



**SPECIAL COMMISSION OF INQUIRY INTO OFFENDING BY FORMER
CORRECTIONS OFFICER WAYNE ASTILL**

**PUBLIC HEARING
SYDNEY**

**FRIDAY, 15 DECEMBER 2023
AT 9:30AM**

DIRECTIONS HEARING

APPEARANCES

**MS J. DAVIDSON as Counsel Assisting
MR J. SHELLER SC appears for Corrective Services NSW
MS J. GHABRIAL appears for a group of correctional officers
MR J. HARROWELL appears for MR HOVEY
MR B. HALL appears for CSNSW member of staff**

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<THE HEARING COMMENCED AT 9.52 AM

COMMISSIONER: Yes.

5 **MR HARROWELL:** My name is Mr Harrowell, I appear for Mr Hovey.

COMMISSIONER: Sorry, you appear for -

10 **MR HARROWELL:** Mr Hovey.

COMMISSIONER: Thank you. Yes, Ms Davidson.

MS DAVIDSON: Your Honour, I understand leave has already been granted to Mr Harrowell.

15 **COMMISSIONER:** Yes.

MS DAVIDSON: Commissioner, this is a directions hearing that's been convened for the purposes of resolving all outstanding issues in respect of non-publication orders. There have been various applications brought by those representing corrective services in relation to a number of different documents and tranches of documents. I'm pleased to indicate that in many instances, and perhaps indeed all instances, those matters have now been able to be resolved such that as I understand it - and my friend will correct me as I go along - the orders that are proposed are proposed in an agreed fashion as I understand it. But if I can take your Honour through what I - Commissioner, I should say - through what I understand to be the outstanding issues, and indicate what the position as I understand it to be is, and then I will take -

25 **COMMISSIONER:** Sorry, I'm not sure. You say things have been agreed.

MS DAVIDSON: Largely. I understand that to be the position. As of us being at the bar table this morning -

30 **COMMISSIONER:** So, is the form of orders agreed?

MS DAVIDSON: Well, again I understand that to be the case, probably. I'm seeing nods from the other side of the bar table here, so I think that is likely to be the case.

40 **COMMISSIONER:** So, are there different orders that apply to different documents?

MS DAVIDSON: There are, and I will go through those progressively.

45 **COMMISSIONER:** Did someone put that on paper?

MS DAVIDSON: Yes, I have copies to provide to you, Commissioner, and those have been provided to my learned friend. If I could just indicate for the record, and to ensure that the position is clearly stated, in relation to a document related to a briefing concerning the CS - proofing to the Minister, that is concerning the
5 CSNSW review, Bathurst and Kirkconnell Correctional Centres, that is the review conducted by Ms Seymour there were some outstanding claims in relation to legal professional privilege that had not been agreed, but I understand that those are no longer pressed as of information that's been provided to the Special Commission just at the commencement or just prior to the commencement of this directions
10 hearing, perhaps my friend will correct me if I am wrong in relation to that, but I understand that nothing is pressed in relation to that.

As to the remaining issues that concern officer names in either ICAC documents, reports of professional misconduct matters, or what's been referred to as the
15 volume 19A documents, I have a form of order that I understand is agreed to hand up to you, Commissioner, in relation to those. And so that issue, as I understand it, has gone away.

In relation to the Taskforce Themis report, I understand the position to be that
20 Corrective Services, consistent with a letter that was sent from the Cabinet Office, seeks a non-publication order in respect of that document.

COMMISSIONER: The whole of the document?

25 **MS DAVIDSON:** Yes, as I understand it.

COMMISSIONER: And what is in that context meant by "non-publication order"?

30 **MS DAVIDSON:** Well, an order pursuant to Section 8 of the Act that will prevent publication of the document or the content, presumably.

COMMISSIONER: What is - what are you agreeing is meant by "publication" in that context?

35 **MS DAVIDSON:** Well, in respect of - it would plainly prevent any public communication of that document as - by anybody who is aware of it, it having been tendered.

40 **COMMISSIONER:** We are getting closer to the target, what do we mean by "public"?

MS DAVIDSON: Well, any -

45 **COMMISSIONER:** Because we have got a bunch of parties here -

MS DAVIDSON: Yes, correct.

COMMISSIONER: - who have got clients and so on.

5 **MS DAVIDSON:** Yes, it would not in my submission be communication
between lawyers and their clients, that is those who are represented before this
inquiry, in relation to that document. There had been an attempt in terms of the
form of order, or some of the forms of order that had initially been proposed by
Corrective Services in it respect of this document and others, to have a restriction
10 on communication between lawyers and their clients. That, as I understand it, is no
longer sought either in respect of this document or any other.

COMMISSIONER: Well, the form of words then can't just sit as
non-publication, there will have to be exceptions to it.

15 **MS DAVIDSON:** Well, your Honour -

COMMISSIONER: Because otherwise if I just made an order that it not be
published that will be the end of the matter. It couldn't go anywhere.

20 **MS DAVIDSON:** Yes. There could be an addition made to the orders that for the
avoidance of doubt the order does not prevent discussion or communication of the
document as between legal representatives.

25 **COMMISSIONER:** Maybe. It might be better if it was framed "not be published
other than to" would be a better form of order.

MS DAVIDSON: Yes. That could be added, certainly. That is not the way that
the form of orders -

30 **COMMISSIONER:** That's what should be done and then the practitioners should
be named. Not their clients, but the practitioners should be named: "So other than
to A, B, C, D, E and their clients".

35 **MS DAVIDSON:** Yes. That could certainly - that could certainly be done.
Commissioner, that could be an amendment if -

COMMISSIONER: I understand that.

40 **MS DAVIDSON:** - we were to do that by way of clarification that would be a
logical order -

COMMISSIONER: It strikes me as a much clearer form of order and one that I
would normally make if I had been in my previous life.

45 **MS DAVIDSON:** In that case, are you minded, Commissioner, to have me hand
up to you and take you through without that clarification, nevertheless, the various
documents that had been the subject?

COMMISSIONER: Well, if it's all agreed I'm not sure that I want to interfere, do I? Do I need to?

5 **MS DAVIDSON:** No, other than to have it stated for the record and for the benefit of - I think only that those who are here are persons who would otherwise receive the orders in any event, and I don't understand it will be contested by any other party. I see Ms Ghabrial nodding on the screen. She will no doubt tell me if there is some difficulty there.

10

Commissioner, you have seen the letter from the Cabinet Office. That is, as I understand it, the whole basis upon which Corrective Services relies for the purposes of their application.

15 **COMMISSIONER:** Again, if you agree I'm - if you are agreed I will make an order that reflects the agreement, but it may be that you've got to get it retyped to reflect what I've said, and which means I will make it in chambers in due course.

20 **MS DAVIDSON:** Yes. I understand - and my learned friend might seek to say something about this - that the Special Commission has sought to be as precise as possible in the various annexures to the orders that are proposed to be made. Including, for example, naming the officers covered. That is, where officer names are to be the subject of the orders and including specifying page numbers. I understand Corrective Services' position is they would like some more time to
25 check the annexures that have been provided. I have indicated to my friend that were there some error that was drawn to the Special Commission of Inquiry's attention I didn't perceive that there would be a difficulty in amending the form of order. But the order should nevertheless still be able to be made with any subsequent amendment that's necessary -

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COMMISSIONER: Well, we can do that or -

MS DAVIDSON: - at that point.

35 **COMMISSIONER:** - they can check it and I will do it in chambers in due course. I mean, either way it will work.

40 **MS DAVIDSON:** In my submission it will be preferable if the order could be made so that the prima facie position was put in place, and if there are one or two amendments that need to be made to that, that that should be dealt with -

COMMISSIONER: All right.

45 **MS DAVIDSON:** - down the track.

COMMISSIONER: I'm happy to that did if Mr Sheller is happy to do that.

MS DAVIDSON: If I might just have a moment, Commissioner.

5 The index, I should add for the record that has been provided to Corrective Services in terms of the specific list of names, does include in respect of all the categories of officer names that have been the subject of discussion. So the document that has been colloquially referred to as the Seymour Briefing has included, for example, another ministerial briefing.

10 **COMMISSIONER:** I understand what's said about the view of the Cabinet Office in relation to the Seymour report. What is the foundation -

MS DAVIDSON: The Themis Report.

15 **COMMISSIONER:** What is the foundation from an order that the name be - is it redacted or what's to be done?

20 **MS DAVIDSON:** It will be a non-publication order in respect of those names and the result of that would be that they will be redacted from the public version. So consistent with the order when the documents with the exhibits, for example, are published, those names will be redacted.

COMMISSIONER: But are there to be extensions to who can see or know those names?

25 **MS DAVIDSON:** Well, yes, because the order in the form that - or in the clarified form that you have suggested, Commissioner, would make plain that as between solicitors and their clients there can be publication and discussion of those names.

30 **COMMISSIONER:** Yes. I think we need to do that, just to make sure there is no slip-up.

MS DAVIDSON: That can be done.

35 Commissioner, other than that, there are some amendments to the tender that will resolve - that is to the matters that have already been tendered and some additional tenders to make that will resolve some outstanding matters and if it's convenient I seek to take you through those now.

40 The first of them relates to the documents referred to as the COPP, effectively an operational procedure document. The version - there was a version annexed to the statement of John Buckley that was a full version of that document that's not necessary for any of the Inquiries' purposes. Thus - and relevant extracts I should say have already been tendered that are included in the tender bundles, and thus I
45 withdraw the tender of the full volume of the COPP that is annexed to the statement of John Buckley, which is Exhibit 59 in tender bundle 5. It's annexure 1 from JB6 in volume 22 tab 4. And I understand that's not opposed.

COMMISSIONER: What am I being asked to do. Substitute?

5 **MS DAVIDSON:** Not to substitute, I'm just simply indicating in respect of that document that the full version is withdrawn. The substitutes are already contained in tabs 627 to 633 of the tender bundle.

COMMISSIONER: So, I need to say nothing?

10 **MS DAVIDSON:** Nothing. It's simply to note for the record that that is what is being done. Similarly, annexure 2 the statement of Berndt Kaschubs which appears within Exhibit 59 of tender bundle 5. That's volume 28, tab 13. The tender of that document is withdrawn. It's not relied on by any party and not necessary to be tendered.

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COMMISSIONER: So, what do I need to say there?

MS DAVIDSON: Again nothing.

20 **COMMISSIONER:** Nothing.

MS DAVIDSON: In respect of additional tenders - and these relate to documents that have come to light or have been provided subsequent to the close of the public hearing, Commissioner I tender bundle 6. I tender a copy of that for you. Those are further documents, and there is an index and they have been circulated to the parties, who have come to light following the conclusion of the public hearings.

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COMMISSIONER: Number 60. Yes. Well, tender bundle 6 will be Exhibit 60.

30 **<EXHIBIT 60 TENDERED AND MARKED**

MS DAVIDSON: Thank you, Commissioner. I have already noted that there are existing extracts of the COPP document which are substitutes for the annexures to Mr Buckley's statement but, Commissioner, you need say nothing about those given that they are already included within tender bundle 5.

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The final document is a substituted document, and that is page 23. It's a redacted version of page 23 of the document that's referred to as the Legal Officer Staffing Manual. That appears within Exhibit 47 volume 21A, tab 2, annexure tab 2A and the specific page noted. That is the specific page reference which I can read on to the record, is CNSW.0001.0079.0024, and the redacted version has been circulated to - will be circulated to the parties simply to redact off some officer names.

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45 **COMMISSIONER:** So, I need to say nothing?

MS DAVIDSON: Only to indicate that that page will be substituted within Exhibit 47.

COMMISSIONER: For the -

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MS DAVIDSON: And other than that, Commissioner, those are, as I understand it, the matters that -

10 **COMMISSIONER:** Well, it's the form of the other orders are agreed then just get them typed and I will make them in chambers. If that's suitable, Mr Sheller?

MR SELLER: Thank you. Thank you.

COMMISSIONER: Nothing more to say today?

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MS DAVIDSON: There is nothing more to be said yes.

COMMISSIONER: All right.

20 **MS DAVIDSON:** The matters now having reduced to agreement.

COMMISSIONER: I will adjourn.

<THE HEARING ADJOURNED AT 10.07 AM