



Transcript of Proceedings

CRIME AND MISCONDUCT COMMISSION

MR R NEEDHAM, Chairman

No 5 of 2005

PUBLIC HEARINGS INTO GOLD COAST CITY COUNCIL

BRISBANE

..DATE 23/09/2005

..DAY 1

WARNING: The publication of information or details likely to lead to the identification of persons in some proceedings is a criminal offence. This is so particularly in relation to the identification of children who are involved in criminal proceedings or proceedings for their protection under the *Child Protection Act 1999*, and complainants in criminal sexual offences, but is not limited to those categories. You may wish to seek legal advice before giving others access to the details of any person named in these proceedings.

CHAIRMAN: Good morning. This is Hearing Number 5 of 2005 of the Crime and Misconduct Commission conducted under section 176 of the Crime and Misconduct Act. The Commission resolved on 26th of August 2005 to hold public hearings in relation to complaints relating to the Gold Coast City Council and further resolved on the 9th of September 2005 to hold hearings with respect to specified terms of reference.

10

A copy of this resolution of the 9th of September 2005 will be marked as Exhibit 1.

ADMITTED AND MARKED "EXHIBIT 1"

20

CHAIRMAN: The hearing is in the context of a misconduct investigation and, as Chairman of the Commission, I will be conducting the hearing. Mr Robert Mulholland QC, Ms Theresa Hamilton and Mr Danny Boyle have been appointed as Counsel Assisting the Inquiry. I nominate as the hearing room orderly, Mr Tex Howarth and I nominate Mr Howarth to administer an oath or affirmation to any witness appearing at the hearing.

30

Pursuant to section 5 of the Recording of Evidence Act 1962, I direct that any evidence to be given and any ruling, direction or other matter be recorded by mechanical device by a recorder within the meaning of that Act. The hearing will proceed in two brackets of evidence. The first bracket will commence on the 10th of October 2005 and will be investigative in nature.

It is proposed that witnesses will give evidence on oath and will be subject to examination and cross-examination.

Witnesses will be entitled to legal representation. This first bracket will examine complaints made about alleged official misconduct before, during and after the Gold Coast City Council election in March 2004.

40

The second bracket of evidence will commence on a date to be fixed and will deal with the second term of reference relating to the adequacy of existing legislation, policies and practices in respect of electoral issues raised by evidence in this matter. That bracket will focus on policy considerations and systemic reform.

50

No-one will be compelled to appear at that bracket. Relevant organisations and persons will be invited to make submissions. Witnesses will not be sworn on oath and will not be subject to cross-examination by other parties. The Commission, through myself or Counsel Assisting, may ask questions to clarify oral or written submissions made by interested parties.

Now, Mr Mulholland, are there any preliminary matters that you wish to raise? 1

MR MULHOLLAND: Mr Chairman, this public hearing is being held as part of a CMC investigation that is ongoing and information is still being received and analysed. In these circumstances, it may not always be possible to follow the procedure I'm about to outline. Information may come to hand unexpectedly or some other unforeseen circumstance may arise but, in general terms, this is the procedure we intend to follow. 10

Witnesses will not be called unless a proof of their evidence is available in the form of a response to a notice to discover, a witness statement, a transcript of an interview or in some other appropriate form. As far as possible, it is intended to provide a copy of the witness's statement to all interested parties at least two clear days prior to the witness giving evidence.

This will be on a confidential basis until the witness gives evidence and I'd refer, in that regard, to parties who are given leave to appear, to section 213 of the Crime and Misconduct Act. Statements will not be authorised for publication generally until they've been tendered and sworn to or affirmed by the witnesses. 20

Prior to that time, statements will be authorised to be provided to counsel on the express condition they will not be published beyond counsel and those instructing counsel except to their clients as necessary to take instructions. If a witness is legally represented, the witness's legal representative will be given the option of taking the witness through his or her evidence-in-chief. 30

If that course is followed, Counsel Assisting will then cross-examine the witness followed by any counsel representing other parties who have been given leave to appear and permitted to cross-examine the witness. If there is any further re-examination after that process, Counsel Assisting will also have a right to further examine the witness. 40

If a witness's legal representative does not wish to adduce the evidence-in-chief or if the witness is unrepresented, Counsel Assisting will examine first followed by the witness's legal representative, other legal representatives and, finally, re-examination by Counsel Assisting.

Mr Chairman, I understand that an indication has already been given to the media through what I understand to be termed "media advisory" about the scope of the media access that will be permitted in the hearing room and its precincts during these public hearings. It may be appropriate for those conditions to be now formally placed on record by you. 50

CHAIRMAN: Yes, thank you, Mr Mulholland. The media have been advised and it will be a ruling of the Commission that the media will be allowed to film without sound and take still photographs during all of today's hearing. Filming with sound

and still photography will be allowed on the first day of the hearings on the 10th of October 2005 during the opening comments by myself and by counsel assisting. Filming with sound and still photography will, if no objection is taken by a particular witness, be allowed during the first few minutes of the appearance of each witness, namely while the witness is being sworn and asked formal questions about his or her name, address and occupation.

The media have been advised that a room is being made available for journalists covering the hearing, which is at the end of the corridor, which will have a direct sound and video link to this room. Recording of the audio from that link will be permitted for accuracy but not for rebroadcast. Yes, all right, thank you, Mr Mulholland. Now, is there anyone announcing their appearance today? Good morning, Mr Glynn.

MR GLYNN: Good morning, Mr Chairman. Mr Chairman, I seek leave to appear on behalf of Mr Ron Clarke who has been summonsed to give evidence before this hearing.

CHAIRMAN: Yes. Well, once he is summonsed to give evidence and is a witness you have a right to appear, so I acknowledge your appearance.

MR GLYNN: In that case I announce my appearance rather than seek leave.

CHAIRMAN: Thank you.

MR GLYNN: Would it be appropriate if I raised a couple of issues at this stage?

CHAIRMAN: Yes.

MR GLYNN: I have to point out I have to leave a little earlier, that I am due in another Court. I wonder if there are statements which make allegations against my client that are presently in existence could be made available now rather than two days before the witnesses are called so that that gives ample opportunity to take proper instructions from my client. Secondly, that if statements become available more than two days before, they could be made available when they're available to the Commission. And, thirdly, if the greatest possible notice of the time of attendance of any particular witness making allegations against my client, if there are any, can be given so that Mr O'Gorman and I can both arrange our diaries as it is not intended, unless required by the Commission, that we be here at all times, but rather only if there are allegations being made against our client.

CHAIRMAN: Yes. Well, with respect to those various matters, I suggest you take them up with counsel assisting. I am sure counsel assisting will attempt to assess but you might understand there might be some reason why if a particular witness is being called, if that witness makes some comment about Mr Clarke that he'd need to be able to know about to be

able to have you cross-examine on it, that witness's statement should be made available to you, but there might be good reason why another witness's statement might not be wanted to be made available at that time. You can understand that might occur in certain circumstances. I don't know whether it will occur here. I would be leaving that in the hands of counsel assisting. If at any stage you thought what was happening was causing some unfairness to your client, well then you would be able to raise that at that time.

1

MR GLYNN: All right. I am content to raise the matter with Mr Mulholland.

10

CHAIRMAN: Thank you. With respect to giving notice of the times when witnesses are coming, I am sure I am sure counsel assisting will do what they can, but again it will be a running list, and you know that I am finding it difficult to work out how long the hearings are going to go in this matter. I have no idea whether a witness will take one hour or two days or some time in between. We will do what we can, Mr Glynn.

20

MR GLYNN: I appreciate the fact that at least there will be an attempt anyway.

CHAIRMAN: Thank you.

MR GLYNN: Thank you. That is really all I had to raise.

CHAIRMAN: All right.

30

MR GLYNN: Would you excuse my attendance? I am required in Court.

CHAIRMAN: That's fine. And you may come and go, of course, at any stage as you want to throughout the hearing.

MR GLYNN: Thank you, Mr Chairman.

MR MURAKAMI: Thank you, Mr Chairman, my name's Murakami, that's, M-U-R-A-K-A-M-I, initials J J, solicitor to the firm Nyst Lawyers, I appear to announce my appearance this morning, Mr Chairman. Mr Ian Temby QC has been briefed on behalf of Mr David Power, Councillor David Power, who is the Deputy Mayor the Gold Coast.

40

If I can just add to Mr Glynn's submissions, Mr Chairman, particularly in relation to the running list. I understand the difficulty of a matter like this that comes on very quickly but I'd also reiterate that not only the statements be provided as soon as possible, but certainly the running list. It's very difficult for a man such as Mr Temby's stature and to work around him on the basis that he is to block out two weeks on the - on the basis that he may or may not be required as the Commission puts witnesses before the Commission with regards to - to our client.

50

So, it's on that basis and no doubt I'll pre-empt Mr Chairman's response that we liaise with counsel assisting but I just want to place on the record at this stage, as early as a month ago, we anticipated these difficulties and have been writing to the Commission strenuously requesting a running list, copies of statements, so that we can properly be prepared and be able to deal with the witnesses as they fall due. But, at this juncture, nothing has been forthcoming. So, I respectfully request the Commission at least put some attention to that issue.

1

10

CHAIRMAN: Yes, certainly. Look, I understand, and counsel assisting understands, the difficulties of counsel working out his availability and the requirements of his attendance here. But, I'm sure Mr Temby, with his experience, will also understanding the difficulties that are involved in running an investigative hearing like this.

MR MURAKAMI: Certainly.

20

CHAIRMAN: I'm sure counsel assisting will do everything that they can to assist Mr Temby to make it easier for him.

MR MURAKAMI: Certainly.

CHAIRMAN: But, in the final result, witnesses will be called, as they can be, and we are, with a running list, we are stuck with the situation that we do not know exactly how long each particular witness will go and Mr Temby will have to make, and you will have to make, on behalf of your client, the necessary arrangements to make sure that his interests are best looked after.

30

MR MURAKAMI: Thank you, Mr Chairman. One other issue, Mr Chairman. I was advised by members of the CMC yesterday that the format of today, and the reasons for today, may have also included allowing members of the public to make submissions to the Commission. I didn't understand that. That's not the case, is it?

40

CHAIRMAN: I'm sorry, I'm not understanding what you're meaning.

MR MURAKAMI: I spoke to a member of the CMC yesterday asking the format of today. I understood it just was to take appearances and I was advised that it may also take a format of any person, members of the public or otherwise, making submissions or announcing appearances before the Commission. I just wanted to know if that was the case because if that was the case, I'll be making application regards certain matters. Is that the case?

50

CHAIRMAN: It's - today is basically to take appearances but it's also to hear submissions such as you've just made to me. If there's any procedural matters of that sort of nature, you may raise them today if you desire. I'm not saying they'll necessarily be dealt with today but you can raise them if you so desire.

MR MURAKAMI: Nothing - you don't anticipate any submissions from any members of the public however?

CHAIRMAN: I have no idea of any submissions from any members of the public but if any members of the public sought leave to appear today and wanted to raise some submissions, well, I would listen to what they are and determine whether to deal with them today.

MR MURAKAMI: If they-----

CHAIRMAN: But I have no knowledge of any such submissions.

MR MURAKAMI: Certainly. If that was the case, Mr Chairman, I'd respectfully request then if any members of the public were to make submissions today, I'd like to make the submission that you consider exercising your discretion with regards to closing the - the Commission for those purposes, or indeed non-publication. And, the reason for that, Mr Chairman, is this. Is that at this stage, as you're aware, Mr Temby's been briefed in relation to this matter. Mr-----

CHAIRMAN: I think this might all be a little bit premature. You may remain at the Bar table at the moment. You have leave to appear, remain at the Bar table and if some submission is commenced to be made that you think raises a concern that you're now addressing, make it at that time.

MR MURAKAMI: Thank you, Mr Chairman.

CHAIRMAN: It might be totally irrelevant, it might never arise.

MR MURAKAMI: Certainly, Mr Chairman. I just want to put on record though that the concern of any sort of unsubstantiated submissions being made by the public, that's the concern of our client and also Mr Temby in these circumstances because-----

CHAIRMAN: Sure.

MR MURAKAMI: -----as you're aware, Mr Chairman, that at this juncture, there's been a lot read in the media about this so called dossier. Now, Mr Temby has read the dossier-----

CHAIRMAN: Well, there is a power that I have-----

MR MURAKAMI: Yes, I'm aware of that.

CHAIRMAN: -----for suppression of any matters-----

MR MURAKAMI: I'm aware of that.

CHAIRMAN: -----so, if it becomes relevant, we can address that issue then.

MR MURAKAMI: I'll do it on an ad hoc-----

CHAIRMAN: I don't think we need to go into it now.

MR MURAKAMI: I'll do it on an ad hoc basis then, Mr Chairman.

CHAIRMAN: Thank you, Mr Murakami.

MR MURAKAMI: Thank you, Mr Chairman.

MR RADCLIFF: If it pleases, Mr Chairman, my name is Radcliff, initials G J. I seek your leave to appear for Mr Shepherd.

CHAIRMAN: Mr Shepherd has been served?

MR RADCLIFF: Yes, he has, he's a councillor.

CHAIRMAN: I note your appearance then, Mr Radcliff.

MR RADCLIFF: Thank you. I - I have nothing other than to say-----

CHAIRMAN: You're a solicitor?

MR RADCLIFF: I'm a barrister.

CHAIRMAN: A barrister, right.

MR RADCLIFF: Yes.

CHAIRMAN: And you're briefed by?

MR RADCLIFF: I'm directly instructed at this point in time-----

CHAIRMAN: All right.

MR RADCLIFF: -----depending on how this evolves. The other aspect - I need to say no more other than what was said by Mr Glynn and I've had discussions with Mr Mulholland about his assistance and the - what he said about providing us with as much material as possible at an early stage.

CHAIRMAN: Thank you, Mr Radcliff.

MR RADCLIFF: Thank you.

MS HAUFF: Good morning, Mr Chairman. My name is Hauff, initial K, a solicitor from Deacons. I appear this morning for Mr Dutton of Stockland Developments and Mr Devine of Devine Limited.

CHAIRMAN: Sorry, that's Mr Devine and Mr?

MS HAUFF: Dutton.

CHAIRMAN: Mr Dutton. And Mr Devine has been served with a notice. Has Mr Dutton?

MS HAUFF: He has, Mr Chair.

1

CHAIRMAN: He has. All right. I note your appearance then Ms Hauff.

MS HAUFF: Thank you.

CHAIRMAN: Any other appearances today?

MR FYNES-CLINTON: If it please the Commission, if there are no further appearances as of right. My name is Fynes-Clinton, initial S, counsel, instructed by King & Co and I seek the Commission's leave under section 181 to appear on behalf of the Local Government Association of Queensland Incorporated.

10

CHAIRMAN: Yes.

MR FYNES-CLINTON: Mr Chairman, I've prepared some brief written submissions with respect to the matters which I submit are relevant to the granting of leave and the demonstration of the required special circumstances.

20

CHAIRMAN: Thank you, Mr Fynes-Clinton. Can I just ask are you seeking leave to appear throughout the entire Inquiry or just in the second bracket?

MR FYNES-CLINTON: As the submissions point out, Chairman, the association acknowledges that its primary interest is in the second bracket. I have, however, instructions to seek leave generally appreciating that in the first bracket my client will not be seeking to defend or protect the interests of any particular party and would generally have a subsidiary role but the submission is that matters which come out in the evidence or which fail to come out may generate an appropriate instance for the asking of a few questions to bring out matters that may not have come out but which my client considers relevant to the Commission's determinations about the way in which the law is presently applied and perhaps any future recommended changes so as I've said in the submissions, Mr Chairman, we acknowledge fully that our role in the first part would be subsidiary, that we would only be able to ask questions with special permission and that that would need to be justified but on the basis set out in paragraphs 7 and 8 of the submissions I do request general leave to appear throughout the Inquiry.

30

40

CHAIRMAN: Yes. Well, Mr Fynes-Clinton, as your submissions say the Local Government Association of Queensland is the peak representative body for all local governments in Queensland. Your client certainly has a very valid interest in the second bracket but I acknowledge what you say with respect to its interest in the first bracket and on the basis as that leave is sought, as set out in paragraphs 7 and 8, I'm prepared to grant that leave throughout the entirety of the Inquiry.

50

MR FYNES-CLINTON: Thank you, Chairman. I've nothing further this morning.

CHAIRMAN: Thank you. Yes, Mr Webb.

1

MR WEBB: May it please you, Mr Chairman, I appear today for the Gold Coast City Council, the Body Corporate, to seek leave to appear in the Inquiry. I realise I must demonstrate special circumstances. I have prepared an outline. But may I say it is mentioned in the outline that should the LGA have an interest - and I concede they certainly do - then certainly we should for the reasons outlined in the submissions. After all, the media states that - and indeed the Commission's media release - states that this is an Inquiry, a wide-ranging public Inquiry, into allegations concerning the Gold Coast City Council and if indeed a man in the street were asked should the Gold Coast City Council then be represented without knowing or looking closely at the terms of the reference the answer, I would submit, would be obvious. But perhaps I should just let you read the submissions or I'll read them out.

10

CHAIRMAN: It might be faster if we each individually read them. Thank you, Mr Webb.

20

MR WEBB: I do have some other points to make on them.

CHAIRMAN: Certainly.

All right. Mr Webb, you say that the appearances on behalf of the Gold Coast City Council being the Body Corporate, which is for both the executive and administrative arms which includes all councillors and council officers.

30

MR WEBB: Yes.

CHAIRMAN: We've already had appearances on behalf of some councillors, so presumably you wouldn't be seeking leave to appear on their behalf?

MR WEBB: Only in a more general sense in that the executive as a body has an interest. It's a difficult concept, I acknowledge, to grasp but as I see the----

40

CHAIRMAN: I am having some difficulty with it, I must say.

MR WEBB: There are - there are differing interests. The Council, that is the executive and the administration, constitute the Body Corporate. Now members of the executive are separately represented and indeed are entitled to as of right but the councillor - a matter may arise which doesn't directly affect them but which affects the executive of the Council as a whole. I'm not seeking to appear in respect of the councillors who are not here as of right, I'm only seeking to appear for the executive which comprises all of the Council and it would not be in any way our intention to usurp the function of the counsel appearing for those councillors who are here as witnesses or have been summonsed to appear as witnesses, or the role of my learned friend Mr Mulholland QC.

50

We do not see in that issue that we may have - we'd have to seek permission anyway to ask any questions, but we don't intend to descend into that area where a member of the executive is appearing and, as it were, defending allegations made against himself. But there may be areas where the whole of the Council has an interest in something that comes up and it's in that respect that we would be - I would be seeking to act in respect of the executive, and I don't see how it can be otherwise because the - being as it is, a body with essentially two limbs, I could not, for instance, as we see it - and I say the - my instructor and his team of lawyers appear for the administration, or the CEO without the administration, or for those councillors who have not been summonsed to give evidence.

CHAIRMAN: Can I ask from whom you would receive your instructions?

MR WEBB: The instructions would come firstly, obviously, from my instructing solicitor and the person to give those instructions would be the Chief Executive Officer, who is----

CHAIRMAN: So you'd really be appearing at the instructions of the Chief Executive Officer.

MR WEBB: In a practical sense that's where the instructions would come from though----

CHAIRMAN: And what would happen if there was a suggestion, say, that a Council officer, a planning officer or any other officer had perhaps been subjected to any form of overbearing by another member of the executive, be it a councillor, be it Mr Dickson himself or someone else? Where would you see your role then would be?

MR WEBB: That's exactly the point that we're really raising in saying that we should be - we're the body being inquired into and in those circumstances----

CHAIRMAN: Well, with respect, you're not the body being inquired into.

MR WEBB: Well - well, that's not quite what your own media release says.

CHAIRMAN: It's about the Gold Coast City Council but there's no suggestion that the Council was some sort of amorphous body as being examined itself.

MR WEBB: No.

CHAIRMAN: I - can I just indicate what my thoughts on the matter are? I'd be quite happy to give the Council as the Body Corporate leave to appear on the second bracket. I'd be quite happy, of course, for the Council through your instructing solicitor, through Mr Dickson, through yourself. You will have access, certainly can be here in the room. You will have access to the transcript, you will access to all the

exhibits because they will be publicly available to anyone. If any matter comes up where there is a suggestion say against Mr Dickson, or if it's a matter that Mr Dickson can provide some elucidation on, then you may contact Counsel Assisting and Mr Dickson might end up in the witness box telling us about that, and if he is a witness then, of course, you could seek - you would have the right, if you were instructed, to appear on his behalf.

But the problem I have is that the Council itself is this general body that is involved with the councillors. It is involved, as you say, with the administrative arms, and involves all Council officers is what you say in your submissions. I find it very difficult to be able to, at this stage, give you leave to appear on the first bracket acting for such an amorphous body.

MR WEBB: Well, certainly, I appreciate what you're saying in relation to the second aspect of the matter. But in relation to the first aspect of the matter, that's the very point, the special circumstances are the problem that you have, the amorphous body. We - for instance - if I may give by way of one example. I've seen part of the so-called dossier as it's been referred to earlier today. Part of what appears in that is just demonstrably wrong where it's talking about Council practice in relation to one matter.

CHAIRMAN: Well, that's fine, Mr Webb. If evidence is led that is wrong with respect to Council practices, I would expect that you will have every opportunity to bring that to the attention of counsel assisting and that can then be brought out. I'm sure if there is something wrong about the practices, then counsel acting for Mr Power or counsel acting for Mr Shepherd who have already announced their appearance today, will bring that out. I don't see any real risk that we're going to be mislead because the Gold Coast City Council isn't here able to check all those matters.

MR WEBB: Well, with respect Mr Chairman, those persons would not be interested necessarily in that particular matter or they may not know the practices intimately.

CHAIRMAN: Well, Mr Clark-----

MR WEBB: And that's the reason that - it's one of the reasons I've advanced that, if we are given leave to appear, we can ensure that those matters are picked up as they go through. Otherwise, they might just pass by and it's because of that amorphous - as you used that term, I don't adopt it - nature. I think it's quite clear that the body corporate has only two limbs and I'm seeking the leave to appear to protect the interests of both of those limbs apart from the individual interest of the witnesses who have been summonsed. And it's clear, by your example, it's clear that certainly the Chief Executive Officer, given the wide-ranging charge that he is given by the Legislature, has an interest in the example that you gave.

Now, we may not, if we're not here and given the opportunity to hear the evidence as it's given, pick up on one of these things. And if we did, we can immediately take steps to ensure that the matter is properly dealt with by the Commission which might not otherwise occur.

1

CHAIRMAN: Is the Chief Executive concerned to ensure that the truth is brought out at this inquiry?

MR WEBB: Insofar as there's a reflection, if there is any reflection upon the administration arm, certainly. And-----

10

CHAIRMAN: And not apart from that?

MR WEBB: -----not only that, and it's difficult to see, because we don't know because it's going to be wide-ranging. If something were advanced in relation to the returns, the returns of other members of the Executive, then he has an interest in that because he's charged with the duty of - I'm speaking of the election funds returns - he has, as you would've seen Mr Chairman, he has a direct Legislative responsibility to look at and control those matters so far as he can to keep, I should say, not to control. He can't control but he has to keep them.

20

CHAIRMAN: Well, if there's any suggestion that he's been derelict in his duty, I'm sure counsel assisting will advise that there's evidence coming out to that effect and he can renew an application to be represented personally, rather than the Gold Coast City Council and then that will be considered at that time of course.

30

MR WEBB: Mr Chairman, your words said "if the evidence comes out". Well, that's why I'm instructed to seek to appear so that it won't be that, at the end of the day, we'll be notified that such evidence has come out. Or if, for instance, the Director of Planning, some evidence came out implicating him, we would wish to deal with that matter as speedily as possible. It's because we don't know-----

40

CHAIRMAN: Well, with respect, if some evidence came out about Mr Dickson, if I use him as an example and I have no idea whether any evidence will, of course. But if it was, then, Mr Dickson, I would expect, would be seeking leave. Someone would be seeking leave to appear on his behalf if it was direct evidence about him.

If Mr Dickson - again I make it very plain that I have no knowledge of anything that Mr Dickson might or might not have done but if it did turn out that Mr Dickson, say, to use him as the example, had done something wrong, then I wouldn't expect there would be counsel on behalf of the Gold Coast City Council attempting to defend him; it would be someone on his own behalf doing that.

50

MR WEBB: Well, that would only be if a conflict was found. If there is no conflict, then a person representing the Gold Coast City Council would - and as I'm presently instructed

could and as I'm presently instructed would be appearing on behalf of Mr Dickson.

1

CHAIRMAN: All right. Have you any further submissions?

MR WEBB: Yes, I do. I want to draw attention to one matter in particular. At paragraph "Under special circumstances B"-----

CHAIRMAN: Sorry, this is paragraph what of the-----

10

MR WEBB: 3.

CHAIRMAN: Of the section you're referring to?

MR WEBB: Yes. Paragraph 3 and then the special circumstances outline, how the matter vitally affects the Gold Coast City Council.

CHAIRMAN: Sorry, I'm not following you. Paragraph B of section 180-----

20

MR WEBB: Oh, my submissions. Oh, no, my submissions, I'm sorry.

CHAIRMAN: Of your submission. Which-----

MR WEBB: I beg your pardon.

CHAIRMAN: Paragraph 3B, is it?

30

MR WEBB: First page, paragraph 3B.

CHAIRMAN: Right. Yes?

MR WEBB: As to the matter vitally affecting the Council. You would no doubt be aware of the statement made - well, reportedly made by the Minister for Local Government in the Weekend Gold Coast Bulletin of the 13th of August.

40

CHAIRMAN: I must say that's not a publication I subscribe to on any regular basis.

MR WEBB: I thought - well, it might just be weekend reading, Mr Chair.

CHAIRMAN: I certainly didn't-----

MR WEBB: I thought it-----

50

CHAIRMAN: I have no memory of reading anything in that bulletin. I do sometimes see clippings but you'll have to tell me what was said.

MR WEBB: Yes. I thought it - I was about to - I thought it may have been amongst the material that has been gathered because I don't know what material's been gathered apart from the files that we of course have made available. This

appears, "Local Government Minister Desley Boyle said 'If a Crime and Misconduct Commission, CMC, probe into the Council found evidence of corruption, the Council would be sacked,' so I say it's vitally important and on behalf of the Council, the Council doesn't wish to suffer the fate of John Cooke and have any of the punishments handed out to him." 1

He was the counsel who prosecuted Charles the 1st-----

CHAIRMAN: Oh, I see. 10

MR WEBB: -----and was eventually-----

CHAIRMAN: Mr Robertson's recent book.

MR WEBB: Yes, emasculated-----

CHAIRMAN: Yes, I haven't read it yet.

MR WEBB: He was emasculated, disembowelled, burning - an iron rod put into his bowels, head chopped off and then head - he was drawn and quartered. We don't want either of those----- 20

CHAIRMAN: Mr Webb, it's often said that the CMC has broad and wide-reaching powers but I don't think that we've been given any of those powers as far as I'm aware.

MR WEBB: Well, we don't want any of those things to happen to us. Certainly we don't want our head chopped off, which is the reason I drew that analogy, because the Minister for Local Government has signalled that that could be an outcome. Now, the point of my submission is this. John Cooke was given the right to be heard, he was heard and he did make a speech and we don't want to be in the situation of being denied the opportunity of hearing what is being said and asking for special permission if need be to put material relevant to some testimony in a timely way at that time. 30

And if we aren't given the right to appear on what is in reality an investigation into us, then justice will be denied to us. It's really, in my submission, as simple as that. We do have a legitimate interest in being there and, with respect, Mr Chairman, you're foreshadowing problems that may or may not arise if a particular officer or a councillor who hasn't been mentioned yet, hasn't been called as a witness, if something comes up. 40

There may or may not be a conflict of interest. The fact that there may or may not be is not a reason for denying to the Council the freshest and earlier opportunity to hear what's being said about it. Excuse me. Yes, my attention - I have referred to section 1131 of the Local Government Act which speaks of the role of the Chief Executive. 50

And he is the person who is to act on behalf of the Council. If, Mr Chairman, you were to say, "Well, he may have a more understandable position of special circumstance, I might have considered giving leave to him to appear by - to be

represented." - it's not to appear; it's to be legally represented - then I also carry those instructions as a fall-back position.

1

CHAIRMAN: All right. Anything further?

MR WEBB: So it's a very - from the Council point of view, as indeed I'm sure everything that comes before the Crime and Misconduct Commission may potentially be very serious, this is a very serious issue particularly in view of the statements made by the Minister for Local Government, and that underscores the necessity of us - well, it creates the special circumstances in which we should be given the right to be legally represent the Council throughout the hearing, not only the second stage.

10

CHAIRMAN: Yes. Yes, Mr Mulholland, have you got any comment?

MR MULHOLLAND: Mr Chairman, there is nothing I can usefully add having only received these written submissions today. What I would submit, however, is the following: first of all, any person who falls within the administrative arm of the Council as described by Mr Webb who has information which is regarded as useful to the terms of reference of this Inquiry, then that person is encouraged to speak to the Commission staff.

20

There does not, on what has been said so far, appear to be that special circumstance which is required under the Act to give leave, subject to a further consideration of this written submission that Mr Webb has provided, but in my submission it's a matter which could be kept under review as the Inquiry proceeds.

30

CHAIRMAN: Yes, thank you, Mr Mulholland. Mr Webb-----

MR WEBB: Can I just respond to that. That, then, creates the problem - "kept under review" would mean that either we would have to be here without the right so that we don't have to do any catch-up football work on what has already gone before, or if we weren't in that position we would have to seek time to read all of the transcript to get into that position, and it is, with respect, a more sensible course to say, well, there is another further special circumstance why we should be here in the first place rather than being put in the invidious position that Mr Chairman you would be well aware of, that when someone has to come into a matter late and attempt to come up to speed on transcripts of evidence, which always take an incredibly long period of time to read.

40

50

CHAIRMAN: I find the logic of that difficult to follow, Mr Webb. It seems to suggest that you wouldn't be able to keep following the matter on a day-to-day basis or your client, whomever within your client would be delegated the role, of watching the matter on a day-to-day basis, that you couldn't do that unless you had leave to appear. That doesn't seem to make a lot of sense to me.

MR WEBB: No, I didn't make my submission clear. That if we adopted that alternative, then on the basis that it can be foreseen there would be some circumstances arising, we should, with respect, be allowed to be there without having to make a special application at a later stage, and in the public eye it would be extremely difficult to understand if we're denied leave to appear why we're there and expending the resources of Council doing the - sitting and writing in the public gallery. That's a practical matter.

1

CHAIRMAN: Yes, look, I'm certainly minded to give your client leave to appear for the second bracket of evidence. I will consider the first part and advise you in writing of my decision.

10

MR WEBB: I'm sorry, I didn't mean to be discourteous by sitting.

CHAIRMAN: No, that's all right. I didn't take it as a courtesy. I will consider my decision and then advise you in writing of that decision.

20

MR WEBB: Yes. Should, on reflection, in conferences we have, a further submission could we make that in writing by perhaps close of business Monday?

CHAIRMAN: Yes, yes, that would be fine. Yes, thank you, Mr Webb. Any other appearances at all? No?

MR MULHOLLAND: Nothing further.

30

CHAIRMAN: Yes, thank you, Mr Mulholland. The hearing will now adjourn, thank you.

HEARING ADJOURNED AT 10.20 A.M.

40

50