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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

In attendance:

Mr N Laurie (Clerk of the Parliament)

Staff present:

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)

THURSDAY, 7 MARCH 2013

Brisbane

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Committee met at 12.20 pm

CUNNINGHAM, Mr Adrian, Director, Digital Archives and Government Recordkeeping, Queensland State Archives

ELVERY, Mr Niles, Manager, Public Access, Queensland State Archives

HAWKINS, Ms Elizabeth, Manager, Archival Collections, Queensland State Archives

HORNER, Ms Josephine, Manager, Agency Services, Queensland State Archives

PROWSE, Ms Janet, Executive Director and State Archivist, Queensland State Archives

SULLIVAN, Ms Maureen, Manager, Collections and Preservation, Queensland State Archives

CHAIR: Welcome, Ms Prowse. Ms Prowse, the procedure today will be that we will confirm who is in the room. We will confirm the purpose of the meeting. We will also confirm the condition of the meeting and we will go from there. I will ask you for an opening statement. The meeting will be recorded by Hansard and it is confidential. Can you confirm, Ms Prowse, that you are the Executive Director and State Archivist, Queensland State Archives?

Ms Prowse: Yes, Madam Chair.

CHAIR: Would you introduce your other members, please?

Ms Prowse: Yes, thank you. Starting on this end, Mr Adrian Cunningham, Director of Government Recordkeeping and Director of the Digital Archives Unit; Josephine Horner, Manager of Agency Services; Maureen Sullivan, Manager of Collections and Preservation; Elizabeth Hawkins, Manager of Archival Collections; and Niles Elvery, Manager of Public Access.

CHAIR: Thank you very much. I remind you that this is a confidential meeting between the Parliamentary Crime and Misconduct Committee and yourselves as witnesses. You are not under investigation, but the committee is endeavouring to determine events that have led up to the committee's deliberations today and, as such, we are keen to see and hear from you given your expertise. It should be noted that the meeting is being recorded and that the transcript of the recording may be made available to the parliamentary commissioner for the purposes of his investigation and to other people depending on the decisions of this committee.

It is relaxed, and we are not looking to eat anybody or vice versa. Ms Prowse, if you can make an opening statement and then the committee will, in a fairly informal way, ask some questions of you, because we really do want to get an understanding of your role in holding these documents and also, as the release has occurred, how and why and by whom.

Ms Prowse: Thank you, Madam Chair. Thank you for this opportunity to be here today. In my opening statement I wanted to talk a little bit about Queensland State Archives for those who do not know much about us. The Queensland State Archives is the Queensland government's archival authority. As the State Archivist, I administer the Public Records Act 2002, and this is an act about the making, managing, keeping and preserving of public records in Queensland. I oversee Queensland State Archives and its repositories which are located here in Runcorn, Brisbane.

Queensland State Archives has two core roles: we are a recordkeeping regulator and we are a custodian. I would just like to say a short piece about each of those roles. As the recordkeeping regulator, Queensland State Archives is the lead agency for government recordkeeping in this state and, as such, we are responsible for overseeing the legislative and policy framework for recordkeeping. You may be aware that there are some 600 public authorities in Queensland. We publish a recordkeeping policies and standards framework which public authorities are required to have regard to. As the State Archivist, I have statutory independence in decision making around the area of retention and disposal of public records.

Inquiry into the CMC's Release and Destruction of Fitzgerald Inquiry Documents

In the custodian role that we play we are the custodian of the largest and most significant documentary heritage collection in Queensland. The collection dates back to the convict era of the 1820s through to the present day. The state's archival collection measures over 48.5 kilometres in length. You may be aware that the expanded facility opened in late 2008, and since then we have been taking transfers of around 1.5 kilometres of archival records into the facility each year. Between June 2009 and June 2012 we took into our custody 6.3 kilometres of records.

The collection is housed in a secure, modern facility at Runcorn. We are the custodian of the records; we are not the owners of the records. Public authorities own the records and, as owners, public authorities have rights under the Public Records Act. In particular, the public authorities have rights to set what is known as restricted access periods, the closure periods for the records under section 16 of the Public Records Act. Also, public authorities have rights to change the restricted access periods under section 19.

CHAIR: Thank you very much. I am remiss in not introducing to you others in the room. We have Hansard representatives. We have the Clerk of the Parliament, Mr Neil Laurie. Neil has been giving the committee assistance in this matter. For many of us it is not a process that we have been through, and Neil has been giving us well-informed assistance. We also have the secretariat: Ms Amanda Honeyman, who is the Acting Research Director, and Mr Peter Rogers, both giving us excellent assistance as well.

The matter obviously is the storage, the retention and the release of the Fitzgerald documents. I am sure you have turned your mind in the last day or so greatly to that. I am wondering if you could at the outset outline your recollection of your receiving of the documents, your retention of the documents and the release of those documents, particularly as it pertains to events in the last couple of days.

Ms Prowse: Yes, Madam Chair. Queensland State Archives has received four transfers of records from the Crime and Misconduct Commission which relate to the Fitzgerald inquiry collection. I will just quickly refer to my reference material, if I may, with the dates of those transfers. The first collection came in on 1 August 2007. The second collection came in on 2 December 2007. The third collection was 3 March 2008. The fourth and final transfer we have received is 12 March 2009. However, I do not believe I have the full Fitzgerald inquiry collection in the custody of Queensland State Archives. I believe and understand that the CMC still retains some records.

CHAIR: Did you want to add anything to that?

Ms Prowse: That was on the transfer. That was that part. What was the next part? The retention? For a record to come into the custody of Queensland State Archives it has to be deemed to be a permanent record. As archivists, we see records as permanent or temporary. Under the Public Records Act, I approve retention and disposal schedules. I am an independent statutory office holder in determining the retention periods for public records. Once it is deemed to be permanent and the agency no longer has an ongoing operational need for the record, they can negotiate a time to transfer it to Queensland State Archives.

CHAIR: Once it is transferred to your archives, though, they still have ready access to it and they are still the ones that determine the RAP?

Ms Prowse: Correct. Every agency that transfers a record to Queensland State Archives can still have access to their own records.

CHAIR: Whilst you have them and they determine the RAP, you do not allow access to the documents unless they give direction that they can be accessed.

Ms Prowse: Correct. I will explain the RAP process, if I may. May I seek leave to table some documents through Mr Rogers?

CHAIR: Yes. Leave is granted.

Ms Prowse: I will just maybe talk you through the process. Transfers are negotiated—they do not just arrive on the loading bay; it is negotiated the time of the transfer and the volume of records we can accept on any one day and the types of records. So the archivists negotiate that with the agency. At the time of transfer we like to have all the paperwork regarding the restricted access notice complete. Mr Rogers will show you. Records are required. Agencies are required to complete a restricted access notice form that accompanies the transfer which is the legal direction I receive under the Public Records Act on the closure period for the records. The record comes into the building. We check inventory control—100 boxes, did 100 boxes come in; what was in the box
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against the list—and the RAP is assigned and entered into the catalogue along with the catalogue record. The records get assigned a shelf location and then when they are available a public researcher can lawfully ask for access. I am not sure how much detail you want me to go into.

CHAIR: Have members got any questions up to this part?

Mr DOWLING: Yes. When the documents arrive, you know the content or the nature of the document but you do not necessarily know what is in there, as such, do you?

Ms Prowse: I would not say we know the content of the records. We have a general idea that it is Fitzgerald inquiry records, transcripts, exhibits, general correspondence. We do not have time with the volume—no government archive does—to read it. We do not read through each record. The agency has already determined and boxed the series and identified the series prior to transfer, so it will know its collection and what is coming in.

Mr DOWLING: There were some questions around documents that through this investigation at the CMC on their own documentation it turns out they have lost some number of documents. Would they have authorised you to destroy documentation? I noticed in your presentation you said that you have a life on the documents and you can determine what you destroy and what you do not. That would not apply to this documentation presumably?

Ms Prowse: No. I do not know of the comment that you are referring to that you have just made in regard to the CMC. We set retention and disposal schedules. So in relation to CMC records, there have been a number of retention and disposal schedules approved for the CMC, starting with the Fitzgerald inquiry, the CJC and the CMC.

Mr DOWLING: So you do not receive instruction to destroy some of—

Ms Prowse: No. I personally have not received instruction. We do not destroy records when they are in our custody. That is not our role. When I accept for transfer I am accepting that permanent is permanent. I issue retention and disposal schedules to the agency, so the CMC has a retention and disposal schedule for its records and it sentences the records against the schedule. So they use the schedule to lawfully dispose of records at their end-of-business use, according to the schedule.

Ms TRAD: I just wanted to ask about the inventory check. It is just a simple matter of checking the number of boxes that are on the form against the number of boxes that are received?

Ms Prowse: It is not always simple because it is not always coming in a box. It can come in a bundle. The boxes are checked because it is not just the number of boxes; it is the items in the box.

Ms TRAD: That is what I wanted to know.

Ms Prowse: Yes. One box can have three files. The next box can have four. So it has to be checked. So the archivists in our sorting room go through the process and check as best they can all the detail, that it is all there, because if there is any discrepancy in that inventory control, we should be doing it at the point of transfer.

Ms TRAD: Ms Prowse, one of the issues that has emerged is that some of the files that were held by State Archives were empty.

Ms Prowse: Yes.

Ms TRAD: So in that inventory check period would you have picked up that some of the files were empty?

Ms Prowse: I will acknowledge that a couple of days ago it was brought to my attention one document was missing in a Fitzgerald inquiry file. A researcher asked for the record. When the archive was brought out, the report was not there. In its place was a slip of paper with a CMC reference number. And we have since gone back to the CMC, and we have correspondence—I do not have that on me now—to say how could this happen that the file did not come to Queensland State Archives and where is the file because we have a researcher who requested it? I argued we never received the file. They argued we lost the file. We asked them to go and check their collection.

In them checking their collection they conceded—and we have it in writing—they never transferred the file to us. And, yes, we probably should have—I would like to table through Mr Rogers, if I may, Madam Chair, a photograph of a bundle of Fitzgerald inquiry records. Bundles are hard to explain sometimes because they come in all different shapes and sizes. This was a ringbinder. It is accessioned in the inventory control through the archivist. It might have 50 or 60 things. So you are going through and checking at item level. You get to the page where the record

should be. There is a slip of paper with another reference, which is not our reference number, not the one the agency gave us. So you go back to the agency: where is it? I have had an explanation from the CMC as to what happened. May I table these, Madam Chair?

CHAIR: Yes, certainly. Can I just ask: you have said that you have got a folder with a number of sleeves in it. Do you at this point in time have any idea what the records were, what they were constituted of, how were they described, that are not in your custody, that the CMC have since acknowledged were not transferred?

Ms Prowse: When they transferred the records to Queensland State Archives, including that bundle with the missing record and it was replaced with a slip of paper, it still had the metadata about the record, the descriptive words. And that researcher who searches the catalogues sees, 'Oh, that was interesting. I'll request that.' And that is how it was located that the record in the bundle comes out. It should have been there. And that record was provided by the CMC.

Mr KRAUSE: What was it?

Ms Prowse: I don't know the answer to that at this—it related—the metadata was about a man called '...', but I don't know what the record was.

Ms TRAD: Can I just ask, whilst we are on this topic: we understand that it was identified on 1 March that this file was missing. What is your recollection?

Ms Prowse: No, I'll tell you what date it was. May I refer to my reference material?

Ms TRAD: Sure.

Ms Prowse: Thank you. I was alerted on Tuesday, 26 February in an email from a staff member. An archivist emailed Mr Niles Elvery, who then sent the email to myself. I finished my business meetings for the day—it was around just before five—I opened the email and acted on it straightaway.

CHAIR: Can I ask you to do something for me, and I am hoping it will inform all of us. We had brought to our attention not yesterday but late afternoon the day before that there was an issue in relation to records. I was told—it was me, personally; I was rung and told—that there were two issues, one that Fitzgerald inquiry documents that had been transferred to the State Archives had at some later date had their RAP reduced from 65 years to 20 years.

Ms Prowse: Yes.

CHAIR: In that change of the RAP those documents had been accessed and you very kindly provided a schedule of access to the documents yesterday to the CMC. They forwarded it on to us because it was our request. The second issue that we have been advised of—and that was again on the Tuesday evening—was that in the process of investigating these matters it became apparent that some of the Fitzgerald documents that the CMC had retained as intelligence data had subsequently been destroyed as part of their information-handling processes. I am sure that since that time you have expediently looked at your processes since receiving the Fitzgerald material right up until the present so that you have a timeline on what you have done with it. Can you walk us, in a relatively short time, through that process from your perspective?

Ms Prowse: Yes, if I may. I will start with the restricted access period applying. Can I just address quickly: Mr Rogers, I believe, will take leave to table this document and if I can take the committee members through this.

CHAIR: Yes.

Ms Prowse: Then I will deal with the issue of destruction of records, if I may, after I deal with this one.

CHAIR: Yes, sure. We are dealing with this document here with the big boxes on it?

Ms Prowse: Yes, that one-page one.

CHAIR: Not the little one, that one at the back?

Ms Prowse: Headed 'Restricted access periods as of 6 March 2013'.

CHAIR: Okay. Do you have a question in relation to this, Peter?

Mr DOWLING: It is right at the very start of the process. The photo that you have shown us with the bundle—the ringbinders and some 50, 60 pages of plastic sleeves. Do you physically flip through to see that each of the documents is there or do you just say, 'Right, there's the bundle. It is 50 documents. That looks about right,' and you put it away?

Ms Prowse: I might take leave to ask one of my staff to join me. Who would like to come forward? Maureen?

Ms Sullivan: Maureen Sullivan, Manager of Collections and Preservation. When these records were received in 2007-08 there were different processes than what we have now so I cannot be exactly sure of what the process was then. What we would do is: when someone transfers to us they also send us an electronic transfer list, which is what we upload into our system, and that is the listing that they have given to individual documents and that is what people can search on our catalogue. So we check that we receive that listing. So we checked that we received that one that says that. When we are actually going through the box, what we should be doing is going through each one and seeing that it is there. Because it was like that, what people have probably done—and I am not exactly sure—is gone like that and looked at the top and may not have realised that there was nothing in there. Having said that, even if there is something in there, we do not check that that is what is in there and we have no way of knowing how many pages it should be or what it refers to. We do not check the contents in any depth. Certainly not at that time we did not and we still do not. Does that answer your question?

Mr DOWLING: Yes, it does. It seems to me, just in this early stage, that the CMC is not entirely certain of what they sent you and the integrity of what they have sent you is probably not as robust as it might be, but even by what you were saying earlier there is like a slip saying, 'We have this file,' yet they thought you had it.

Ms Prowse: That was their initial reaction. We asked them to check their collection, and it took a couple of days for the explanation to emerge.

CHAIR: When did that interchange happen?

Ms Prowse: I was informed, as I said, on the 26th.

Ms Sullivan: The 26th is when we got straight back to CMC.

CHAIR: 26 February?

Ms Sullivan: Yes.

Ms Prowse: Yes, it was the first conversation.

Ms Sullivan: And they took a couple of days to actually check. We gave them more details about what was on the slip of paper because it looked like some sort of filing number.

Ms Prowse: Can I just say: sometimes it is not unusual for records to be missing and so you have to go back to the agency, ask, 'Where is it?' and it is located. But being a Fitzgerald inquiry record it got my attention immediately.

Mr KRAUSE: I notice in the file here there is a series ID 18586 et cetera.

Ms Prowse: Yes.

Mr KRAUSE: Then documents have item IDs as well. Are those series IDs and item IDs given to documents and series by the agency from where the documents come or are they given by you as the archivist?

Ms Sullivan: We do it. It is part of our archival management system. As I said, we upload the data from them. That is part of when they get their IDs attached and the series attached. If you have got one of those RAP forms it actually—maybe it is not in there. In the transfer one, which we probably have not given you, they put their records under particular series.

Ms Prowse: The series are defined by the agency.

Ms Sullivan: As an example correspondence. They put everything under correspondence. We do not check that it is correspondence.

Mr KRAUSE: So the classification of documents into certain series is done by the agency from where the documents come?

Ms Prowse: Correct, and we will accept their classification.

Mr KRAUSE: And there is a transfer document that comes when the documents are received. Does it list that categorisation and the RAP that would apply to that categorisation?

Ms Sullivan: It comes with the RAP. They come together.

Mr KRAUSE: They come together.

Ms Sullivan: And we apply that at that time. When we have the RAP we apply it and then we send a transfer report back to the agency to say, 'This is what we have received from you.'

Mr KRAUSE: So, if there are documents within a particular category which has a RAP of 65 years which should by rights have a RAP of 100 years or 20 years, it is not your responsibility to govern that at all? It sits primarily with the agency?

Ms Prowse: Under the Public Records Act that authority sits with the agency. I have no statutory obligation to set that requirement.

CHAIR: You said to us earlier that you received the Fitzgerald documents in four bundles, for want of a better word.

Ms Prowse: Four transfers.

Ms Sullivan: That is four separate times.

CHAIR: We will assume for the purposes of the discussion that you are now the custodian of those four bundles of documents.

Ms Prowse: For the entire Fitzgerald collection that is in my custody at Runcorn, not four bundles. The collection is around 19,000 items.

CHAIR: But you received them for triage?

Ms Prowse: Yes, correct.

CHAIR: So you have now got that document in your hand. What has happened after that?

Ms Prowse: Well, we then refer perhaps to this document, Madam Chair, if I may. So the restricted access periods apply in the catalogue. The first restricted access period—even though the first transfer came on 1 August 2007, we did not get a form from the CMC until September 2010. So all the records of mine were closed and locked down anyway, I can assure you of that, but it took the CMC three years to get us the documentation—I think because they were not going to immediately open anything. But that is unusual. Normally it should come around the time of the transfer.

Ms TRAD: So their RAP paperwork did not come?

Ms Prowse: For three years, yes.

Ms TRAD: From 2007?

Ms Prowse: If I may, through you Madam Chair, just point the committee members to the dates of the transfers we have put at the bottom of this to make it a little bit easier. And the date of the RAP transfers are across the top of this. The RAPs when they were applied and changed and changed are across here, but the dates of the transfer are at the bottom of this document.

Mr DOWLING: Just on those RAP dates, could I ask what may end up being a silly question. The last two items—the transcripts from Greg Early's shorthand notebook and the transcripts of hearings—it says across in the first RAP 'Applied September 2010, 65 years, no exceptions'.

Ms Prowse: Yes.

Mr DOWLING: It also says it was applied, in the very last column, 6 March 2012—that it is 65 years, no exception. Yet at the later date of September and June 2012 the RAP applied is 20 years.

Ms Prowse: As you have heard.

Ms Sullivan: Yes.

Mr DOWLING: Those two sets of documents have had their time lines cut from 65 back to 20.

Ms Prowse: Correct.

Mr DOWLING: They are now quite legitimately open for people to see?

Ms Prowse: Yes, correct. If I can perhaps refer you to the top strand of this chart. We received in writing, which we will table through you, Madam Chair, the restricted access notice, the legal direction under the act. The first direction was in September 2010. In February 2012 the CMC on its own accord decided to, under section 19(2) of the Public Records Act, change its restricted access notice, which it is legally entitled to do. Then it changed again and again and again and then recently. This chart we have put together to help you understand how those changes came into

effect. So once the restricted access period for the record ends, under the Public Records Act I must provide access to the record because I am the custodian, not the owner, and the owner sets the restrictions.

Mr DOWLING: Why are they not done date-coded so that the most recent amendment is in the right-hand column?

Ms Prowse: Sorry, I don't understand the question. I beg your pardon?

Mr DOWLING: It goes February 2012, June 2012, September then back to March.

Ms Prowse: I beg your pardon. That should be 13; we have made a typo. I beg your pardon, Mr Dowling. We have made a typo.

Mr DOWLING: I was trying to work out why they are out of sync.

Ms Sullivan: Sorry.

Ms Prowse: I don't know how we did that, I beg your pardon.

CHAIR: Can we note on that major graph, the right-hand two columns: RAP applied 5 March should be 2013, not 2012; RAP applied 6 March should be 2013, not 2012. Is everyone clear? Ian, you have a question?

Mr KAYE: Just on the information you have provided to us, which was with the email from Sophie Turner on the front, looking at the restricted access notice change requests I notice that all the forms are signed with the exception of the one dated 2 February 2012. Is there any reason why there is no signature on that?

Ms Prowse: I will just refer to the document, if you do not mind, please.

Mr KAYE: Sure.

Ms Prowse: If I may ask a staff member to come forward and provide the explanation to you.

CHAIR: Absolutely.

Ms Prowse: Please come forward.

CHAIR: When a new person comes forward, because Hansard is recording, would you just mind giving your name and title, please.

Ms Hawkins: My name is Elizabeth Hawkins. I am Manager, Archival Collections at State Archives. Now, thinking with that particular one, what Peter would often do—because I had the dealings with Peter—is email me a copy of the forms and then say, 'I'm sending you the hard copy.' So I would suggest what has probably happened in this case is that he has emailed it—and that is what has been on our electronic system—and instead of going back to the hard-copy file and copying the original document for you, somebody has just copied the email, because it was quicker and easier.

Ms Prowse: So are you saying we have a signed copy?

Ms Hawkins: I would suggest—I say very strongly we would have a signed copy.

CHAIR: Excuse me, have you got a signed copy?

Ms Hawkins: I think—I would have to look at the records, but I would assume that we do. I would have to double-check that.

CHAIR: Would you send us a copy of that signed record?

Ms Hawkins: Yes, I can do that.

CHAIR: And advise us if there is not a signed record?

Ms Hawkins: Yes, I will let you know that.

Ms Prowse: Through me, if that is okay, yes, of course.

Ms Hawkins: Yes, we can do that.

Ms TRAD: Is this transfer form the complete form?

Ms Prowse: That is the restricted access.

Ms TRAD: It is a transfer. That is the restricted access—

Ms Hawkins: That is not a transfer form; that is simply indicating the series, not all the items within the series. So what we have done is, we have all the series, we have a number of records in each series—some of them up to 7,000, 9,000—and we have sent, in this case Janet Legg, who

was the authorised officer at the time, a form and said, 'These are all the series that we have got. What restricted access period do you want?' and she has used that to apply that period. Now, when all of those were applied, we sent an electronic copy of actually every item—a list of every item—to them. So we have that.

CHAIR: Elizabeth, can you tell me, in the letter dated 3 September 2010 there is an amendment made to the series. Who made that?

Ms Hawkins: They actually made an error, which we discussed with them over the phone, in the number—the CMC—and we corrected it and I corrected verbally with Janet Legg at the time and we also did that later, because that error seemed to perpetuate itself with various other correspondence. You will find one of the emails from Peter saying, 'I acknowledge that that is not the number. We need this other number.' I do not know if that is in this particular bundle, but, again, I can get that for you.

CHAIR: If you would, please. That would be greatly appreciated.

Ms Hawkins: That is fine. It is an email that I have.

Ms TRAD: Sorry, could you go back and step through that again?

CHAIR: This is in relation to the letter of 3 September that you are referring?

Ms TRAD: Yes. So you received a restricted access change notification and it is unsigned on my copy.

Ms Hawkins: Okay. Now, this is the one 3 September 2010?

Ms TRAD: 2010, yes.

Ms Hawkins: That one—that is when they were actually setting the RAPs for the first time and it was accompanied by the letter—that is the cover letter—which is signed.

Ms TRAD: They have been changed?

Ms Hawkins: No, that was the first time that ever a RAP had been set. We had been doing some backwards and forwards with them for some time requesting one. We had not received it and then in September we finally got that one.

Ms TRAD: I understand. So this is the original restricted—

Ms Hawkins: The original, yes.

Ms TRAD: I understand. So then the change.

Ms Hawkins: The change—the first change was made in February 2012. Other than that, it stayed the same.

Ms TRAD: And it is unsigned?

Ms Hawkins: That is because it is attached to a letter that he has written giving all of those details that he has signed.

Ms TRAD: That he has signed.

Ms Hawkins: And then the form is attached. Again, there may well be a signed copy—original—on our file; I will have to check. But certainly, the letter we would take any notification, it does not—I mean, this is an administrative thing we put on this form. As long as he as the authorised officer—and we checked that he is the authorised officer—has said, 'This is what I want to happen,' that can happen. This is just administrative convenience, having it on the form.

Ms TRAD: Sure. Just in relation to this, though, I just want to clarify: this is not the complete restricted access notice, though?

Ms Hawkins: No, that is simply changing those particular series. The one from September 2010—from Janet Legg—is the first full restricted access period. Then in February 2012 Peter Duell changed the restricted access period on the particular series that he has noted there.

Ms TRAD: It is just that the change that he has requested on this series includes a file or a series that is not included in the original transfer.

Ms Hawkins: Yes. He would not have changed—I would have to check that one out, but whether there is just something that has been missed off. We had 17 series of records relating to Fitzgerald.

Ms TRAD: That is right. But there are only 16 on here—

Ms Hawkins: On this one?

Ms TRAD: On the original.

Ms Hawkins: The original. Okay. I would need to go back and check that. I am sorry, I do not have that information.

CHAIR: And will you provide that to us, please?

Ms Hawkins: Yes, I will.

Ms TRAD: Can I just ask as well, could you just step through—actually, there are 17—no, I lost a page. I have just found it.

Ms Prowse: Okay, thank you. That is good.

Ms TRAD: I just want to know how people—researchers et cetera—come in. There are obviously journalists who come in, researchers who come in. Can you just explain how that happens?

Ms Prowse: May I call the head of public access, Mr Niles Elvery?

CHAIR: Absolutely. I know Janet has just introduced you, but if you would introduce yourself again that would be wonderful.

Mr Elvery: Niles Elvery. I am the Manager of Public Access at Queensland State Archives.

CHAIR: Thank you.

Mr Elvery: Can I just ask you to repeat the question?

Ms TRAD: Sure. I understand how students who are pursuing a particular topic would want to come to the State Archives and have a look through information. But how do journalists? I am just wondering about the spontaneity of the request to come in and inspect files. Do they come in regularly to check the dates on the restricted access period? What happens?

Mr Elvery: I am not aware that they would undertake that sort of process. My understanding is that they would come in like any other researcher. They have a topic they want to research; they search our catalogue, which is available on the website. So they would go through that process and identify maybe what they want at the time. There might have been something else happening in the media that has attracted their attention to the fact that they might want to be undertaking research.

Ms TRAD: So can you log on and be an interested party to a particular file with the State Archives and receive electronic notification or changes to RAPs?

Mr Elvery: No.

CHAIR: And I have a follow-up question. If the RAP has that document as not accessible, it is not on your catalogue then, is it?

Ms Prowse: No, it is. In archives around the world the public have a right to see the catalogue record but not necessarily a right to see the record. They have a right to know the record exists but not necessarily the record, unless the client asks us to not expose the catalogue record.

CHAIR: And you may have said this so I apologise. When they go into your website and the scenario is, 'I want to look at the evidence of a certain person in Fitzgerald,' can I search to that degree on your website even though the RAP says 'not accessible for 20 years'?

Ms Prowse: If the metadata exists for the catalogues for the search.

CHAIR: It would acknowledge that the data is there?

Ms Prowse: Yes, and the metadata for the Fitzgerald inquiry collection came from the CMC.

Mr Elvery: And at the time those records were open the metadata was all available on the website.

CHAIR: And is that what this is? It is metadata, the little printing—the little description—

Ms Prowse: Correct.

Mr Elvery: All the title—the file tiles are as you see there on the list.

CHAIR: So I come in and I type '...' it will pop up as, '...' and that is all I can read.

Ms Prowse: That is all you can read.

CHAIR: That is what I can read if a RAP has precluded access to that document.

Ms Prowse: Yes.

CHAIR: If the RAP allows for public access, I can then get access to that?

Ms Prowse: And would you like to know how, then? I will ask Mr Elvery to explain that process.

Mr Elvery: Thank you, Janet. The client can, as you say, search the catalogue from wherever. They can find that we have the record in our collection. What they need to do then is come into the archives to gain access to that record, or if it is open they can actually write or email to us and ask for a copy to be sent to them. From our records we understand that that has not happened with these.

CHAIR: It has not happened?

Mr Elvery: No, but the client can come into the public search room and get a copy of that file. They can access the file in the search room,

CHAIR: So they can access—irrespective of the RAP status of a document, the metadata is available online. You have said that if it is an open document they can either request for the document to be copied and sent to them or physically come into the facility and look. You have said that nobody in relation to the Fitzgerald documents and in relation to our concerns currently has had paperwork copied and posted.

Ms Prowse: Correct.

CHAIR: But people have obviously been into your facility and looked through. When they are there, is their review of the documentation supervised or are they at liberty to take copies of whatever material—whether it is by phone, by written data or by photocopy?

Ms Prowse: I will ask Niles to help me answer that, but I will just give you a bit of context, if I may, in answering it. So it is not like a library. I am not sure if any members of the committee have been to State Archives. The reading room is not like a library where you can browse the shelves, take something from the shelf and flip through it. The reading room is like this: you request the item, the item is brought out and there is a reference archivist who supervises the reading room. You may ask for a copy if it is open. You are entitled to ask for a copy. We charge fees, like libraries and archives do, for copying. Not all people live in Brisbane or can come to the reading room in Brisbane to sight the item. In archives around the world people can ask for a copy and pay for a copy to be sent to them. So that is not unusual. So, sorry, the second part of your question: could you repeat that?

CHAIR: So in this instance, you have said that no document has been copied and sent out on the Fitzgerald stuff. People have come to the archive. They have requested copies of certain series and they have sat in the reading room—

Ms Prowse: And inspected the record.

CHAIR: Can you clarify for the committee whether that material was copied either by them electronically with phones?

Ms Prowse: When a client wants a copy of a record—a researcher—they cannot use the photocopier themselves. We do the copying for them, and that is because some of the records are rare and fragile and we have different types of copying machines. It might copy from above; it may not be flipping it and putting the lid on. We have to protect the record. So Niles has a team of staff that do the copying. No-one has; our records show no-one—of the 19 individuals that did access Fitzgerald inquiry material, we did not copy any item for them. Now, did they use their mobile phone or digital camera in some—I think in two cases we ascertained that we were aware that two journalists did use either—was it a mobile phone or a—

Mr Elvery: A mobile phone, I think.

Ms Prowse: A mobile phone to copy, using the camera on a mobile phone. But how much they copied from the records that were brought out we could not tell.

CHAIR: And you know that they used the phone because you observed it?

Ms Prowse: Not me. Who did? The reference archivist on duty—

Mr Elvery: One of the reference archivists would have seen it, yes.

Mr DOWLING: So it is not unlawful for them to do it?

Ms Prowse: It is not unlawful and it is not unusual. We can provide, tabled through you, Madam Chair, a copy of the digital camera policy. Every archive has a digital camera policy—how to use a digital camera, how and when you can use a digital camera. Before you could only ever
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use a photocopier, but technology changes. We were one of the last archives in Australia to actually allow the use of digital photography in the room and we have a guideline on what is appropriate and not.

CHAIR: You said that staff observed two journalists taking copies, either with phones or digital cameras. Was that recorded, that observation?

Mr Elvery: No, we have no mechanism for recording and we do not—

Ms Prowse: No, we do not.

CHAIR: So it is memory on their part?

Mr Elvery: Yes. Can I just clarify the statement? I could not be sure that it was two journalists.

Ms Prowse: Was it Mr—do we say the name? Mr Thomas from the *Australian*. He had a research assistant, Emma Hart. We are not sure if she was a journalist or a cadet or a research journalist. Is that what you wanted to—

Mr Elvery: Yes.

Ms Prowse: Yes, we were not sure.

Mr Elvery: I would just like to clarify that at this point I am not sure that Mr Thomas was using his phone but one of the other staff does understand that one of the other people on the list did as well.

CHAIR: Emma Hart did, too.

Mr Elvery: Yes.

Mr KRAUSE: Do you have any idea what documents they were looking at?

Ms Prowse: We do have a list of what people saw and I would like to table that through Mr Rogers, which is this list.

CHAIR: Is that a three-page document?

Mr Elvery: Yes, three pages. Yes, that is right.

CHAIR: We will accept that as a tabled document. You said Hedley Thomas did not photograph, you did not think; Emma did—

Mr Elvery: Yes.

CHAIR: But you think another journalist did. Do you know which journalist?

Mr Elvery: Can I just have a quick look through the list?

CHAIR: Sure. We will accept that this is anecdotal, but we appreciate the knowledge.

Ms Prowse: We have security cameras on-site but not in the reading room. The archival staff provide supervision.

Mr KRAUSE: It is part of your policy to allow people to take photos of documents?

Ms Prowse: Correct. We were one of the last government archives in Australia to issue a policy. So we are in alignment with everyone else.

CHAIR: Did you find the person?

Mr Elvery: Yes. I think the name is '...'. Partway down the second page is where her name is.

Ms TRAD: Mr Elvery, do you keep records of people who request items but they are denied because of restricted access?

Mr Elvery: Yes, we do. Can I just clarify? We only keep the record if they have put that request in through the catalogue system. The way the process—

Ms TRAD: The online catalogue system?

Mr Elvery: Yes.

Ms TRAD: What about if they come in?

Mr Elvery: We would not have a process of recording that request.

Ms Prowse: If I may add to that, it is the Archives One collection management system recording it, not us sitting there recording it. It is recorded because you hit—

Ms TRAD: It is automated.

Ms Prowse:—‘request’ and it is automated. So it captures the request.

Ms TRAD: To my mind, it is very interesting that three weeks after the restricted access was amended there is this flurry of activity. It does seem to be quite intense. What I would like to know is: was there that intensity prior to the release, prior to the restricted access being changed? If there was—obviously there is a lot of interest in the Fitzgerald inquiry—

Ms Prowse: It is hard to answer that question, if you do not mind me saying. I think it is a collection many people would be interested in. There are other records on the Fitzgerald inquiry in libraries—private collections. The John Oxley Library and the Fryer Library at UQ contain private records relating to the inquiry.

Ms TRAD: Sure, and no-one is disputing that. It is just very interesting that very soon after the change to the records had been issued by the CMC there seems to be quite an intense flurry—

Ms Prowse: There is a question for the CMC: had they had conversations or communication with journalists or other people wanting access? Why did they change the restricted access period in the first place?

Ms TRAD: The information on the collection—online database—that does not have the restricted access or when the records were accessible to the public? Is it codified in a way that would make it easy for people to understand?

Mr Elvery: Yes. If someone does a search and you get up the information relating to the particular item, there is an access category information panel that comes up and it will say if it is restricted for 100 years, 50 years or 30 years.

Mr KRAUSE: Or if it is available?

Mr Elvery: Yes. No, what it will say is the time period that the restriction applies and it is up to the client then to say—

Mr KRAUSE: To figure it out.

Mr Elvery: To do the mathematics and work out whether it is open or not.

Ms Prowse: Even if you request ‘Closed’, we will not bring it out if you have done the mathematical calculation wrong.

Ms TRAD: I would be interested if the State Archives could have a look to see if there were online requests for information prior to the RAP being changed.

Ms Prowse: Madam Chair, may I seek leave to ask: is that relevant to the purpose of this inquiry?

CHAIR: Yes. We are casting a broad net, simply because we are trying to get an understanding of what occurred—whether there were precursors to the various changes in RAPs and also obviously the implication of those changes, particularly in light of the implications for people who, in good faith—

Ms Prowse: From the first collection that came in on 1 August 2007—do you want to see if our IT provider can run that search? I am not sure what it will show or how far back the records are able to show. I am happy to run the search. I am not sure how extensive a result it would show.

Mr KRAUSE: The time before the RAP change perhaps.

Ms Prowse: Just before the RAP?

Mr KRAUSE: Or 12 months before perhaps.

CHAIR: Is 12 months enough?

Mr KRAUSE: To give an indication of—

CHAIR: It will show a pattern of behaviour, if nothing else, in terms of interest in the documents prior to the RAP and interest around and post the RAP change.

Mr KRAUSE: I actually have another question. I am sorry, I am going back to what I mentioned before. I noticed on this document here there is a title for each of the series. Is that title given by the agency where the documents came from or is that given by the Archives?

Ms Prowse: No, by the agency, the CMC.

Mr KRAUSE: So you had a bundle of documents or a series of boxes and they already had a title assigned to them?

Ms Prowse: Correct.

Mr KRAUSE: Is that the same case for the description of the documents?

Ms Prowse: Correct.

Mr KRAUSE: The title is already given by the agency? So is the metadata description given by the Archives or by the agency?

Ms Hawkins: We get basic information from them. So the documentation—that title, as Janet says, yes, we get that. We get obviously some information about what is in the record. But that really detailed description that we do, if you look on our catalogue—that is the staff looking at the records and working it out. We go with the basis of what we are given and then we look at the records and flesh it out so that it is as useful as possible for the researchers.

Mr KRAUSE: So these descriptions are manually typed in by—

Ms Prowse: The Fitzgerald collection, if we go to this list—

Ms Hawkins: It depends where you are looking. If you are looking at the item—

Ms Prowse: That is what I am saying. We did not write these.

Ms Hawkins: We did not provide the item list. Where it says ‘ “...” ’—we do not provide that; that comes directly from the agency. What we provide is the series, what sits above that. So the documentation series—we would go and say, ‘In this series you are likely to find these sorts of records. This is how they are arranged and described.’ But that list, that is exactly right; we do not provide that.

Ms Prowse: That is what I was saying.

CHAIR: What you are calling the description—

Ms Hawkins: The description of the item we do not provide. The description of the series we provide.

CHAIR: I have this in very small print. Did you see the *Australian* newspaper on the 6th—yesterday? On the second page it had a document, a photocopied page. Was that a photocopy of records from yourself or part of the Fitzgerald collection?

Ms Prowse: I did read part of the article. I did not recognise that. I will have to turn my mind to that if I may take that on notice and come back to you.

CHAIR: That would be great.

Ms Prowse: Is it a record in Queensland State Archives custody?

CHAIR: No, is it a document created by State Archives or is it a document that is part of the Fitzgerald collection?

Ms Prowse: I will have to come back to you.

Mr KRAUSE: The reason I ask is that one particular series ID—18651—has been accessed quite a lot recently and it is just entitled ‘Documentation’. But when you look at some of the item descriptions it probably should have been, perhaps we could venture, named a little bit differently. I want to know where that—

Ms Hawkins: That comes straight from the agency. Those listings do come from the agency.

Ms Prowse: It might be a question to put to the CMC as to why they describe their records in that way.

Mr DOWLING: I have another question. In the two applications for the RAP—that is the RAP application to change—there are two documents that have been submitted by Peter Duell, one dated 5 March and one dated 6 March 2013 and they reference three series between them. There is 18856 and then there is 18501 and 18586. Why were those three series singled out just in the last five days essentially?

Ms Prowse: In the last five days?

Mr DOWLING: What is the date today? The 7th. These two documents—

Ms Prowse: Basically you could take it as a notice to close the collection.

Mr DOWLING: In essence?

Ms Prowse: In essence, yes.

Mr DOWLING: I am coming at this in bits and pieces. It is a letter from Elizabeth Hawkins to Peter Duell going back to 8 June 2012, so almost a year ago. In that letter it lists a number of documents for which they want to change the RAP and they list the numbers, one of which is 18651. In the second paragraph of that same letter it says that they are to remain not for publication, for inspection for 100 years. So on 8 June, as I understand it, that file 18651 was to be a part of the files that were not to be seen for a hundred years. Is that correct?

Ms Hawkins: Not entirely. Most of the series had been opened up previously to 20 years and then a number of files had been identified that were labelled as confidential and I had a conversation. Yes, this is saying these particular items within this series—so not all of them—are to be closed and the notification removed from the public website so that the public could not see that those records existed.

Mr DOWLING: Bearing in mind that that is the letter from yourself to Peter that those files be closed, how is it that series 18651 was inspected all the way through from March 2012, right through to as recently as this last week?

Ms Hawkins: It was only those particular items. The exceptions that we talk about here were the only ones that were closed. The other records in that series, in 18651, were in fact still 20 years, so they were open. It was only these particular records that had been noted the exceptions in the letter that Peter has written.

Mr DOWLING: So it did not close the series?

Ms Prowse: No.

Ms Hawkins: No, not the series, just those particular items within the series, and that is something that is quite common.

Ms TRAD: Ms Hawkins, who identified that there were confidential documents?

Ms Prowse: Within the series?

Ms TRAD: Yes.

Ms Prowse: It would be the records' owner.

Ms Hawkins: I think it was the records' owner. I think it was raised from them, but I cannot remember exactly. I have had lots of conversations with them about it. I think, though, somebody went to them and said, 'This is open,' and they looked and said, 'That shouldn't be open.'

CHAIR: Was that about May last year?

Ms Hawkins: Yes.

CHAIR: That was Krosch.

Ms Hawkins: That may well be the case, yes.

CHAIR: There is a repeated issue in letters from the Crime and Misconduct Commission to you, one to Janet Prowse and one to Elizabeth Hawkins, dated 3 September 2010 and 3 February 2012. On both occasions series 18651 is in the formal letter and it is subsequently changed to 18658 in both instances. Are you saying—either of you or both of you—that the error was identified by the CMC and they contacted you to make that change?

Ms Hawkins: No. The error identified in that series number was identified by us. I have an email trail between myself and Peter Duell saying, 'This is what you've said, but that doesn't make sense,' and he has corrected it, which is why there is a later restricted access period.

Ms Prowse: Were we to supply those emails to explain that—

CHAIR: The series of documents I would appreciate having.

Ms Prowse: Yes, that is fine.

CHAIR: So you received the letter from the Crime and Misconduct Commission. You determined that there was an inaccuracy or inconsistency and contacted them back—

Ms Hawkins: Yes.

CHAIR:—and on the basis of your contact to the CMC the letter was changed by yourself as a notation?

Ms Hawkins: Yes.

CHAIR: If you could send that series of emails it would be welcomed.

Ms Hawkins: We can do that.

Mr DOWLING: I still do not fully understand how you can identify a series but only parts of it.

Ms Hawkins: It is common archival practice where a series as a whole has a particular restricted access period but there are some items at item level—in most of the records they may think it is very innocuous, nothing, no problem. But there are one or two things there that are really very sensitive. So it is quite common for them to say, 'Right, as a whole, this series is open. These two items over here? No. We will close those because they are sensitive.'

Ms Prowse: I just assure you that it is common for agencies, instead of closing a whole series, to close that one document and envelope it and they will know which document they need to close. For court records in particular, judges will seal one particular item in a court case.

Mr DOWLING: It is just that within this request form it requests that the series be restricted, not bits of it. There is nowhere that I have seen yet where anyone from the CMC or the archives said, 'This document will be embargoed or closed to public access.' Every piece of correspondence, everything that people have visited or looked at just has that series number.

Ms Hawkins: I will need to go back and check the documentation, but I know that we were very careful about that. There were particular things. We can check that documentation and send it through to you because it was something we were very aware of.

Ms TRAD: Can I just ask about the first column that says 'Research' and what the acronyms stand for?

Ms Prowse: I might ask Niles to explain the acronyms.

CHAIR: So there is an acronym ACE. What does that stand for?

Mr Elvery: ACE stands for academic. Can I just clarify that when clients come into the public search room we ask them to identify the type of researcher they are. So they might be a family historian, a local historian or an academic. We ask them to identify that. So that is what that first column refers to.

Ms TRAD: And PUB is a member of the public?

Mr Elvery: Correct.

Ms TRAD: And QSA is the Queensland State Archives?

Mr Elvery: Queensland State Archives, yes.

Ms TRAD: Academic, public—what does the next column mean?

Mr Elvery: The next column is the type of research they are actually doing. Even though they are an academic, they might be doing transport research or something like that.

CHAIR: So LEG is legislative?

Mr Elvery: Legal. Family history, local history—there is another in there as well.

Ms TRAD: What does MED stand for?

Ms Prowse: Media.

Mr Elvery: Correct, yes.

Mrs MILLER: So you rely on them self-identifying?

Mr Elvery: Very much so.

Ms Hawkins: I have come up with the answer to your question while you have been talking.

Mr DOWLING: It is the item ID number that differentiates it.

Ms Hawkins: The letter received on 29 May, which has the RAP notice attached, refers to all the series except a number including 18651. But on the back of the form he has identified 18651 as one of the ones he wants to change. That is where I emailed Peter and said, 'You can't have it both ways; make up your mind'—in the nicest possible way. So he sent a letter through on 8 June. The restricted access period there does not include 18651 as the one he is changing. So he did ask in an email, which I can provide you with, to pull this one from 29 May—'Please remove that. It is not valid. The valid one is the one from 8 June.' We have an email trail about that.

CHAIR: And you are sending us that?

Ms Hawkins: Yes, I am sending you that.

Mr KAYE: I go back to the metadata. Just so I have this right, in the file that the CMC sends across if they have in their metadata 'Surveillance of "...", suspect, drug dealing' that is what is going to be there for people to search?

Ms Prowse: If that is the way they choose to describe the record, if they have not asked us to hide it in the catalogue or to mask it, yes. We have not sanitised anything, no. They are aware at the point of transfer that we will use their listing in the metadata record in the catalogue.

Mr KAYE: Just some clarifying points. In relation to the restricted access notice change requests, are there any other methods by which that is done? We have already had email mentioned?

Ms Hawkins: We expect something in writing. Whether it is a form, which is our preferred way because it is easier, or a letter signed by the authorised officer, that is fine. If we take it as an email, we ask that they follow it up with a letter immediately so that we have proof positive that it is an authorised change.

Mr KAYE: Just briefly on the slip of paper that was in place of that file that was missing. Was that on CMC letterhead?

Ms Prowse: The slip of paper?

Mr KAYE: Yes.

Ms Prowse: It seemed to be a yellow slip of paper with a handwritten reference number on it. It did not have a CMC letterhead.

Mr KAYE: So it could have been from the CJC time?

Ms Prowse: It could have been. I am happy to talk about that issue if you would like, Madam Chair.

CHAIR: Yes, please.

Ms Prowse: So we tried to understand a bit about the Fitzgerald collection. Off the top of my head, the Fitzgerald Commission of Inquiry closed around June 1989 and the government of the day passed legislation—I think the CJC Act—on 31 October 1989. On 1 November the CJC was established under law. The CJC owned the records of the Fitzgerald inquiry. They became owned by the new entity. It was another machinery change. The CJC—I do not have the date—became the CMC. It has always owned the records. It is our understanding, although you would need to check with the CMC, that some of the staff from the inquiry ended up working at the CJC and have remained as the entity changed again.

We have only understood this in the last few days. When the CJC inquiry closed and the records transferred to the CJC, some of the investigations were still ongoing. We understand, although you will need to get it confirmed by the CMC because it is just hearsay, that they removed the records knowing they needed a further investigation. We have had a conversation: 'Was that lawful? Was that best practice recordkeeping?' That was the recordkeeping of the day. It is not unlawful, because you are the owner of the record so you can manage the collection in the way that you want. Today, in commissions of inquiry best practice recordkeeping would say 'Leave the collection in situ as a whole. The owner may copy or access but not remove from the original order the record.' Some records were removed, apparently, and replaced with this slip of paper with a reference number which is a CMC or CJC number perhaps.

Ms Hawkins: I do not know. It referred to a particular series of files.

Ms Prowse: In the dialogue between my staff and Mr Duell and his staff in the last couple of days, Mr Duell has I think provided emails to say that the CMC or CJC had removed the files; they never came to the State Archives.

Ms Hawkins: Certainly it was a conversation which I recorded. I sent an email relating to that. I honestly cannot remember if he actually put it in writing because that is when they started to change RAPs and things. I think he was moving onto the issue of changing the restricted access periods. They certainly acknowledged it verbally.

Ms Prowse: So the files had been removed in that way. They never came to State Archives. So why we still have a catalogue record of a record we did not have is an issue for us that we will have to address. What do we do about that? We have not reached a landing on that yet.

Mr KAYE: So there is no way of telling whatsoever when that file—

Ms Prowse: No, we cannot. That is a question for CMC, if you do not mind me saying.

CHAIR: Just a follow-up question. So the descriptor which is determined by the CMC has some notation that these files are confidential. Do you have an access spreadsheet for confidential files?

Ms Prowse: No. If you allowed anyone to label their record they would label confidential on everything. There is no 'What is the definition of confidential?'

Ms TRAD: I guess just in terms of understanding, these are all the Fitzgerald files that have been accessed to date?

Ms Prowse: Correct.

Ms TRAD: So some are fine but should not have been released is my understanding?

Ms Prowse: We had a lawful direction under a section of the act to release—

Ms TRAD: You had been requested to release documents that should not have been released?

Ms Prowse: Yes.

Ms TRAD: Is it possible to highlight on this spreadsheet which of those files should not have been released?

Ms Prowse: No.

Ms TRAD: It is not?

Ms Prowse: Not by us. We do not do that. I have no statutory function or obligation to provide advice to any client as to what they can or cannot look at or can or cannot release.

CHAIR: The committee is trying to get an understanding. We now have a spreadsheet—we will get it done, so do not worry. We are—

Ms Prowse: The records owner would be best placed to do that piece of work.

CHAIR: So what we are trying to say is that these are the files that have been accessed. What we will have to do is dredge through and have a look at the files or get the CMC to identify which files have now, in hindsight, been realised were sensitive and have been accessed and should not have been accessed. So you are saying the CMC, as the owner of the file, is best placed to do that?

Ms Prowse: Yes. And may I add a piece of information?

CHAIR: Yes.

Ms Prowse: The CMC is at State Archives this afternoon reviewing every file and taking a copy of every one of those documents to make an assessment. I am not sure exactly what they will do once they have that, but they are on-site and we are providing assistance to them.

CHAIR: The CMC has advised us that there are around 4,000 files—and that has been in the media—of the original Fitzgerald files that were moved, as per this process here, from the original file documentation, the commission of inquiry documentation, into their own file.

Ms Prowse: Into the CJC.

CHAIR: Into the CJC files for further action by the CJC. The remaining files then are purported to have been moved in four chunks to the archives for safekeeping. And around—again, it is in the public arena—4,000 documents, it is believed now, may have been destroyed at the CJC or CMC now. Because those original documents never, ever made their way to State Archives, any breach rests with the CMC Act, not the QSA Act; would that be right?

Ms Prowse: Breach in terms of disposal or unlawful disposal?

CHAIR: In terms of destruction of records.

Ms Prowse: Yes. Can I answer by providing some context first?

CHAIR: Sure.

Ms Prowse: So a breach of disposal would be under the Public Records Act. The Crime and Misconduct Act 2001 does contain one record class which I have no control over—surveillance records—so put that aside. It is not a breach under the CMC Act. We have put together a document—and I will ask Mr Rogers whether I can table this document for you. May I suggest that the question you need to ask is: what retention and disposal authority did the CMC or the CJC or

the inquiry have over that 25-year period? So we have prepared for the committee's view the authorised retention and disposal schedules. I will just talk to this for a moment, if I may. I have got copies of each of the schedules for you and I will explain it because it is tricky.

The first three schedules were published under the then Libraries and Archives Act by the then State Archivist. The last two I authorised under the Public Records Act because that came in 2002. The first one was an approval for the Criminal Justice Commission, the second one was for the Criminal Justice Commission and the third the same. The fourth one was for crime and misconduct Commission and the other one a specific schedule for the records of the Fitzgerald inquiry which we signed pre-transfer the first transfer. So that gave me confidence that they were permanent records coming in, not temporary records that we were going to store for someone.

When a record goes missing you ask: should it have existed; what was its retention period to start with? Not all records are permanent and kept permanently. For commissions of inquiry today a lot of the records generated are permanent records, but they are not necessarily all. When the Fitzgerald inquiry ceased to exist, the CJC took custody and ownership and took control of the records. So they were the owner so they could manage them because they owned the records.

I have had to go back to files the last couple of days to collate this information for you. The State Archives did issue a retention and disposal schedule—it has its reference number on the left—to destroy duplicate copies of Fitzgerald transcripts. The second one was issued in 1996 to the CJC for intelligence division files.

CHAIR: Janet, could I just ask you to wait until the members get a copy of what you are referring to.

Ms Prowse: Yes, sure.

CHAIR: It is very difficult. Can I go back to a question. You have talked about the Public Records Act.

Ms Prowse: Yes.

CHAIR: The Fitzgerald inquiry records, say, are a block of records. You received the majority but not all.

Ms Prowse: I do not know if it is the majority.

CHAIR: You received your portion—

Ms Prowse: Correct.

CHAIR:—although not necessarily all. The CJC and then the CMC retained ownership of a number of records—

Ms Prowse: The CMC, because the CJC no longer exists.

CHAIR: The CJC and the CMC have retained a number of records—

Ms Prowse: Which might be Fitzgerald inquiry records.

CHAIR:—and I am fairly confident that some of them are original Fitzgerald inquiry records. If that is a given—if the CMC had in its possession original Fitzgerald inquiry documents and they subsequently destroyed them, would they be in breach of the Public Records Act?

Ms Prowse: Today—it depends. It depends on the retention period for them. The schedule for the Fitzgerald inquiry records—I published a schedule pre the transfer, the first transfer in August, which we both signed and agreed. So if they are sentencing them against the last schedule, which basically makes defunct the previous schedules, once I issue a schedule the previous ones that relate to it no longer are relevant. It depends when they disposed of them. And not every record—some records are temporary. So they may have deemed them to be temporary records and they may have had an authorisation.

CHAIR: And who would have given them that authorisation?

Ms Prowse: The former State Archivist, because they had a schedule in 1994, October. You will see on the list January '96, May '97. So we asked ourselves: could this be a case of unlawful disposal? At a glance, when you actually unpack all of the existing authorisations over that time period since 1994, it may very well not be.

CHAIR: What about if it was in 2007?

Ms Prowse: What date in 2007?

CHAIR: We do not have a date.

Ms Prowse: I do not know. Is there a claim? I have not received any advice.

CHAIR: No, we have not got—we are still gathering information and that is part—

Ms Prowse: Our understanding from Mr Duell is that some of the destruction of the files which were removed, that the CJC held in its custody, happened in the 1990s. Is that correct? May 1996, we understand from Mr Duell. I am not sure which authority, whether it was the October '94 or the January '96 disposal authority. Was it the January '96? Under the January '96—okay, so the CJC had authorisation in January 1996 to dispose of some records. It was a lawful authority at the time under the Libraries and Archives Act.

CHAIR: I am conscious of time for everybody, because we do—

Mrs MILLER: Can I just make a comment here. I think Peter intends to cancel Ethics.

Mr DOWLING: I am going to defer our meeting, yes.

CHAIR: Ladies and gentlemen, I am going to call a 10-minute recess.

Proceedings suspended from 1.38 pm to 1.57 pm

CHAIR: Ladies and gentlemen, we will resume the hearing. We have had a short break and have had a discussion. The committee does have some time imperatives in the chamber. Prior to the 2.30 resumption of parliament, we do have some matters to consider in relation to this. Could I put upon each of you that we will suspend the hearing and then resume the hearing at a later time? I cannot give you a definite time, but I appreciate that Ms Prowse has given me her mobile number. We will call you to advise of the resumption of the hearing. I also understand that you are under time pressures in that you need to pick up your car by five o'clock.

Ms Prowse: If possible. We can ask the building to remain open. It is just that a staff member lives on the Gold Coast and it will be hard to get home. It is 40 minutes to drive to Runcorn and then—

CHAIR: We will certainly hope to have you out of here by then. We will bear all of those things in mind.

Ms Prowse: Thank you.

CHAIR: I suspend the hearing from 2 pm. We will resume the hearing taking evidence from you after we have called you.

Mr WELLINGTON: Chair, as an indication, do you think the committee is likely to resume at a quarter to three?

CHAIR: Yes, at a quarter to three or three o'clock.

Proceedings suspended from 2.00 pm to 3.25 pm

CHAIR: Thank you again for accepting what has been a fairly unpredictable afternoon. The committee has met and discussed a way forward and what we would like you to clarify now is, over the hearing previous to the break you talked about providing us with some additional information that was identified as potentially being able to help the committee. If you could give us a timeline on that that you think you might be able to provide it in—provide all the information to the secretariat. Can I ask—and this is a broad net to cast—in accessing and considering information at the archives or elsewhere, if you identify information that you think may assist this committee in its determination, we would ask that you, of your own initiative, forward that information to us.

Ms Prowse: Yes, Madam Chair, we will do that.

CHAIR: And at this point in time, is there anything else that you feel—I am sure you have had a chat over lunch—that we need to know?

Ms Prowse: I think we have covered the issues. I was served the summons at 7.30 last night. We have been in early today and discussed what issues you might like to raise and what documents. We had very little time to prepare, but we have prepared what we believe were the issues. We knew you would like to have the names of the people who accessed the information. We have supplied that under the authority and protection of the summons. That was 19 individuals. It is on the list. We also have another document with the home addresses of those 19 individuals should the committee or police or CMC require those.

CHAIR: We would ask that be provided.

Ms Prowse: I am able to table that now. Excuse me for one moment. Do you have it to table with Peter, please? I did table, just before the break, the retention disposal, which I understand will take a while to read and understand. I am happy at any other point to answer any questions in that regard or provide any additional information, through Peter.

CHAIR: Peter or Amanda.

Ms Prowse: Or Amanda, yes, thank you.

CHAIR: Again, I reiterate: if you think of anything that you believe will assist the committee, we would value that. We are wanting to be as well informed as we possibly can be. I would remind all of you who have appeared that this is a confidential hearing and that the material that we have discussed remains confidential to this hearing. I would also remind you that you may be called again in the course of our investigation. Can I thank you for being as responsive as you have been. You have not had long and neither have we. We appreciate your forthrightness and your candour.

Ms Prowse: Thank you.

CHAIR: We look forward to working with you again.

Ms Prowse: Thank you, Madam Chair.

CHAIR: Hopefully under less stressful circumstances.

Ms Prowse: Thank you. Madam Chair, you asked when we could supply the outstanding information to Peter.

CHAIR: To Peter or to Amanda, as early as possible.

Ms Prowse: By early next week, absolutely.

CHAIR: Could it be earlier?

Ms Prowse: We could do our best to supply it by close of business tomorrow. What we can do—and if I may through you, Madam Chair, liaise with Peter and Amanda as to—

CHAIR: That would be wonderful.

Ms Prowse: I just need to turn my mind to it. The information is there. It is about how long it will take me to collate it. I will do my best to get you all of the information by close of business, Madam Chair, but if I may have until Monday for anything that—

CHAIR: I think what I am trying to reinforce is that it is a matter of urgency. As promptly as you can get it to us, we would really appreciate it.

Ms Prowse: Yes, as promptly as we can we will, thank you.

CHAIR: I do not know whether you heard my statement to the chamber—

Ms Prowse: No.

CHAIR: The fact that you were summonsed was contained in my statement.

Ms Prowse: Okay.

CHAIR: Not your names, but the fact that you were summonsed was contained in my statement to the parliament. The committee felt that a full and frank statement needed to be made.

Mr DOWLING: And the meeting had happened here and was still ongoing.

CHAIR: That is right. It was those things. I have reminded you of the confidentiality. I have reminded you that you may be called again. I thank you again for your patience and I thank you again for your availability and appreciate all that you have done.

Ms Prowse: Thank you. We are happy to assist the committee in any way. Thank you very much.

CHAIR: Thank you.

Ms Prowse: And you are welcome on a tour. Madam Chair, at an appropriate time we are happy to host you.

CHAIR: Thank you.

Proceedings suspended from 3.30 pm to 3.47 pm

MARTIN, Mr Ross, Chairperson, Crime and Misconduct Commission

STRANGE, Mr Warren, Assistant Commissioner, Misconduct, Crime and Misconduct Commission

CHAIR: Thank you, Mr Martin, for coming at such short notice. Things have certainly, I think, accelerated more greatly than they need to. I acknowledge Mr Strange, too, in attendance. I just ask for clarification. Did you hear the statement to parliament?

Mr Martin: Which statement is this?

CHAIR: My statement to parliament?

Mr Martin: I heard parts of it.

CHAIR: We will provide you with a copy. It is on the table. I will just make a couple of statements, if that is all right, bearing in mind that this is a formal hearing of the committee and the transcript may be provided at a later date to the parliamentary commissioner or others as the committee deems appropriate.

After discussions with the committee, with yourself, with the Attorney-General and with others, this committee believes that legislation is the most certain protection for those who have been affected by the release or the potential release of information at the State Archives, given that the success of an injunction at this time is uncertain. The committee believes that it is premature again at this time to consider the position of anyone who has been involved, as there is insufficient information before the committee and the committee has had insufficient time to consider what information it has, what information it still requires and the implications of that information. However, the committee's focus is to remedy the situation, particularly in relation to those people who, in good faith and at some risk, may have given evidence to the Fitzgerald inquiry and whose security and safety may be at risk. That is one of the unknowns.

Or we would ask you as chair, in order to progress the situation that we currently find ourselves in in relation to a short-term remedy, to consider publicly acknowledging the errors of judgement exercised by CMC officers in these matters, the impact potentially of those errors on witnesses giving testimony during the Fitzgerald inquiry, and the urgency of the introduction of legislation, which will be at the request of the CMC to the Attorney-General, to apply a short-term prevention of republication of information obtained after access to the archive documents. That short-term prevention will enable a full and informed examination of what information is available and an informed opportunity to move forward. The committee is looking at a sunset on that legislation of approximately three months.

That is the committee's considerations at present. We have met over some time with the State Archives representatives but we have not had time to fully consider their information. We are concerned that today is the last of the sitting days for this week—we do not sit again for two weeks—and we do believe that it is critically important and that the central issue is the protection of those people who currently are vulnerable.

Mr Martin: I have heard what you have said, thank you. There are a number of components to that. The protection of the people involved is dependent upon the release that has occurred and that is independent of any question of publicly acknowledging errors of judgement that was part of the document that you suggested I would have to provide. I am not yet understanding why it is necessary for me to do that. I have already publicly said that this is a CMC fault and it does not follow. If, for example—and I am not saying it is the case—it had been the fault of Archives, the legislation would still be necessary. So I am trying to understand—I am not saying I will not do this, but I am trying to understand—what the logical connection is between whose fault it is and the need for remedial legislation.

CHAIR: Okay. It boils down—and if I can be fairly frank—to sensitivities. Can I just adjourn the proceedings for a moment, please?

Proceedings suspended from 3.52 pm to 4.13 pm

CHAIR: I welcome back Mr Ross Martin and Mr Warren Strange. The bottom line, Ross—and we will go back to your statements and questions—is that this government has some sensitivities in relation to what is now historic, which is the Fitzgerald inquiry. The curative action that this committee sees as promptly available to it is legislation that will preclude republication of the information from the archives. For the Attorney-General to entertain an urgent request for legislation, he has asked for a letter from the CMC acknowledging the error in process that has

created this situation and requesting—that is, the CMC requesting the Attorney-General—the introduction of legislation to allow for an urgent ban on republication of the information with, as we have said, a three-month sunset clause to allow for all parties to be able to examine the information and the situation. The Attorney-General has advised that it would be his intention to table that letter in parliament in order to explain and give justice to the emergent legislation.

Mr Martin: I understand what you have just told me. That does not address the issue I raised, which is that there is no logical link between us being the cause of the problem and the need for the legislation. It seems to me—and I want to explore this—that it is entirely appropriate for me to say that legislation is needed independently of what the cause might be. So I am trying to understand, if it is possible for you to enlighten me, why the Attorney needs me to acknowledge something that I have already acknowledged.

CHAIR: That perhaps is a moot point. You have acknowledged it so you are not going to be saying anything that you have not already said, but it appears that the sensitivity on the part of government is that Fitzgerald was about uncovering problems including corruption in a former conservative government. They do not want in any way to be exposed—this is my interpretation of the situation; this is not the words they have used—in terms of being a further conservative government restricting access to information.

Mr Martin: Again, the logic of that does not require the acknowledgement. That is what my concern is. I am also mindful of a number of other issues. That last question that I raised and the insistence that I make an acknowledgement is part of my concern. If I do not have the confidence of the government or of this committee, then any letter that I write is logically weightless. If I make a request in an environment where I do not have that confidence, then it seems to me at least on present indications that such a letter is hollow and meaningless. That is why I raised with you before, Madam Chair, the question of whether such a letter is meaningful. I do not say that to cause a problem here. If, for example, I were to resign this minute, Mr Strange could write such a letter, so the problem can be solved. It is a question of whether this process is about some other purpose.

CHAIR: Can I interrupt you and say this: this committee has not had time—and I do not believe the government has had time, but I cannot answer for it—to determine confidence or lack of confidence. We were phoned at half past four on Tuesday afternoon and advised that there were some issues. It has been full tilt ever since. We have not had time as a committee to determine confidence or otherwise. Our primary focus has been to deal with the emergent issue, which is the potential risk to witnesses given that 19 people have accessed those documents, and we do not know what their intent was. There is not a lack of confidence in the sense that no decision has been made.

Mr Martin: May I acknowledge that everything I say is subject to the proposition that the primacy attaches to the resolution of this, and the position of the documents and the witnesses and so forth is primary. Please understand that I am not saying anything to the contrary of that.

In order to develop my thoughts further, your public announcement about your investigation and the use of the parliamentary commissioner to do so may or may not, as I presently understand things, have overtaken the indicated intention of the Attorney this morning to expand Callinan and Aroney's terms of reference. They, at least as presently indicated, do not have any powers to conduct an investigation of the sort that the parliamentary commissioner does. I have sensitivities of my own in respect of that.

If you will bear with me, if the Callinan-Aroney inquiry process were to persist parallel to the parliamentary commissioner's process, it seems to me that there is at least a risk of contributing to the creation of two separate reports as it were, one of which contradicts your report, and that may raise the potential for contempt if, for example—it doesn't matter who has done it—you were to investigate the CMC and I were to engage a friendly inquirer to make an inquiry that contradicted yours. You might well take a view that that was potentially contemptuous and the fact that the inquiry is not generated by me but by somebody else may raise that issue. Now, that is a separate issue. I acknowledge that. But it may be something that needs to be resolved sooner rather than later.

CHAIR: It is an ancillary issue to the issue of legislation.

Mr DOWLING: That was going to be my question. This is just time we do not have that can be addressed later—the other issues you have raised. The question that we are asking as a committee is: will you draft the letter to bring on that legislation, the letter in the form that it is

needed or required? That is the question. That is all we need—a yes or a no. You have indicated and said, 'Look, it was a CMC problem,' so that is already on public record. There is nothing new in the letter, and you are aware that we need that legislation and we need it with some urgency.

Mr Martin: I understand the urgency and the need for legislation. I am not yet understanding the nexus between the acknowledgement of error. What I have—and I might ask if Ms Honeyman can copy this—is a document that I have drafted. I do not say that I will sign it yet, but it may be that you can at least consider it to see if it addresses the issues were I to sign it.

CHAIR: The issues have been put to us by the Attorney-General.

Mr Martin: Yes.

CHAIR: As I said to you earlier, the Attorney-General wishes to table the letter in the parliament, along with the draft bill, that indicates that the need for the legislation was identified by the CMC and by this committee. He already has a letter from us saying that we believe legislation is required as a matter of urgency. The letter from you, as the member for Redlands said, was to acknowledge what is already in the public arena—that is, that there was an error at the CMC—and requesting that the current government introduce legislation which will preclude access—

Ms TRAD: Remedy.

CHAIR: Sorry, which will preclude republication of the information that has been accessed in files that should not have had their RAP changed. That is what the remedy is in the legislation. You have got files there that had sensitive information and the CMC put a RAP through that dropped the access block from 65 or 100 years back to 20. Now, that information is all out there and we have got to try to put the monkeys back into a barrel.

Mr Martin: I understand all of that. My only concern is what other use might be made of such a letter. Because I do not immediately see the nexus between the various components, I am concerned that some other use may be under contemplation. But I have said already that I acknowledge the need to resolve this issue as a matter of primacy for the sake of the various stakeholders other than me.

Ms TRAD: Mr Martin, do you think your statements to date could be used for the alternative purpose that you are contemplating?

Mr Martin: All of that is possible, and that is why I am anxious. I am being careful because I just do not know what this adds to what I have already said. And that is why I have some—the scribbled-out word at the end was going to include a line to the effect that the primary consideration needs to be, in this case, the position of the witnesses. And some form of words like that might find its way in there.

Mrs MILLER: What is wrong with it? It is good.

CHAIR: My only comment, having heard the Attorney-General and the Premier say it several times now, is if that last sentence could actually request the legislation. It is an abundance of caution on my part, but what they put to me was that the CMC request that the government introduce legislation.

Mrs MILLER: I thought that was implied.

CHAIR: It is implied.

Mrs MILLER: It is implied, isn't it?

CHAIR: This is a suggestion of words—a form of words, 'I understand that there is some hesitation for the government to act in proposing curative legislation without the CMC requesting the legislation. I make that request.'

Ms TRAD: Can I suggest something else?

CHAIR: Yes.

Ms TRAD: After 'I make that acknowledgement and join with the PCMC in requesting such legislation', or not 'join' but—

Mr Martin: 'Support the PCMC's request'.

Mr WELLINGTON: Yes, 'support the PCMC's request'.

Mr Martin: 'I make that acknowledgement'—

Mr DOWLING: This is coming from you; this is not coming from the PCMC.

Mr Martin: But you have already made a request.

Mrs MILLER: We have told him.

CHAIR: We have already made a request.

Mr DOWLING: We have done ours.

Mrs MILLER: But we have told Ross that this is what we have already done.

CHAIR: I know that. I just do not want—

Mr DOWLING: This is not a joint submission.

Mrs MILLER: We know that.

Mr DOWLING: And we are not joined in it.

Mrs MILLER: We are pandering to a bloody Attorney-General who is having a bloody little tanty.

Ms TRAD: Just to get this right, the Attorney-General wants to table this. Is he tabling the PCMC's correspondence initially requesting it?

Mr Laurie: The committee could authorise him to table our correspondence as well.

Mrs MILLER: Bigger it. We'll table it ourselves. Stuff him.

Mr Laurie: Or Liz could just table it.

CHAIR: Yes, I can table that.

Ms TRAD: I think we need to table it.

Mr WELLINGTON: Table our request.

CHAIR: I am sensitive to not muddying the waters. If it is better served that you leave our request for the legislation out of your letter, we will table our letter to Jarrod during the debate.

Mr Martin: I want to make it clear that there is a nexus between this letter and a request from the PCMC. I am doing this in response.

Mr WELLINGTON: Yes, I agree with you.

Mrs MILLER: Yes, you are.

CHAIR: Absolutely.

Mr WELLINGTON: You are doing it as a result of our request.

Mr Martin: 'I make that acknowledgement as a result of a'—

Ms TRAD: 'course of action proposed by the PCMC'.

Mr DOWLING: With all due respect, that is not you doing what you need to do.

Mr Martin: If you will bear with me, I will come up with a form of words and I will see what I can say.

Mr WELLINGTON: Then it will be up to the Attorney-General if he wants to accept it or not.

Mrs MILLER: Yes, it is up to him. If he doesn't want to do it, it is on his head. It is on his head.

Mr DOWLING: No, no, no.

Mrs MILLER: Yes, it is.

CHAIR: Seriously, let us just remember that our focus is those people who could be disadvantaged.

Ms TRAD: That is true.

Mr DOWLING: And it would be nice if all the players had that focus.

Mrs MILLER: We do.

Ms TRAD: And for transparency we actually need to make all the facts known, and we were the original decision makers in relation to this curative legislation.

Mr DOWLING: I don't see the need to annexe us with the CMC's request.

Mr WELLINGTON: Mr Martin can do his letter first. Let him concentrate and then we will talk about it.

Mr Martin: This form of words might be appropriate. Following from the last paragraph as it appears there: 'I understand there is some hesitation for the government to act in proposing curative legislation without the acknowledgement of its desirability by the CMC. I make that acknowledgement. I am informed that the PCMC has made a request for such curative legislation. I join in that request.'

Mr WELLINGTON: I am happy with that.

Mrs MILLER: That's right, simple.

Mr DOWLING: It is not the letter where the CMC is asking. You are just saying, 'Hey, I agree with the PCMC's position.'

Mr Martin: Well, I have not seen any draft legislation yet. This is something I raised earlier. For me to request legislation in the ordinary circumstances would require me to see such a document. So at the moment I am being asked to do something by this body and I accept in good faith that this body will adequately supervise whatever legislation is proposed, but I have not seen it and so—

CHAIR: Without undertaking either.

Mr Martin: I understand that. I mean, the curative legislation might be, in an extreme situation, to take quite radical steps that I might not agree with. That is why I am linking my request with the PCMC's request.

CHAIR: I have to say that as the person that has been dealing with the calls and the conversations with the Attorney and more latterly the Premier, I think the suggestion of linking your request with us will undermine the speed at which that legislation is going to be forthcoming.

Mr Martin: My words 'I join in that request', respectfully, are unambiguous. I am requesting it.

Mr DOWLING: Then request it without the link or the reference to the PCMC's request. You are obviously adding it for a reason known only to yourself that I am not fully understanding of and, to paraphrase or to reflect as it has been explained to us by the chair, you need to write a letter requesting legislation. The legislation appears to be the only thing that we believe can resolve and prevent the republication of these documents. It is not about you linking to our request; it is about the CMC formally doing it to depoliticise the issue from the government of the day because, whether we like it or not, as a conservative member of the government, if the *Courier-Mail* and the *Australian* were of a mind to, because we effectively gagged all of that documentation through legislation, it is conservative government protecting conservative government, the old Joh days—

Ms TRAD: This is an all-party parliamentary committee.

Mr WELLINGTON: Excuse me, Chair, can I—

CHAIR: Just a minute. Finish your sentence.

Mr DOWLING: So, the sensitivity around it runs both ways. As the CMC you have acknowledged that the problem has arisen and you have acknowledged it in the press, yet now you are not going to do it. It was okay to do it in the *Courier-Mail* and in the *Australian*, and various other media outlets, but you are not prepared to put it into a letter.

Mr Martin: No, no, no, I'm sorry—

Mr DOWLING: We need legislation to protect—

Mr Martin: The draft includes that acknowledgement. The draft of this letter includes that acknowledgement. My concern is that I have not seen any such legislation. For me to support it or request it without any further particulars is risky.

Mr DOWLING: How is that risky?

CHAIR: Wait a second, Peter. Peter?

Mr WELLINGTON: With respect, we have conveyed the view of the Attorney-General to Mr Martin, chairman of the CMC. As far as I am concerned, it is up to Mr Martin to now do a letter that he feels appropriate and, quite frankly, if the Attorney-General doesn't like it he can pick up the phone to Mr Martin and talk about it. I am not interested in being the go-between, to put words into everything. As far as I am concerned, I want to move this matter on. I have conveyed my views. We have conveyed our view from the Attorney-General as best we can to Mr Martin and Mr Martin is preparing a letter and it is up to him to respond in the way that he feels appropriate. And if the Attorney-General doesn't like it he can simply pick up the phone and speak with Mr Martin. That is my position.

CHAIR: Can I just ask one further thing. I remain of the view that as you have drafted it it will create difficulties rather than solve issues. If I could just put another option towards you that limits in some ways the use of the letter but clarifies more clearly what the purpose of the legislation is. The first three sentences remain the same and the final paragraph, 'I understand that there is some hesitation for the government to act in proposing legislation that will prevent the republication of information gained from the Fitzgerald inquiry information without the CMC requesting the legislation. I make that request'—requesting the amendments.

Mr Martin: Could I take that down again so that we can get that right?

CHAIR: Yes, sure.

Mr Martin: 'I understand that there is some hesitation for the government to act'—

CHAIR: 'in proposing legislation that will prevent the republication of information gained from the Fitzgerald inquiry proceedings'—information—'from the Fitzgerald inquiry information'.

Mr Martin: 'The republication of information gained from the Fitzgerald inquiry'. I think that was what you said.

CHAIR: Yes, 'without the CMC requesting that legislation. I make that request.'

Mr Martin: Would you bear with me for a minute?

CHAIR: Do you want some time?

Mr Martin: I think we can probably do it at the table here.

CHAIR: Thanks.

Mr Martin: I am asking you this not for permission but because you are the ones who have had the dealings with the Attorney-General. I have not and I am not now in a position to call him. Can the sentence read this way: 'I understand that there is some hesitation for the government to act in proposing short-term curative legislation that will prevent the republication' and so on.

CHAIR: Sure. To be fair and respectful to you, those words I believe are in accord with what the Attorney-General had outlined to me. Your final form of words is your choice.

Mr Martin: I understand that.

CHAIR: But we do appreciate your cooperation. Ross, I have to reiterate that this committee has not formed any opinions about cause, fault or anything else. We have tried to respond to the community with our statement to parliament and be as factual as we can. This committee has had a plethora of information presented to it over the last 24 to 36 hours and we are still trying to come to terms as much with process as with content and we are not in a position to be saying where the fault lies or otherwise. That is what an investigation is for. Our primary goal in the meetings today with you and with the Attorney-General was to give emergent protection to those people.

Mr Martin: You will understand that my primary goal is to achieve the outcome for the people who gave evidence. I also am concerned that in the absence of seeing this legislation I am writing a blank cheque and I want to make sure that that does not happen.

CHAIR: And I think your wording has constrained what the purpose of that letter is for.

Mr KRAUSE: Limiting your request with that final amendment, I think—

Ms TRAD: Jon, I think that is the word. I think that is the word that is missing from here, 'I understand that there is some hesitation for the government to act in proposing short-term curative legislation limited to the prevention of publication of information.'

Mr WELLINGTON: I think that is important. We do not know what the legislation is; we have not seen it. Mr Martin has not seen the legislation. We do not know what the Attorney-General will come back with and I would be concerned if this letter is then used to say, 'Support the legislation.' No, I think it has to be very specific what the CMC is requesting.

CHAIR: The republication of information.

Mr Martin: I am also considering making this contingent on seeing the draft legislation.

CHAIR: That is up to you.

Mr Martin: But I am letting you know of that now in case there is any hesitation about that. But that contingency is something that I am inclined to insert when the final version is written up.

Mr WELLINGTON: I think that is reasonable, very reasonable.

CHAIR: That call is yours as the chair of the CMC. I believe that the committee, as clearly as we can, passed on to you what the Attorney-General's request was. The final form of words is yours. We have put some options up to you, Ross, in an attempt to progress the matter, not in an attempt to in any way—

Mr Martin: And I understand that everybody is, so far as possible, trying to act in good faith, but we have to understand that this is an environment where unintended consequences can emerge and can create great difficulties and so the need for care is there. I will draft a letter essentially similar to those words and I will have it made available very quickly. How quickly? Are we talking 10 minutes? I will have to get this dictated to somebody at the CMC, put on a CMC letterhead, have my electronic signature put on it and sent to the Attorney. That seems to me the best I can do in the time available.

CHAIR: That is fine. That is all that we can ask you. At this point I will suspend the meeting. Thank you for your attendance, Mr Martin. Thank you, Mr Strange.

Proceedings suspended from 4.42 pm to 4.57 pm

CHAIR: Thank you for that. I apologise that proceedings were interrupted because of a division. Mr Martin, before we close the committee there are a number of questions from committee members, but would you have any other comments or statements that you wanted to make?

Mr Martin: If you will bear with me for a moment, I am anxious about some of the language that was used in the statement with respect to the destruction of the documents. It is clear, at least to me so far, that the destruction of the documents occurred many years ago. That is not immediately apparent in the statement to the House and it might be thought that they were destroyed in the same time frame of the last week or so when other matters came to light.

The second issue is concern about advice from the CMC and our not drawing this to your attention in May 2012. I hope you accept from me that in good faith I have done my best to draw things to your attention when it seemed appropriate to do so, whether or not section 329 strictly applied. But I would invite you to bear in mind that section 329 is the guiding piece of legislation here. As things presented in May 2012, it was not immediately apparent or apparent at all that this is a matter to which section 329 applied. That is something that I would respectfully observe about that representation with respect to concern about our advice.

I mentioned since that letter has been drafted, we now have some time. In the meantime I have spoken to people from the Attorney's office and it was the Attorney's office that was ringing me when my phone embarrassingly went off earlier. That legislation is now in the process of being prepared and it will be discussed with me. It might be opportune to raise the issue that I mentioned earlier about whether or not your public statement this afternoon, which postdated the observations of the Attorney about Mr Callinan and Aroney being involved—whether that concern that I had is capable of being addressed, a concern of us contributing to a potential contempt if we engage in an investigation that can potentially contradict yours.

Mr KRAUSE: Mr Martin, when you say 'we', do you mean—

Mr Martin: We, the CMC.

Mrs MILLER: Could I go back a step, please, Madam Chair. It just seems amazing to me, given the time line of all of this now, that we wrote to the Attorney-General in good faith as a unanimous decision of this committee in relation to seeking legislation. The Attorney-General wrote back, basically saying—

After reviewing the committee's request I am not convinced urgent legislation is required at this juncture. At this point in time it is not clear to me what documents have been accessed by whom ...

and so on. I would perhaps like to say to the chair that the Attorney-General has, in fact, misled this committee, because he would have had to have people from his office and his department and the parliamentary draftsman already working on this. We have this letter that was delivered to us today.

Mr Martin: I do not know the answer to that, I am sorry.

Mrs MILLER: No, but I am saying that to the chair, because any of us who have worked in government know that you do not just dream up legislation in five minutes.

CHAIR: That could be a matter for another conversation. I do not know the time lines.

Mrs MILLER: I am glad that that has been noted for Hansard.

CHAIR: I do not know the time lines for drafting, so I cannot comment.

Mrs MILLER: Well I do, and let me tell you it does not happen that quick. So he has given us a letter which is false in premise.

CHAIR: Can I clarify for my own mind, Ross, you said your concern is that if the CMC contributes to an investigation by—

Mr Martin: Callinan and Aroney.

CHAIR: And that is running in parallel to the PCMC's investigation—

Mr Martin: Yes.

CHAIR: That is where you think the contempt could occur?

Mr Martin: It possibly could occur. I invite you to take a step back, logically. This is an example I gave before. We could, for example, set up a contrary investigation that was in principle designed to undermine the authority of your investigation. I am glad that the Clerk—

CHAIR: Sorry, can you say that—

Mr Martin: We could in principle—I am speaking purely hypothetically here; we would never do such a thing—set up, entirely cynically, an investigation that would come to completely different conclusions from yours and thereby undermine the authority of your conclusions. That might well be something which this committee would take with great concern. It does not matter, it seems to me, then, extending the logic, who it is who sets up the second investigation. The question is: is it potentially a contempt for us to contribute to a second investigation which could undermine the authority of this one? That is why I raise it. I asked whether or not—and I do not understand the timing of this, politically—the Attorney's comments in parliament this morning have been overtaken by your indications this afternoon that you were going to undertake an inquiry with the authority of the commissioner and his powers. That is why I raise the issue. It is for your consideration and to give us some assistance in respect of.

CHAIR: Thank you. Did you have a question?

Ms TRAD: I think not to keep that hanging out there—and we obviously have to deliberate on that. Given that yesterday afternoon, Mr Martin—you were on speaker and I understand we were on speaker at your office and Mr Strange was in the office—there was that issue about the fact that Callinan had contacted you in relation to this matter, we certainly conveyed to you at the time—and we are all aware of it—that we thought the parliamentary commissioner was the appropriate person to undertake this inquiry. Obviously I was not apprised of the Attorney-General's statement before he made that statement this morning, and I think most of us were caught unawares by that. I do not know that that had anything to do with the statement that was drafted.

Mr Martin: The letter from Mr Callinan, I should say, yesterday was not really of a nature of investigation as such. It asked us questions that were more or less tangential. And I would not have any particular difficulties about dealing with that. My concern is that that seems to have escalated now to an investigation that might run in parallel with yours, now that the position is different from what it was yesterday afternoon.

CHAIR: And I am sure we will have to get advice as things are clarified because a lot has happened in the last several hours.

Mr Martin: It may be possible to discuss this with the Attorney. He may not have known, because of the secrecy of these proceedings, what had gone on.

CHAIR: It is possible. Are there any other questions to Mr Martin?

Mr KAYE: Mr Martin, I do not expect an answer to this question now. It is just more for your information to take away and come back to us. With the list of files that we were provided from the archives, there is the tag line which they refer to as the metadata. So it is a description of the contents of the files, and it is quite explicit in some lines. Apparently that is searchable on the archives' website.

Mr Martin: To my alarm I discovered this, yes.

Mr KAYE: That was my question to you, whether the CMC, or the CJC originally, knew that that data would end up being viewable?

Mr Martin: Again, this is a question that emerges and will emerge in the course of an investigation that we will not be conducting. The first I was aware that there might be searchable lines which themselves were high risk, if I can say that, was in the last couple of days. So that is a matter which will be looked at. At the moment Mr Hutchings tells me that he has been out there and he has observed that even that is now shut down, so I am told. That is at least encouraging.

Mr KAYE: That is not consistent with the information we have.

Mr Martin: If that is wrong, I will check—

CHAIR: We will certainly have to get confirmation from the State Archives staff because they certainly believe that that metadata is searchable on their database regardless of the RAP because that is the basic information that the author of the data provides to the archives. The archives use what they call metadata, the description, as almost the basis of a search engine search. Then the RAP determines whether further access to the documents is available. So, when you read some of the data lines, it is quite concerning because it gives names, some of the allegations or accusations or lines of questioning, but without access to the background documents the person could very easily go away with a false impression.

Mr Martin: One of the documents contains a reference to a line about a bribe of '...', for example.

Mr KAYE: There is also '..."—those sorts of things.

Ms TRAD: '..." '.

Mr Martin: Yes. Now, all of those things are of concern. I—and this is the peril of acting too soon—thought this had been resolved. Mr Hutchings told me that he had been shown the computer system in operation so that the problem was resolved. I may have misunderstood.

Mr KRAUSE: Was that today?

Mr Martin: Yesterday, I think. If that is not so, then I am not sure what I can do except try to say that the metadata is itself data and should be subject to an RAP. We will attempt to resolve that straightaway.

CHAIR: As a matter of urgency, because not only with the Fitzgerald inquiry data but with all data that you have available through the State Archives that metadata line is accessible as we speak, irrespective of the RAP. So it may be something that is a matter of urgency.

Mr Martin: I regret that if my information is wrong—I thought about the point but we can but battle on.

Mr KAYE: Certainly the information that we have is basically that any member of the public had a right to know what was in the file but they may not necessarily be able to see.

Mr Martin: That cannot necessarily—well, that has to be subject of the proposition—

CHAIR: But I have to say that from the State Archives' point of view, they are custodians of or they look after the files that you give them, but that data line is yours; you provide that. What is written on that data line is what the owner of the information provides. They do not mess with that.

Mr Martin: I do not know because it was before my time.

CHAIR: No, but that is what the State Archives told us today.

Mr Martin: I understand that. I wish I had been here to hear that.

Mr KRAUSE: Mr Martin, I understood there were some members of the CMC there today at the State Archives looking at the documents that were accessed.

Mr Martin: Yes.

Mr KRAUSE: Have you had any reports back about the nature of those documents?

Mr Martin: Not yet. I have been here. Mr Hutchings is on his way back. Mr Hutchings and Mr Adams were the two staff members who were out there today looking at the material. They are focusing, first of all, on a body of material that was the subject of a request from the chair to us. Then they are going to start at the beginning and go through the whole lot, collect copies and see where we go from there.

Mr KRAUSE: And that is the list of documents which we have received.

Mr Martin: Yes. They will try to identify which ones were actually seen, because I understand that that list of 234 or something is a list of requests. Please, I am asking this now because you have spoken to the archivist and I have heard this. I understand that is a list of requests. It does not follow that that list means that every such document has been seen. So what they are telling me is that not all of these documents were actually seen.

CHAIR: No, but that data line they would have seen.

Mr Martin: Yes. They are related but separate issues.

Mr DOWLING: Madam Chair, am I able to show him a copy of the data line?

CHAIR: He has a copy.

Mr Martin: I have not got it with me but I think we are talking about the same thing.

CHAIR: He provided it to us yesterday.

Ms TRAD: It is the description of the file.

Mr Martin: Yes.

Mr DOWLING: When did this first come to light? I think you said on Tuesday—I am trying to remember when you told us you were made aware that files had been accessed or were still able to be accessed.

Mr Martin: I do not have the documents in front of me of the time line, and I am very hesitant to get it wrong because I am only going by my memory now and much has happened very quickly. I have a recollection that the document I tabled the other day suggests that one of my staff became aware of it on 1 March, which was last Friday. It was drawn to my attention, I think, on Monday afternoon, at which point I said, 'Shut down access.' That occurred on Tuesday. Then the consequence of that was that the journalist could no longer get access, and they published on Wednesday and here we are today. That is, I think, the time line, to the best of my recollection.

Mr DOWLING: If you could just clarify that, that would be great. If you could send it through to Amanda.

Mr Martin: Yes. Do you want the actual hour or time of the day?

Mr DOWLING: If it is an email, then a copy of the email or whatever the notification was.

Mr Martin: I heard about this orally myself. So I do not know what information the person who told me about it had.

CHAIR: Do members agree to the release of this A3 sheet of paper to Mr Martin?

Ms TRAD: Yes.

Mr DOWLING: Yes. I have no problem with that. Obviously it is confidential.

Mr Martin: Of course.

Mr DOWLING: I think that is yours anyway.

CHAIR: It is similar to what you gave us, only the formatting of this makes it much more stark in that this is A3 this way and yours was printed that way. This gives you an idea of exactly what people see.

Ms TRAD: Is there marking on it?

CHAIR: No mark on yours?

Mr Martin: I have only ever seen it on the screen, so I am not—

CHAIR: It gives you a very stark idea of what people access prior to them even being able to check if they can get the file.

Mr DOWLING: That is what they see when they go online.

Mr Martin: Madam Chair, you asked me to provide you with an indication of which documents would be ones we would say no to—

CHAIR: Which things would have been blocked given the RAP that is attached to them.

Mr Martin: I misunderstood.

CHAIR: So that spreadsheet is the list of people who have accessed those files. Of those on that schedule, which ones should they not have had access to, now that you have the wisdom of hindsight, and which ones should they have had access to?

Mr Martin: Your question may have a couple of different components. Please be patient with me for a moment.

CHAIR: Yes.

Mr Martin: I have been told by Mr Hutchings that he has been shown a summary of the RAPs that were held by archives that does not quite gel with the material in this list. So they are having to go back and see the original RAP correspondence that talks about these things. So to derive that answer purely from the RAPs is not easy. If what you are asking me is to apply my best judgement, without having seen the documents, to which documents I think would be ones that I would at least, so far as the line is concerned, wish to withhold, then that is the process that I have been trying to undertake and it may be that we are at cross-purposes.

CHAIR: Both would be helpful to us, providing it is clearly enunciated the basis on which you make the markings.

Mr Martin: The one based on the RAPs is not going to be easy to do in the very short term, and you asked me about an urgent request. The reason I say that is that, for example, there is a document here that is an actual exhibit, but when I went through the Fitzgerald inquiry report I found that that exhibit was in fact a restricted exhibit. There is a transcript there and one would not have thought that that would have been controversial. However, I do know that some days—and Mr Laurie will be happy to confirm—were held in secret. So I cannot say and I do not know without a rather painstaking investigation what all of these things mean. So I cannot do it urgently, I think.

Ms TRAD: But that is for a forensic account. But for a best-guess account if that were urgent—

Mr Martin: For a best-guess account, I have done that. But time has overtaken me. I have had to come down here. It is sitting on my computer.

CHAIR: So long as it is clear that it is your best guess and that is not a scientific test, and I understand that. But at this point in time we just need to know—

Mr Martin: Almost all of it is something that I would be hesitant to release on the strength of the material here, based on the prospect that there is confidential information in it, unsubstantiated claims, references to other bodies other than the CMC, such as the NCA, and there may be another class or two.

CHAIR: All the more reason for the legislation, then, because this is a list of the documents that have been accessed.

Ms TRAD: I have one more question. Mr Martin, you said before that this list did not necessarily represent files that had been reviewed.

Mr Martin: Actually seen.

Ms TRAD: Actually seen.

Mr Martin: Yes.

Ms TRAD: I certainly did not get that impression from the State Archives.

Mr Martin: As I say—

Ms TRAD: I know you were not privy to that.

Mr Martin: Unless we all have the same body of information—there is a document here that I discovered on going through this that looks like it was one of the documents that was destroyed, and that seems to be the document that led us to discover there had been some destruction. So if it is here on this list and it was destroyed then it cannot have been seen by anybody. I am also given to understand, and I may be wrong, that this is a list of requests. For example, many of these requests were in the afternoon of 4 March and it may be that our closure of the files—which was Monday, I think, or on Tuesday or Monday afternoon; I am not quite sure when it happened—may have shut down access to some of those. All of those are possibilities we have to explore, and the detail of that is being examined now by Mr Hutchings.

CHAIR: We look forward to information from you—what you can give us beforehand but also after Mr Hutchings' examination of the documents.

Ms TRAD: In terms of a forensic audit, Mr Martin, how long do you think the CMC would need to do that forensic audit?

Mr Martin: I would hope that it would be capable of being complete—of these documents?

Ms TRAD: Yes.

Mr Martin: I would hope that it would be capable of being complete within a week or so. I think we have all the documents gathered, and I would expect we would be a long way along the road of knowing what were legitimately documents of the relevant ilk or not. I see that my draft letter has turned up, so I will have to attend to that to try to make things happen.

CHAIR: Thank you very much. Thank you for your attendance. It has been a difficult couple of days. We as a committee want to see things done fairly, appropriately and transparently. I hope that we can continue to work together. Thank you, Hansard, for your work. Thank you to the committee. Thank you, Mr Martin and Mr Strange, for your prompt response.

Mr Strange: Madam Chair, could I raise one very brief matter? Given the interests of those people that you have mentioned who have cooperated with the inquiry, we have had two phone calls from people who sought information from us today about whether their records may have been accessed. At this stage we have established a process of a dedicated officer to speak to those people and take their details and their concerns. As we work through this process we will be in a position to liaise further with those concerned people about those issues, but that is in place to deal with any queries that are made directly of us.

CHAIR: Thank you, Mr Strange and Mr Martin.

Proceedings suspended from 5.21 pm to 5.27 pm

BLEIJIE, The Hon. Jarrod, Attorney-General and Minister for Justice, Queensland Government

CHAIR: Thank you for coming, Jarrod. We appreciate it. We have been having meetings with people at very short notice. Have you any feelings for or against the meeting being recorded?

Mr BLEIJIE: It can be recorded.

CHAIR: Thank you very much for that. Just so you know—and I have already said this in my statement—on Tuesday afternoon I was contacted by Warren Strange to indicate that there were concerns in relation to access to documents. The committee has met twice—but one meeting has been going all day today—to try to ascertain, where people who gave witness in the Fitzgerald inquiry in good faith and expecting protection, the instances in which that information has been made available. That has not been quantified yet. We do not know whether it has, to what extent it has, to whom it has and for what purpose.

Late yesterday afternoon I asked the Clerk to issue a summons to the State Archives and they have been in today answering questions so that we can get a better understanding of the way storage and access to information occurs. We also have had the chair of the Crime and Misconduct Commission and Mr Warren Strange in specifically as a result of your request for a letter from the CMC to enable emergency legislation to be drafted. We have had a number of phone conversations with him and a number of conversations with you, but we felt that it was more efficient for them to come and appear before the committee, which they have done. He has agreed to a form of words. Whether it is acceptable to you is up to you. But the committee's primary concern at this point in time is to get the records that have been accessed, potentially copied and potentially distributed sealed again, at least for the short term, to allow for this committee to properly examine what has occurred and what may be the result of that. We have asked the parliamentary commissioner to commence that investigation on our behalf and have done some work through the Clerk to properly resource him to be able to do that.

You have made some statements in the parliament and I am unsure how that feeds into the process which this committee has commenced in terms of the parliamentary commissioner's examination of these incidents and issues. We as a committee are trying to get clarity in our own mind as to where you see the way forward and where you see the problems so that we can have a dialogue.

Mr BLEIJIE: Thank you, Chair. I will make it abundantly clear. The oversight was absolutely unacceptable. I made it abundantly clear, secondly, in my letter this morning to the committee that if Ross Martin wanted government assistance to assist him fix his problem that he created as CMC chair then he was to go public and explain to the people of Queensland why the stuff-up occurred, how it occurred, who has taken responsibility for it and what action he has taken and what we are actually trying to protect here, because as far as I understand it the committee does not even fully appreciate or understand the documents and what we are trying to protect.

The letter I got from the committee yesterday asked for my assistance with legislation for protection of certain documents. It may be informants or whatever the case may be. The letter I sent back to the committee early this morning made it clear that if Ross Martin wanted the government's assistance he was to make a public statement, tell us what happened, tell us what he is doing about it and why he wants legislative amendment and how that will assist in fixing the problem that he created or the CMC created.

As far as I know, that public statement has not been made. I then had a conversation with you about a letter, that if he was to provide a letter and explain the situation I would table that letter in parliament. Since I have spoken to you, Mr Martin has contacted my office. Mr Martin has told my office that he is typing a letter as we speak and there will be a caveat, and the caveat is that he is to peruse any legislation before we pass it in the chamber tonight. I am sorry; it is his stuff-up. If he wants the assistance of parliament from all sides then we are happy to assist, but as of last night when I got the letter I was not convinced who we were trying to protect.

Mr Martin has had all day to go public and explain to the people of Queensland exactly what is happening here, and as I understand it he has not, other than internal meetings here. Now, to ring my office and say, 'Yes, we are writing a letter but there will be a caveat that any legislation that is put in I have to peruse first,' is completely unacceptable. When is he going to take responsibility for what he has done? That is the issue.

Inquiry into the CMC's Release and Destruction of Fitzgerald Inquiry Documents

The Commercial Arbitration Bill is now in the parliament and the Deputy Premier is having to give my second reading speech on it. I am here out of courtesy to the committee. You have requested me to be here. But, quite frankly, I am not happy and I am not going to be pushed into helping Mr Martin fix his problem.

CHAIR: Can I clarify something that you said: if the CMC wants help, he needs to go public and explain why it happened, how it happened and when it happened? That has not yet been clarified. That is part of the problem that the committee has, as well as the CMC, in terms of trying to quantify what has happened. We know that something has happened and that documents that were transferred from the Fitzgerald inquiry into storage at the archives with RAPs of 65 years and 100 years were reduced to 20 years. We still do not have clarity on how that occurred, bearing in mind that we found out as a committee late Tuesday afternoon.

Mr BLEIJIE: I appreciate that.

CHAIR: In the period between when the RAP was reduced to 20 years, which made them available, and now, there have been at least 19 people who have accessed those documents. Some of those documents are very sensitive. The legislation that we need—and I apologise if my letter to you was unclear—was to prohibit the republication of that information until the committee and the parliamentary commissioner have time to examine what did occur and to be able to see what longer term measures have to be taken to fix the problem.

So we know that files were accessed by 19 people, but we do not know the depth of access. We know that some of the files that were recalibrated under the RAP should not have been, but the CMC themselves do not know all of that information. They still do not know how the process broke down. They are looking at that and so will the parliamentary commissioner. So our concern is that we cannot give you quantifiable data. That is why we need the legislation to stop the reproduction so that we have time to get quantifiable data.

Mr BLEIJIE: I understand.

CHAIR: Can I ask a question. Is the committee agreeable for the Attorney-General to have a look at this roster? All right? This is all the information that we have to date of who has accessed the file. You should note that that string at the end under 'Description'—Archives calls it metadata. That string is available to the public now when they search the archives. We found out this afternoon that the responsibility for what information is in that string is the owner of the document, whether it is the CMC or anybody else. The State Archives do not question the validity or appropriateness of that string of information. So in all of these documents, some of which are incredibly sensitive, that string or metadata has been what a person interrogating the State Archives files to determine whether to go and have a read of them, that is what they read. That information (a) lacks context and (b) gives an inference—and I am using that word advisedly—of activity on some of the people who are named, and a lot of people are named, that may or may not have any validity whatsoever.

Mr BLEIJIE: And these people, with all respect—

CHAIR: Which people are 'these people'?

Mr BLEIJIE: The people who accessed the documents.

CHAIR: Yes, the 19.

Mr BLEIJIE: Accessed it lawfully.

CHAIR: They did.

Mr BLEIJIE: Now, my issue is this—and I may be able to assist the committee. Ross Martin is the chairman of CMC and he bugged this up. The CMC bugged this up. We accept that and you have accepted that in the statement you have made to the House this afternoon. And then there is the shredding of documents, which is another issue in its entirety. Ross Martin, as chair of the CMC, should have come out today and made a public statement about why he wants the government's assistance to fix the problem. With all respect to the committee, the committee can do that but the committee did not stuff this up, the parliament did not stuff this up, the government did not stuff it up; the CMC did. They have to lead the charge if they want government to act.

But I may be able to assist them, because when I get this letter from Mr Martin tonight, if I am satisfied, I will move legislation tonight and the parliament will sit to whatever hour of the morning we need to get legislation through. But here is my caveat. Upon putting legislation in tonight, I will
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be likely announcing a royal commission into the CMC for a 30-day period where he will have his legislation for 30 days—he can do whatever he wants for 30 days—but he will sit down in front of a royal commissioner in a public environment and explain what has happened. Then we will have everything out in the open and then Mr Martin may be persuaded to engage in discussion.

CHAIR: Okay. Before I go to other members, can I clarify something. I got a phone call Tuesday afternoon to say that these issues were emerging. The severity of the issues for me did not become apparent until I read the *Australian* the next morning. I called an urgent meeting of this committee. We did not go back to the CMC and say to Ross Martin, 'Do you want legislation?' We did not seek his permission to write to you asking for curative legislation. We wrote to you under our own hand without him knowing, without his permission, without his conversation. So we wrote on the basis that this committee said, 'We have got a bunch of people here whose files are being accessed by 19 people whose motives we do not understand.' They might be Sunday School teachers but they could have other motives as well. As a committee, our urgent need was to get something in place to protect those witnesses and we wrote as a committee.

It occurred subsequently that we said to the CMC, 'We are asking for curative legislation.' It was subsequent to our writing that letter to you and it was subsequent to our sending a summons to the Archives. I believe that is accurate. It was subsequent to our actually issuing the summons to the Archives that Ross Martin and the CMC even knew that we were taking that tack, because at that time our primary focus was not to lay blame; it was to protect.

Mr DOWLING: Can I add to that, too?

CHAIR: So that is the time line. All of this other stuff we have had—that was Wednesday. The summons required the Archivist to appear here at 12 o'clock. They have been here on and off until half past three. We have had adjournments and other things. We adjourned the meeting so that I could attend the parliament and read that statement, because, again, the committee was concerned that, as much as we are able, we imparted information to both the parliament and the community. Then we summonsed Mr Martin to us—what time was it? About three o'clock. He has just left and we put to him the request that you, Jeff Seeney and the Premier verbalised to me to the best of our ability. We cannot direct him, although we did give assistance with the wording to the best of our ability.

The ultimate determination on how that letter was worded is his, but I reiterate that we put the first request in for legislation without reference to them at all and their involvement in the legislation has been on the basis of your request. We understand the basis for your request: the coalition government—the LNP—does not want to be hammered in the media to say, 'Now you are protecting stuff. We had access to it. The LNP got wind of it and you have shut the access off with this legislation.' That is part of the reason the committee asked for the legislation to be sunsetted—so that it just gives us time and the CMC time but, more importantly, the committee and the commissioner to investigate what has been going on and the best method to give ongoing protection to those people.

Ms TRAD: I have just two issues. We completely know that it is not the government's fault, it is not our fault; it is the CMC's fault at this particular point in time and the chairman has acknowledged that publicly. The issue for us in terms of compelling or encouraging strongly the chairman to go out and ask for this curative legislation is to flag with those people who have had access to the documents that the parliament is preparing such legislation, which will then give them time to republicise the information. So us not taking that course of action had very legitimate reasoning behind it. Additionally, we have become aware at the end of the CMC's meeting here this afternoon with us that a number of people whose files have been witnessed have, in fact, contacted the CMC to express concern about this.

Mr BLEIJIE: And rightly so.

Ms TRAD: And rightly so. So that does go to the urgency of the curative legislation, which I know you understand. But we actually need to find a way through this and find a way through this urgently.

CHAIR: Can I just add to that.

Mr BLEIJIE: I have not got the letter, by the way.

CHAIR: No, when you arrived he left. He had rung up and got it all done electronically and he was leaving here to attend to it. So it is probably there now. In that draft statement we actually had at the end—I think I can say this—reference to the legislative cure and we withdrew that plainly and simply not to telegraph to those who may be tempted to publicise the information that maybe a

block on publication was forthcoming. We did that on purpose—not to try to withhold information but to try to preclude additional problems. So we have withheld that information from my statement to parliament, but that was our reasoning for it—not to be telegraphing that the legislation was coming.

Mrs MILLER: I have a question.

Mr DOWLING: Was I—

CHAIR: Sorry, I apologise.

Mr DOWLING: Part of the other reason we sought a legislative option was that we canvassed the idea of going to the courts to have it suppressed through a legal process. Unfortunately, the success of that has a huge question mark over it and there are some timing issues around that as well. So that is why we felt that that was probably the better option for us to take—that tack. I believe Ross Martin basically talked that the High Court proposal was fraught with danger and not guaranteed of success.

CHAIR: I think it was yesterday afternoon he actually sought—yesterday at some time—legal advice as to the probability of success of an injunction and the advice that he got from an SC—is that a silk?; whatever they are, senior counsel—was that—

Mr BLEIJIE: They will be QCs in a couple of weeks.

CHAIR: That the probability of success was not good. The probability—

Mr BLEIJIE: But I think the committee should also understand that the legislation response, if we do it, is not foolproof either in terms of jurisdiction. Someone in New South Wales could rightly publish this stuff if they have the documentation.

CHAIR: That is true.

Mr BLEIJIE: So—

Mrs MILLER: We all understand that, yes.

CHAIR: No, we have had that explained to us, but we do not know what other options we have got. We do not know what other options we have got. To do nothing to try to protect these people is not acceptable, either.

Mrs MILLER: My question is that you wrote back to the committee saying that you did not believe that legislation was urgent. So what time did you actually ask parliamentary counsel or the director-general of your department to organise the drafting of this legislation?

Mr BLEIJIE: About 15 minutes ago. They have not been asked.

Mrs MILLER: No, you requested that about 15 minutes ago?

Mr BLEIJIE: Yes. I called my DG, John Sosso, and Jenny Lang from the department down to the office of Deanne, my chief of staff, and that was first they heard of the issue. They have not been briefed on any of this. In fact, I am not sure if parliamentary counsel—they may know now—but it was whilst I was sitting in the chamber, in between you making a statement and me going to the commercial arbitration, before that, that the DG was walking down.

CHAIR: Okay. Are there any other questions? Can I reiterate, Jarrod, that the committee is trying the best it can to exercise its role, its responsibilities. I have been disappointed as chair, because the conversations were on the phone, that there is some question in the government—between yourself and Jeff and Campbell—that we have not done the best that we can. I believe that we have. We only found out Tuesday afternoon and, again, I reiterate that the severity of this situation did not become apparent until I read what was in the *Australian*. That may have been the way it was conveyed. It was Warren who rang me, because Ross was crook. It was a conversation. I immediately asked him for a report to the parliamentary committee—to the PCMC—as a matter of urgency so that we had something in writing to deal with. We have responded as quickly as we can and as thoroughly as we can, given the constraints of our authority. We have used the summons, we have used—

Mrs MILLER: Which is rare.

CHAIR: We have used a call to the CMC chair to attend and we have been grateful that you have been prepared to voluntarily come to this committee. So we have worked hard. I would be disappointed to see the credibility of this committee undermined and potentially the credibility of the parliamentary commissioner undermined when I believe that we have acted promptly and as well as

we could. I want to put that on the record, because I think the members of this committee have responded quickly and made themselves available and the secretariat have been working long—and Neil, because he had to be involved in the summons.

Mr BLEIJIE: Chair, I fully appreciate that and I appreciate the committee's time that you have all spent on this for the last 48 hours. I think I am with you: the blame here rests with the CMC and at some point in time some questions are going to have to be asked about who is going to take responsibility at the CMC for what has happened. But I fully appreciate that none of us wanted to have this issue being dealt with over the last 48 hours. We all have better things to be doing.

CHAIR: Can I then get your perspective on something? You made a statement in the parliament this morning before my statement about extending the powers of Callinan to investigate. I am sure the committee is, but I will say me—I am interested in your views about how that will be perceived and how that will run in conjunction, in conflict with, or in any other way with the investigation of the parliamentary commissioner or whether in your view this committee should just close up shop now and leave it all to Callinan.

Mr BLEIJIE: No, Callinan in his current review obviously is interested in what is happening, but he has no powers to—I think you will appreciate that the CMC and Callinan have had lots of negotiation back and forward in terms of getting correspondence and so forth. As I said before, what I think I intend to do now is, after I have read the letter, if there is a legislative base then there will likely be a commission of inquiry set up under the Commissions of Inquiry Act and it will link in with the legislation that you are asking me to move tonight so the commissioner can do what he does. But as I said this morning in my first statement to the House, I do worry that everything is secret and a shut shop with the PCMC and the CMC. A commission of inquiry, on the other hand, is open, it is accountable and everyone can see what is going on inside it. I have raised issues before; I do have concerns about the whole secretive nature of the CMC. I believe that Ross Martin should have been down in the red chamber today being grilled by this committee about what happened here and trying to get to the bottom of it.

CHAIR: But he was not. He was up here being grilled.

Mrs MILLER: He was up here. We were grilling him here.

Mr BLEIJIE: I understand that, but where is the public gallery? Where does the public understand what is going on here?

CHAIR: It has been too early for us to do that in the sense that—

Mr BLEIJIE: Sorry, Chair, I take objection to that.

Mrs MILLER: No—

Mr BLEIJIE: I am answering your interjection, member for Bundamba. I am here in a voluntary capacity tonight—

Mrs MILLER: Yes, I know that.

Mr BLEIJIE: You want my assistance with legislation. We are willing to work with the committee if I am satisfied by the letter. What I am saying is: if I do set up a commission of inquiry, then Ross Martin will be publicly asked questions.

Mrs MILLER: Yes, I understand that. But on the same basis this committee also had the Archivist and six others of her staff here as well giving us evidence in this private room. We asked them to come along. They were here for 3½ hours today. We have regular contact with the chair of the CMC—regular contact with him and his people. The other issue is: you are talking about having the legislation marrying in with this commission of inquiry that you are talking about. I would have thought they are totally different things—

Mr BLEIJIE: They are.

Mrs MILLER:—that you have the legislation and you can announce the commission of inquiry whenever you like.

Mr BLEIJIE: That is right. We will do that. What I am saying is that the commission of inquiry will be the same amount of time for an inquiry as you are requesting for the sunset clause.

Mrs MILLER: Okay.

CHAIR: You have suggested a month. We have discussed potentially—

Mr BLEIJIE: And who knows what Ross Martin is going to suggest.

Mrs MILLER: He might not suggest anything.

CHAIR: I am not sure that he is going to suggest a time line. I think he may just—

Ms TRAD: With all due respect, Attorney, this problem has been since 2007 an escalating or incremental messy business. In order for the CMC to do a forensic audit of all of the documents that have been viewed and all of the remaining documents within the State Archives, it will take some time.

Mr DOWLING: That is not entirely true. The files started to go over in 2007. They have only been accessible since February 2012.

Ms TRAD: Yes, but in terms of the issue of the destruction, Peter—

Mr DOWLING: But that is not the problem. The nub of our problem is that people have accessed files quite legally because of a cock-up. There is no other way to describe it. Files that should have been sealed for 65 or 100 years were accessed in February. The CMC was made aware of it in May and Mr Martin was going to have it fixed. We are now in March and people were still accessing those sensitive files up until yesterday.

Ms TRAD: I am not disputing that.

Mrs MILLER: We know that. We know all that.

Mr DOWLING: So to say there is no onus of blame or no—

Ms TRAD: But the overall issue of document security and document—

Mr DOWLING: Separate issue.

Ms TRAD:—destruction—

Mr DOWLING: That is part of our oversight. Right now we need to try to protect people who may be exposed because of the actions of someone back in February. That is all we are on about. We can do the audit of how the files are housed, the descriptors, when it happened, who did it and all the rest of it next week, next month, next year. What we cannot allow is for those people to be exposed.

CHAIR: That is right. Can I ask you to consider something—and this is not a matter that we have discussed specifically as a committee, but I believe I am reflective of the committee. The parliamentary commissioner does have significant powers. The committee under the Crime and Misconduct Act, section 318, can authorise the parliamentary commissioner to hold hearings to obtain information. Can I ask you to consider allowing the parliamentary commissioner to investigate this matter, allow him time to do that without the royal commission or maybe postpone the royal commission and consider the necessity or value of a royal commission after the parliamentary commissioner has reported? There could be political implications to that that I have not thought of in terms of your calling a royal commission after our parliamentary commissioner has reported. It could be interpreted as a lack of faith in his investigation, but he has not even had a chance to exercise those powers yet. That is it.

Mrs MILLER: I think cool heads in the sense that anyone who has been around this parliament a long time believes that the parliamentary commissioner is a man of highest integrity and has a cool head.

CHAIR: It is a request that I am putting to you as Attorney-General in good faith. I have been in care of this for however long it has been.

Ms TRAD: Eleven months.

CHAIR: And I certainly was not envisaging something like this occurring. It has occurred. I think we have responded promptly to it and we have not had the opportunity to exercise the powers that we have to investigate the matters. The final call is yours; you are the Attorney-General. I am just asking if you will give that consideration prior to making a decision to call immediately a royal commission.

Mr BLEIJIE: Duly noted.

CHAIR: Thank you very much. Are there any other questions? Have you got any other comments or statements?

Mr BLEIJIE: No, I think I have made my position fairly clear.

Mrs MILLER: I have a couple of questions. When will the parliament or when will this committee be advised of whether legislation will be coming in tonight?

Mr BLEIJIE: That the letter?

Mrs MILLER: No, no.

Mr BLEIJIE: Give me a break! You are asking for my help and now you are saying to me, 'Tell me when you are going to do it.'

Mrs MILLER: No.

Mr BLEIJIE: I will tell you when I have made up my mind.

Mrs MILLER: No, I am asking—

Mr BLEIJIE: And if we have to sit til six o'clock tomorrow morning to do it, we will.

Mrs MILLER: Do not treat me with contempt, Attorney-General.

Mr BLEIJIE: Excuse me, I am here in a voluntary capacity.

Mrs MILLER: Yes, I am aware of that. All I am asking is—

Mr BLEIJIE: I know where you are going politically with this. I am not going to entertain that.

Mrs MILLER: No, all I am asking is: when you make up your mind, when would our Madam Chair be advised of what—

Mr BLEIJIE: I will discuss that with Madam Chair.

CHAIR: Can I get clarity? Let us deal with it. You go back to your office, there is a letter from Ross Martin, you will consider the content of the letter and our request for legislation. When you make up your mind are you going to give me a ring?

Mr BLEIJIE: Indeed.

CHAIR: Thank you very much.

Mrs MILLER: That is all we wanted to know.

Mr WELLINGTON: If there is an issue with the contents of the letter, will you pick up the phone and speak with Mr Martin about your concerns with his letter if you have a concern with the contents of his letter?

Mr BLEIJIE: I can do that or I can—

Mr WELLINGTON: I would prefer that you pick up the phone and speak with him directly about your concerns instead of coming back to us, which would just drag the matter out further.

Mr BLEIJIE: I can do that.

Ms TRAD: Attorney, you have obviously given the idea of a royal commission significant thought. Have you thought about who would head it up?

Mr BLEIJIE: I have given it thought. I will announce that at the appropriate time.

CHAIR: Attorney, thank you so much for coming. I know it was on short notice. We appreciate your attendance. We appreciate your candour and your frankness—most of it. Thank you very much. Thank you, committee members. I declare the meeting closed.

Committee adjourned at 5.58 pm