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# ***PARLIAMENTARY CRIME AND MISCONDUCT COMMITTEE***

## **Members present:**

Mrs EA Cunningham MP (Chair)  
Mr PJ Dowling MP  
Mr IS Kaye MP  
Mr JM Krause MP  
Mrs JR Miller MP  
Ms J Trad MP  
Mr PW Wellington MP

## **Staff of the Office of the Parliamentary Crime and Misconduct Commissioner present:**

Mr P Davis SC (Acting Parliamentary Commissioner)  
Dr K Mellifont SC (Counsel assisting the Acting Commissioner)  
Mr M Kunde (Principal Legal Officer)

## **Staff present:**

Mr N Laurie (Clerk of the Parliament)  
Mr S Finnimore (Committee Office Manager)  
Ms A Honeyman (Acting Research Director)  
Mr P Rogers (Principal Research Officer)

## **INQUIRY INTO THE CMC'S RELEASE AND DESTRUCTION OF FITZGERALD INQUIRY DOCUMENTS**

### **TRANSCRIPT OF PROCEEDINGS**

**(In camera)**

**WEDNESDAY, 20 MARCH 2013**

**Brisbane**

## WEDNESDAY, 20 MARCH 2013

Committee met at 4.32 pm

### **SWEEPER, Ms Suzanne, Principal Information Officer, Strategy and Policy, Crime and Misconduct Commission**

**CHAIR:** I declare this hearing open. I note in the room Ms Sweeper and also counsel assisting Ms Sweeper, Mr Diehm, who has leave previously. I note that this hearing at this point in time is a closed hearing. Mr Pollock, you are wishing to stay?

**Mr Pollock:** It is not necessary, I suppose.

**CHAIR:** If you do, you would need to seek leave.

**Mr Pollock:** Perhaps I should seek that leave.

**Mr Davis:** Can we make submissions about that?

**CHAIR:** Yes.

**Mr Davis:** Given the nature of this particular part of the hearing and the evidence we anticipate will be given, in our submission both Mr Diehm and Mr Pollock ought to give undertakings if they are to remain in the room and that those undertakings should be not to disclose any part of the evidence given in this closed part of the hearing to any person including other members of the Crime and Misconduct Commission.

**CHAIR:** Can I ask: it is clear why Mr Diehm is here as counsel assisting Ms Sweeper. What is not clear is the need for or reason for Mr Pollock's presence.

**Mr Davis:** I think Mr Pollock is instructing Mr Diehm. We would submit that that is appropriate for Mr Diehm to have instruction from a solicitor. We do not submit that Mr Pollock ought to be excluded on the basis that Mr Diehm can carry the day. I am sure he can, but it is proper for him to be instructed.

**CHAIR:** Prior to the committee deliberating, are both Mr Diehm and Mr Pollock prepared to give an undertaking of confidentiality of the proceedings of this room?

**Mr Pollock:** Yes, I am.

**Mr Diehm:** Yes, I am, and I do.

**CHAIR:** One moment, please. The committee is prepared to give leave for both to stay? Is there a concern?

**Mr DOWLING:** Is their client the CMC? Aren't they loyal bound by their client? Don't they have to report back?

**Mr Laurie:** The undertaking has been given, so they would have to comply with the undertaking.

**Mr Davis:** Can we make submissions about that?

**CHAIR:** Yes.

**Mr Davis:** That is a valid point, and we understand that. It is not a point for you, with respect, in the sense that that is an ethical issue as between Mr Pollock and the CMC and Mr Diehm and the CMC. Often with proceedings which are similar to this—commissions of inquiry for instance—counsel will find themselves in the difficult position, as will solicitors, where they will be acting for a group of people and sometimes the interests of those people may differ. It is customary in those circumstances for that potential to be simply recognised and then it left for the ethical discretion and judgement of the practitioners. Mr Diehm is a senior counsel. Mr Pollock, I understand, is a solicitor of the Supreme Court of Queensland. You ought not to have any issues, in our respectful submission, about how they give their undertaking or their obligations.

**CHAIR:** Ms Sweeper, Mr Diehm and Mr Pollock, I will ask you to be excused for a few minutes while the committee deliberates, please.

**Mr Diehm:** May I just inform the committee of a couple of things. I appreciate the limited capacity we have in the ordinary lack of a right to address. There are just a couple of things, though,

that the committee perhaps might know when they are considering those things. Firstly, whilst I have assisted Mr Duell to date—that is, I should say, until an earlier time in these proceedings—he is no longer my client and he will be, as I understand it, represented by other lawyers for the balance of the inquiry. My client is the CMC. If I was concerned that hearing evidence here caused, ultimately, a conflict with that, as Mr Davis I think alluded to, I would have to deal with that certain ways that would not involve breaching the undertaking that is given.

The other thing that Mr Pollock has brought to my attention that I raise on his behalf is that he was one of the first persons at the CMC to whom the matters that are intended to be subject of this evidence were brought. That is, he was one of the first to know. And through him ultimately the committee came to be informed of these matters. That was two implications. One is: he knows much about these matters, although there may be more that comes out; but, secondly, there may be some suggestion that is to be made that perhaps he might end up giving evidence about some of these matters. Whether that is to be the case or not Mr Davis might address further on. I just thought I should bring those matters to the committee's attention.

**CHAIR:** Thank you. If I could ask you to wait outside for a few moments, please.

*Ms Sweeper, Mr Diehm and Mr Pollock left the room and subsequently returned.*

**CHAIR:** Based on the undertakings of both Mr Diehm and Mr Pollock in relation to confidentiality, and recognising that Mr Diehm has leave to be counsel assisting to Ms Sweeper, the committee has agreed for Mr Pollock and Mr Diehm to remain in the room. I will ask Mr Davis to resume questioning.

**Mr Davis:** Ms Sweeper, I understand, has been sworn. You are now on your prior oath.

**Ms Sweeper:** Yes.

**Mr Davis:** An issue has arisen in relation to some documents that you saw on a file and then later you returned and those documents seem to have been missing.

**Ms Sweeper:** Yes.

**Mr Davis:** You are aware of that issue?

**Ms Sweeper:** Yes.

**Mr Davis:** That is the issue we wish to deal with now. Can I just get some background information.

**CHAIR:** Excuse me. Just before stepping forward, were you going to make a submission about the in camera nature of this hearing?

**Mr Davis:** I was happy to do so, but I understood that it was rather superseded by the fact that the resolution, which I think was raised by Mrs Miller, was just simply that it be recorded.

**Mrs MILLER:** I think it has been dealt with.

**CHAIR:** Thank you.

**Mr Davis:** Now, you were on maternity leave?

**Ms Sweeper:** Yes.

**Mr Davis:** When was that leave—from when to when?

**Ms Sweeper:** I went on leave on 9 March 2012 and returned on 26 February this year.

**Mr Davis:** So did you physically return to the CMC on 26 February?

**Ms Sweeper:** Yes.

**Mr Davis:** I suggest that you said to Mr Laurie and Ms Mellifont that you saw the publicity in the *Australian* while on leave and then on Monday, 11 March you were advised by Peter Duell that you had been summonsed.

**Ms Sweeper:** That is correct.

**Mr Davis:** What publicity had you seen prior to 26 February?

**Ms Sweeper:** I should say I returned to work on 26 February. I think that was a Tuesday. I now work three days a week—Tuesday, Thursday and Friday. On the following Monday, which must have been 3 March maybe—I was basically back at work for a week and then I had a week of leave. I was not actually due back at work until April so I had something booked in in that first week of March. That first week of March I was in Perth. So I was back at work for three days, in Perth and then back at work.

**Mr Davis:** On 11 March you were advised by Peter Duell that you had been summonsed; is that right?

**Ms Sweeper:** Correct.

**Mr Davis:** Now, once you were aware of that, did you then seek access to a particular file?

**Ms Sweeper:** That was on the Monday. I had obviously been thinking about it overnight and, having seen what was in the *Australian*, I realised it would primarily be about the memo that I had written.

**Mr Davis:** We will come to that in a moment.

**Ms Sweeper:** Sure. So I wanted to look at that file.

**Mr Davis:** This is the memo of recommendation for the RAPs to be changed?

**Ms Sweeper:** Correct.

**Mr Davis:** So you determined that you wanted to look at the file?

**Ms Sweeper:** I wanted to look at the file.

**Mr Davis:** What did you do then? Who did you approach?

**Ms Sweeper:** I was in Peter Duell's office. I believe that I had received my summons from Warren Strange. The next person I saw was Peter. The file was on the desk. I indicated that, in preparation for my appearance, I would like to view the file. I think at that time I was scheduled to attend on the Friday and Peter was scheduled to attend on the Thursday. He advised that he required the file and if I wanted to access the information that I could use the TRIM electronic copy of the file.

**Mr Davis:** So that conversation was on 12 March?

**Ms Sweeper:** Correct.

**Mr Davis:** That is the Tuesday?

**Ms Sweeper:** Yes.

**Mr Davis:** What did you then do? You went off and accessed the documents on the TRIM?

**Ms Sweeper:** I did have a look at the TRIM file, but I also trawled through my emails from the time. I had a subfolder in my email container where I had put all of my email correspondence in relation to Fitzgerald requests at the time, when I was acting records manager. And I also looked at the TRIM file, but I knew before looking at the TRIM file that not everything on the physical file was also on the electronic file, particularly signed documents.

**Mr Davis:** When you say not everything on the TRIM was in the electronic file, the TRIM is the electronic file?

**Ms Sweeper:** Not everything on the physical file was electronically available.

**Mr Davis:** Did you then return to Mr Duell's office?

**Ms Sweeper:** I did.

**Mr Davis:** When was that?

**Ms Sweeper:** It was on the Tuesday.

**Mr Davis:** Right. So it is later in the day?

**Ms Sweeper:** Later in the day. I went into the office to drop off a copy of my timesheet. The file was still on his desk. Because I had looked through my email correspondence at the time, there was two things in particular that I wanted to look at on the physical file. One was the request from Tony Reeves and the other one was the sign-off approval on the memo that I had written.

**Mr Davis:** So the process was, wasn't it, that you would receive a request—that is right?

**Ms Sweeper:** Yes.

**Mr Davis:** There would then be a document generated which was from the QSA which actually identified the particular document that was being looked for?

**Ms Sweeper:** Yes.

**Mr Davis:** And then you would do a memo making a recommendation in relation to the matter?

**Ms Sweeper:** No. The process was correct up until that time. What I would do is then print off the records from the Queensland State Archives, attach them to the email request from the requester, put those on the file and pass the file to the director.

**Mr Davis:** With a recommendation?

**Ms Sweeper:** No.

**Mr Davis:** When you went back to his office, you took the opportunity to look at the file?

**Ms Sweeper:** Yes.

**Mr Davis:** Were there particular documents on it which are relevant to an issue as to whether or not documents have subsequently been removed?

**Ms Sweeper:** I am sorry, I do not—

**Mr Davis:** Bad question. When you looked at the file, did you notice particular documents?

**Ms Sweeper:** I did, because I had in mind to look at those two particular things—the sign-off on the memo and the Tony Reeves request, because I could see from my emails that I had had correspondence with him and his request fell during that time frame where I was relieving as records manager.

**Mr Davis:** Did you also look at the printouts from the QSA?

**Ms Sweeper:** I did, because they were—

**Mr Davis:** They were attached?

**Ms Sweeper:** Well, they were adjacent to the requests in the folder.

**Mr Davis:** Were the complete sets of documents, as you have described them, on the file?

**Ms Sweeper:** To my understanding, yes.

**Mr Davis:** I want you to have a look at this for me, please. Now, I have put a couple of yellow tabs on that. Please do not remove them. Is that the file?

**Ms Sweeper:** It is.

**Mr Davis:** Have you seen that file recently, as in today?

**Ms Sweeper:** Yes. Today?

**Mr Davis:** Yes.

**Ms Sweeper:** No. The last time I saw it was yesterday.

**Mr Davis:** When you last saw it, did you notice anything about its completeness or otherwise?

**Ms Sweeper:** I did.

**Mr Davis:** What did you notice?

**Ms Sweeper:** I noticed that the printouts from the Queensland State Archives that related to the first request from Tony Reeves were no longer on the file.

**Mr Davis:** I would like to take you to documents which are tab B, the yellow tabs. Now, they are printouts from the Queensland State Archives, are they?

**Ms Sweeper:** Correct.

**Mr Davis:** They are not the Tony Reeves ones, though?

**Ms Sweeper:** No.

**Mr Davis:** But the Tony Reeves printouts were in that form, so to speak?

**Ms Sweeper:** Yes.

**Mr Davis:** But they obviously related to other documents?

**Ms Sweeper:** Yes.

**Mr Davis:** If you have a look at the tab B documents, on the documents themselves there is an entry which is headed 'Description'?

**Ms Sweeper:** Yes.

**Mr Davis:** And then what follows is a brief description of the particular document that is the subject of the search. Do you agree with that?

**Ms Sweeper:** That is right.

**Mr Davis:** Now, have you become aware of the term 'metadata'?

**Ms Sweeper:** Yes.

**Mr Davis:** If you have a look at the description which is on those tab B documents, the description is in fact the metadata of the document, isn't it?

**Ms Sweeper:** Yes.

**Mr Davis:** You hesitated in relation to that. Is that because you have not checked those documents against the metadata?

**Ms Sweeper:** No, I—I would have thought that the description—I would say that the records of State Archives that relate to the Fitzgerald inquiry—the description varies a lot. For instance, if it was a letter it could be the 're' of the letter. So it would not necessarily say that that was metadata.

**Mr Davis:** I see. But you know what I am talking about, the metadata document?

**Ms Sweeper:** The description is a brief description of what the document is about or the information it contains.

**Mr Davis:** And the description which is on that document, which is B, is a description which has come off the indexes?

**Ms Sweeper:** Yes.

**Mr Davis:** Which we think is the metadata?

**Ms Sweeper:** Yes.

**Mr Davis:** Could you now go, please, to tab A.

**Ms Sweeper:** Yes.

**Mr Davis:** What is that document?

**Ms Sweeper:** That document is email correspondence between myself and Tony Reeves.

**Mr Davis:** That is a document which is in effect releasing the material—or at least advising of the release?

**Ms Sweeper:** Advising of the release—advising that his request has been approved by the director.

**Mr Davis:** Now, you have told us about the process that you followed. Is it the case that normally attached to that particular document, which is tab A, would be other documents?

**Ms Sweeper:** Yes.

**Mr Davis:** And what would be attached?

**Ms Sweeper:** The printouts from State Archives that relate to the items that he has requested.

**Mr Davis:** Any other documents attached to that?

**Ms Sweeper:** No.

**Mr Davis:** Are there any printouts from Queensland State Archives attached to that particular document which is tab A?

**Ms Sweeper:** No.

**Mr Davis:** If you look at the top left-hand corner of that document, which is tab A, does it appear that there was once a staple in that document?

**Ms Sweeper:** It does.

**Mr Davis:** And does that indicate to you that that document most probably, consistently with your practice, did in fact have the printouts from the QSA attached to it?

**Ms Sweeper:** Yes.

**Mr Davis:** You would normally attach it by staple rather than a paperclip or anything like that?

**Ms Sweeper:** I suppose it would depend on how many there were, but, yes, I think staple is the most secure way.

**Mr Davis:** Usually used?

**Ms Sweeper:** Yes.

**Mr Davis:** So when you went to Mr Duell's office in the afternoon—it was in the afternoon, wasn't it, when you went back and flicked through?

**Ms Sweeper:** I could not be sure. It would have been middle of the day or early afternoon.

**Mr Davis:** Okay. You flicked through and you actually saw that there were the printouts attached to that document?

**Ms Sweeper:** Yes.

**Mr Davis:** When was the next time that you saw the file?

**Ms Sweeper:** The next time I was able to access the physical file was yesterday.

**Mr Davis:** And was it then that you noticed that those documents were missing?

**Ms Sweeper:** Yes.

**Mr Davis:** Have you spoken to Mr Duell about this?

**Ms Sweeper:** No.

**Mr Davis:** Who did you speak to about this once you realised that the documents were missing?

**Ms Sweeper:** I had originally requested the file from Wendy Klynsmith. She was in a secure room, so I went to her in the secure room and said, 'I think this document is missing from that file. Who should I speak to?' She went and got Jens, the records manager, and brought him into the room and then she left.

**Mr Davis:** Who is the record manager?

**Ms Sweeper:** Jens Sorenson. I described to Jens what I thought was no longer on the file. And obviously because we have both been involved in a situation we realised it was a critical file in relation to this process, so we had a brief discussion about who would be the best person to advise and we decided that it was Mark. So we went to Jens's office and called Mark, who came down. I ran him through what I believed was no longer on the file.

**Mr Davis:** Do you have any reason to believe that Mr Duell has been made aware of this?

**Ms Sweeper:** No.

**Mr Davis:** I will just clarify something. Can we go back to tab A?

**Ms Sweeper:** Sure.

**Mr Davis:** I asked you some questions about your usual practice. The documents which were the printouts from the QSA were in fact attached to that document, to your memory?

**Ms Sweeper:** Yes.

**Mr Davis:** And you saw that when you went into Duell's office when he was not there?

**Ms Sweeper:** Yes.

**Mr Davis:** They are the questions that I have for this witness in camera.

**CHAIR:** Thank you very much. Member for Bundamba, you had a question?

**Mrs MILLER:** There are security cameras at the CMC, aren't there?

**Ms Sweeper:** There are, but only in particular places. They are not generally on the floor

**Mrs MILLER:** So they would not generally be in the records area there? Is that what you are saying?

**Ms Sweeper:** No. There might be a camera in and out of the property room, which is the secure room that I mentioned to counsel. But there certainly is not any in people's offices or on the general floor. There might be one in finance focused on the safe. They are certainly in the liftwell area. But not as a general matter of course, no.

**Mrs MILLER:** And is it the practice that these physical files stay at the CMC or can officers take these physical files away—like, to their home perhaps to work on overnight or not?

**Ms Sweeper:** I believe that they are not supposed to. There are different classifications on the files. Certainly the highly protected files need to be locked away in a safe and I would be very surprised if anyone was taking those home, although I suppose there are times when people go to QPS or the Australian Crime Commission where they need to take material with them. I am not sure what happens under those circumstances. But it would not be normal practice to take files home.

**Mrs MILLER:** It would not be normal practice, I presume, to remove parts of a file at all?

**Ms Sweeper:** No. Definitely not.

**Mr KAYE:** I was just going to ask if you can think of any reason why someone would actually remove those pages.

**Ms Sweeper:** I would only be guessing, but I am assuming because they did not want those pages looked at as part of this inquiry.

**Mr Davis:** Could I, with leave, suggest that that question be slightly amended to ask whether there is any legitimate reason for those pages to be removed.

**Ms Sweeper:** I would imagine that this file has been copied and scanned a number of times as part of this process. To do that, each piece of paper is attached with a binder and they would certainly need, I would have thought, to be taken from the file in order to be scanned or copied. So I am assuming that that happened at some stage during the last week or so.

**CHAIR:** Can I just ask: is it possible that the fact that the staple is removed was for scanning purposes?

**Ms Sweeper:** It is possible. Flicking through the file, there are other documents that are stapled. There are other documents that have obviously been re-stapled. But it is possible.

**CHAIR:** Are there any other questions?

**Mr Davis:** I table that file as an exhibit.

**CHAIR:** Is leave granted? Leave is granted. It is Exhibit 93.

**Committee adjourned at 5.00 pm**