they can – they're looking at it and can give regular updates of how that's coming along. That's - - -

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COMMISSIONER WILSON: That's open-ended.

MS WILSON: Well, I would hope it be less open-ended than that in the sense that I would hope that that will be – those instructions can be provided as quickly as they can.

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COMMISSIONER WILSON: Alright. That's Parliamentary privilege. What other issues are there?

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MS WILSON: That's that issue. The other issue is the Cabinet documents.

COMMISSIONER WILSON: Is there a process there?

MS WILSON: There is a process, and that process has been started.

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COMMISSIONER WILSON: And when was that begun?

MS WILSON: And that process started on – again, that is 9 November.

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COMMISSIONER WILSON: And how long is that process going to take?

MS WILSON: I think that those two are the same types of process, and I think that they will take the same amount of time.

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COMMISSIONER WILSON: Which is unknown.

MS WILSON: Which is that the – they're aware of the situation and the urgency that it's – the urgency that's required on it and are looking at it. And then - - -

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COMMISSIONER WILSON: Are there other issues?

MS WILSON: The other – I think the last issue, then, is the emails, and that is – we've put on a report that is attached to Louise Syme's affidavit. But, your Honour, can I ask the Commission – can I ask for this indulgence. The author of that report, as I understand it, is in the back of the court. Can I speak to him and see if I can get any further clarity addressing these issues. That may be of some assistance to the Commission.

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COMMISSIONER WILSON: Alright. How long do you want?

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MS WILSON: Can you give me 20 minutes, Commissioner?

that is a large span. And it's not just can you search the emails for Elizabeth Wilson and you put in Elizabeth Wilson and you can see all my emails as I've gone from one job in one medical health service to another medical health service. You've actually got to go to each district, put in Elizabeth Wilson and then you go into each district and each district and each district – and with a date range, of course. Oh, no. You put in a date range and then you get the date range of what you're looking for and then you get all of those emails and then you have to put in to try to get out Elizabeth Wilson emails from that. And so that has been something that we may be able to identify because, Commissioner, as you identified, perhaps what your – your inquiries become into sharp focus into 2012. Now, if we're looking at from 2012 to 2014, as I've been informed, that will clearly quicken the process.

COMMISSIONER WILSON: I'm sorry if I misled you, because I didn't mean to. I'm not restricting the time from 2012 to 2014. I'm not suggesting that the earlier ones may not well be critical.

MS WILSON: Absolutely.

COMMISSIONER WILSON: And they have got to be reproduced. What I would like to know from this letter – on the first page of the letter, it talks about “restores”. Each restore takes on average four days to complete. A maximum of four restores per tape library can occur at any given time with two dedicated tape libraries commissioned for the restores. How does that translate – given that this letter was written on 17 September – that's only two or three days after the Commission commenced – how does this letter translate into it taking four to eight weeks from mid-November?

MS WILSON: Commissioner, I'm – Mr McCririck is here, and if you wish to, we can put him in the witness box and you can ask him these questions.

COMMISSIONER WILSON: Can I ask you this question. When did the process start?

MS WILSON: The process started in, as I understand it, in getting the West Moreton emails on 24 July – 24 February. 24 February to get the West Moreton emails. It's not something that just has started last week and we're now - - -

COMMISSIONER WILSON: What do you mean by the West Moreton emails? I'd like that to be clear, because the West Moreton Hospital and Health Service is separately represented before this Commission. There's no one here today. They have, as I am instructed, produced all of the documents that were asked of them and produced them in a document-compliant form. So what's the problem?

MS WILSON: Because – just - all of the emails are in Queensland Health possession and it's – and they have stored them. They have produced those emails because of the work done by Queensland Health since 24 February. It's not that their

work started in September and they could produce them. Their work started in February.

5 COMMISSIONER WILSON: They obviously had advance notice of the likelihood of this Inquiry.

MS WILSON: They're the dates I've been given. So if it was a problem that people could solve, then we could get an answer because we could work out an answer using resources or even you could throw extra money at it. But it's not that. It's a
10 technology problem.

COMMISSIONER WILSON: But it can be solved, because it was solved with respect to the West Moreton ones.

15 MS WILSON: From between February and July.

COMMISSIONER WILSON: I'm sorry, Ms Wilson. I'm really not satisfied with the explanations that are being given this morning. I want to know what you propose to allow the Commission to meet its deadline.
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MS WILSON: Well, Commissioner, I have set out in relation to the documents that Crown Law is in possession of – about when that can be provided to the Commission. And 21 November in document-compliant form. I've tried to get –
25 seek further instructions in terms of the matters of Parliamentary and Cabinet privilege. I can inform the Commission that the parties are aware of the urgency and there's an expectation that that can be provided by the end of the month. But we have this email problem. And it's almost like blood out of a stone.

COMMISSIONER WILSON: Is there anything else you want to say?
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MS WILSON: One other matter that I think the Commission and Crown Law really need to address. Obviously we'll be providing a significant amount of documents to the Commission, and our priority is to get those documents to the Commission. And then the task will have to be undertaken by Commission – by Crown Law staff to go
35 through it and identify matters of confidentiality. That will take some time, but I think a staged process of getting the documents to the Commission is the priority. And then we can go back and do that process. And we will put our thinking caps on how – the fastest – how we can best do that process working with – even maybe with Commission staff – that we can sit down together. This is just a possibility that I've
40 thought about – that Crown Law staff and Commission staff sit down and go through the documents. There will be some matters that are just easily identifiable as matters that require confidentiality. Other documents into a decide pile, and that can just reduce the time used by both staff rather than any double-up – rather than going through the process at Crown Law and then going through the process at the
45 Commission.

COMMISSIONER WILSON: Well, I take note of what you've said, but I'm not going to decide that issue - - -

5 MS WILSON: No, no, no. I'm just trying to think of - - -

COMMISSIONER WILSON: I want to know about getting the documents to the Commission. That's what we're here for today, and that's the only thing we're here for today.

10 MS WILSON: Yes. And I have set out in my submissions how we can get the documents that we've got to the Commission and when we have been advised by external operators about when that can happen.

15 COMMISSIONER WILSON: Thank you.

MS WILSON: Thank you, your Honour.

COMMISSIONER WILSON: Mr O'Sullivan, do you want to say anything?

20 MR O'SULLIVAN: No, if it please the Commission.

COMMISSIONER WILSON: Thank you. Mr Diehm.

25 MR DIEHM: No, your Honour – Commissioner.

COMMISSIONER WILSON: Mr Diehm. Mr Duffy.

MR DUFFY: No, Commissioner.

30 MR McMILLAN: No thank you, your Honour.

COMMISSIONER WILSON: Mr McMillan. Ms Robb.

35 MS ROBB: No thank you.

COMMISSIONER WILSON: Is that it? All right. Do you have anything in reply, Mr Freeburn?

40 MR FREEBURN: I do. I'll just be brief. It does seem as if there is at least a plan for the non-email non-Cabinet documents and, as I understand, that plan is to complete that process by 21 November. But in our submission, there really isn't a sensible or workable plan in relation to either the emails or the Cabinet documents. In my submission, those two matters – and particularly the report at page 97 of Ms Syme's affidavit – needs some urgent and dramatic investigation in order to
45 determine whether the timetable is really so pessimistic.

COMMISSIONER WILSON: Can I interrupt there for a moment? You've talked about emails and Cabinet documents. What about those documents in relation to which there may be parliamentary privilege questions?

5 MR FREEBURN: I was essentially using the expression Cabinet documents to cover those as well.

COMMISSIONER WILSON: So there are really three categories.

10 MR FREEBURN: Yes. So in relation to those three categories, in my submission, a better plan is needed and this – and that should be required of the departments within a very short period of time.

15 COMMISSIONER WILSON: Do you want to make any submissions as to what that plan might contain?

MR FREEBURN: I accept what Ms Wilson says about staging, that is, there is probably a technological question that's raised by this report and there's also a process aspect to it. And the report should deal with both. Process – by process I mean there can be, in agreement of Commission staff or Ms Muir and myself, some priority attached to particular email accounts. But my submission is we certainly need a better plan than we've got today. Yes. Ms Muir reminds me the end of the month is – which was for parliamentary privilege – in our submission, that is too long. The documents that are not – that don't have technological problems ought to all be provided by 21 November.

COMMISSIONER WILSON: By 21 November, those that don't have technological problems?

30 MR FREEBURN: Yes.

COMMISSIONER WILSON: Thank you.

35 MR FREEBURN: Thank you.

COMMISSIONER WILSON: Would you bear with me a few minutes. Does anyone wish to say anything further? Mr O'Sullivan?

40 MR O'SULLIVAN: No.

COMMISSIONER WILSON: Notices to produce documents addressed to the Directors-General of various departments of government including Queensland Health, the Department of Education and Training and the Department of Premier and Cabinet and the Queensland Treasury – notice being to the Under Treasurer – were served on Crown Law in mid-September. Notices were also served on the chief executives of a number of hospital and health services and boards. These hospital and health services are bodies corporate under the Hospital and Health Boards Act

2011. Several of them elected to be separately represented: West Moreton, Metro North and Metro South. The Crown Solicitor is acting for Children's Health Queensland Hospital and Health Service and its board.

5 The notices were issued pursuant to section 5(1)(b) of the Commissions of Inquiry Act 1950. I'll read that into the record and also read into the record subsection (2).

(1) A chairperson may, by writing under the chairperson's hand:

10 *(b) require any person to produce to the Commission at a specified time and place such books, documents, writings and records or property or things of whatever description in the person's custody or control as are specified in the writing*

Subsection (2):

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A person served with a writing under a chairperson's hand referred to subsection (1) shall:

20 *(a) comply in all respects with the summons and requirements contained in the writing, or*
(b) within the prescribed period satisfy the chairperson that the person has a reasonable excuse for not complying as required by paragraph (a) unless the person is not a person to whom this section applies. Maximum penalty 200 penalty units or one year's imprisonment.

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There is then section 5A which sets out a procedure upon non-compliance with section 5(2) and there's section 9 which deals with contempt of the Commission.

30 The notices which required production of documents by the various Directors-General required documents under various headings. Particulars of the types of documents expected to exist were set out. The application before the Commission this morning is not concerned with the relevance of the documents sought in the notices to the Terms of Reference. Relevance to the Terms of Reference has not
35 been an issue except in one respect, which was promptly resolved between Counsel Assisting the Commission and counsel instructed by Crown Law.

The application this morning goes to delay in the production of documents in response to the notices issued to parties for whom the Crown Solicitor acts. It's important to bear in mind that this is not adversarial litigation. The Commission of
40 Inquiry has a very strictly limited timeframe within which to inquire and report. It is conscious of the sensitive nature of the Inquiry and of the vulnerability of persons associated with the closure of the Barrett Adolescent Centre. The Commission is charged with conducting a full and careful inquiry in an open and independent manner. To do so, it must examine all relevant documents. As Senior Counsel
45 Assisting the Commission observed in his submissions, not all of the documents may be helpful but until a good proportion of them are received and examined the important ones can't be isolated.

It's not only the Commission itself which is affected by these delays. There are parties who are separately represented who have been served with notices to provide information or to give statements. Quite reasonably, they have sought access to some documents thought to be in the possession or the power or control of the parties
5 for whom the Crown Solicitor acts in order to complete their statements.

Officers of the Crown Law office have given detailed accounts of the magnitude of the task facing them and steps taken to carry out that task, including the application of extra resources. But the position remains that significant categories of documents
10 that appear to be essential have not been provided in any form, whether pursuant to the Commission's document management protocol, on USB sticks, CDs or in any other form, and I refer to the schedule to Mr Thompson's affidavit.

The projections for compliance remain uncertain. That uncertainty is, in my opinion,
15 unreasonable and can't be allowed to continue. There has to be a realistic program set in place, and it has to be followed. I accept that the Crown Law office has had some technological and resourcing problems, and I have been told this morning that the production of a large number of documents, which is subject to technological problems, should be possible by 21 November.

There are three other categories of documents, however. Those to which there may be questions of parliamentary privilege and cabinet documents: to be told that regular updates will be provided in relation to a process that was set in place only three days ago is, quite frankly, not good enough. There must be a realistic date
20 provided, and the Commission is to be informed by 4 pm on Monday, 16 November of what that date is. That relates to the parliamentary privilege documents and the cabinet documents.

Then there's the question of emails. I find the accounts which have been given of
30 how long it will take to produce these almost incredible, particularly when I'm told that the process started as long ago as February, months before this Inquiry was officially called. I direct that there be discussions between officers of the Crown Law Office and/or their counsel and Counsel Assisting the Commission and/or Commission staff to be commenced, at the latest, by 4 pm on Monday and a plan in
35 writing be provided to the Commission – a realistic plan – by 4 pm on Wednesday, 18 November.

I will adjourn this hearing to 2 pm on Thursday, 19 November. If matters remain uncertain or if the projected times for compliance extend beyond Friday, 27
40 November, it will be necessary at that hearing next Thursday to have affidavit evidence not just from officers of Crown Law Office, but from the individual persons to whom the notices were addressed. Is there something troubling you, Ms Wilson?

45 MS WILSON: Only, Commissioner, you said 27 November.

COMMISSIONER WILSON: Yes. I said that I want discussions and that a plan is to be formulated by Wednesday the 18th.

MS WILSON: Yes.

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COMMISSIONER WILSON: I'm adjourning the matter to Thursday the 19th.

MS WILSON: Yes.

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COMMISSIONER WILSON: if, as at Thursday the 19th, matters are still not resolved or if dates are uncertain or if the dates that you provide are dates that go beyond 27 November, then when we come back next Thursday - - -

MS WILSON: Yes.

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COMMISSIONER WILSON: - - - there is to be affidavit evidence from the individuals to whom these notices were directed.

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MS WILSON: Yes. My apologies, Commissioner. I thought that it was required by 21 November.

COMMISSIONER WILSON: What's required by the 21st? I'm sorry if I'm confusing you. What is it?

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MS WILSON: You said that matters should be provided by the 21st.

COMMISSIONER WILSON: I'll say it all again - - -

MS WILSON: Thank you, Commissioner.

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COMMISSIONER WILSON: - - - and if there's any confusion, you can tell me. Production of a large number of documents subject to ongoing resolution of technological problems I'm told will be possible by the 21st, and I expect it by the 21st. Documents relating to possible questions of parliamentary privilege and cabinet documents – a realistic date is to be advised to the Commission by 4 pm on Monday. Emails: there are to be direct consultations between Crown Law on the one hand and Commission on the other. Those consultations are to be commenced by 4 pm on Monday and concluded by 4 pm on Wednesday. If matters are not resolved when the matter comes back next Thursday, the 19th at 2 o'clock, if dates remain uncertain, or if any of the dates that you say are dates by which you can comply with various things are dates that are beyond the 27th of November – understand?

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MS WILSON: Yes, I understand.

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COMMISSIONER WILSON: In any of those circumstances, then next Thursday there must be affidavit evidence from the Directors-General themselves.

MS WILSON: Thank you, Commissioner.

COMMISSIONER WILSON: Now, is there anything else, Mr Freeburn?

5 MR FREEBURN: No, Commissioner.

COMMISSIONER WILSON: Alright. Nothing else from you, Ms Wilson?

10 MS WILSON: No, thank you.

COMMISSIONER WILSON: Mr O'Sullivan?

MR O'SULLIVAN: No, thank you, Commissioner.

15 COMMISSIONER WILSON: Mr Diehm?

MR DIEHM: No.

20 COMMISSIONER WILSON: Mr Duffy, Mr McMillan, Ms Robb?

MS ROBB: No, Commissioner.

MR FREEBURN: Mr Harper sent his apologies during the course of the morning.

25 COMMISSIONER WILSON: Very well. Yes, please. Would you adjourn.

**MATTER ADJOURNED at 11.41 am UNTIL
THURSDAY, 19 NOVEMBER 2015**