

INQUIRY IN CONFIDENCE

Our reference: 2014/74-1~2
 Your reference: CLS:sml:20130805

Inquiry into Stella Maris
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(Via email) cathy.spurr@halfpennys.com.au

Dear Ms Spurr,

I refer and thank you for your emailed letter of 14 February 2014, re the Stella Maris Inquiry. I note you act for Ms Delia Phoebe Lawrie MLA and Mr Gerry McCarthy MLA. The references to the enclosed copies in your letter have not been received by the Inquiry.

I will deal with each of the matters raised in your correspondence in turn.

Request for submissions

I note in your letter identifies the material on pages one and two, numbered paragraphs 1-5 (inclusive) as your clients' public, and obviously preliminary, submission. I intend to excise that text from your letter and post it on the Inquiry's public website, together with the other public submissions.

Should you have any objection to this course, I request you advise the Inquiry of the reason why, by no later than 5pm Tuesday 18 February 2014. I will consider any response you make.

Public interest immunity

My opening statement from the Inquiry outlines how I intend to deal with documents and testimony concerning Cabinet dealings. I also note recent legal precedents in relation to public interest immunity (PII) claims.

I presume your reference to the waiver of Cabinet confidentiality by the Northern Territory in numbered paragraph 1 on the first page of your letter is intended to be a

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reference to PII considerations. In my understanding, PII is not vested in the Crown, any person or organisation may claim it, and it may not be waived by the Crown. Moreover, to the extent that there may be any PII attaching to the dealings in and around Cabinet during the time your clients were members, it would fall to your clients to assert any claim for privilege should they choose to do so.

The conduct of the Inquiry

The Inquiry has not at this stage engaged with witnesses who are to provide testimony other than through the formal processes under the *Inquiries Act* (NT) ("the Act"). The Inquiry is being conducted in 4 phases and we are still in Phase 2 – which is the information gathering phase. Until that stage has been completed, the Inquiry is not in a position to consider or form a view on whether there is any ground for making the findings of wrongdoing against any person or organisation. The suggestion that the Inquiry is considering making any adverse finding against either of your clients is clearly premature and without basis. For these reasons, I do not share or accept your view that it is not open to the Inquiry ultimately to make findings, some of which potentially could be adverse, in relation to any person or organisation, relevant to the Inquiry's Terms of Reference.

The preliminary evidence gathering stage will be concluded and the relevant materials examined. Then and only then will I be in a position to determine whether there may be grounds to make any adverse findings against any person or organisation. Should that eventuate, I will provide any such person or organisation with notice, all relevant materials, and opportunity to make submissions in relation to the matter.

I also note in this context that you and your clients are well aware of the Inquiry, its Terms of Reference, public website and hearings schedule. Indeed, there has been a person who claims to be from Ms Lawrie's office present during all the public hearings. If you or your clients were so inclined, you could have chosen – and could still make application – to have me consider whether your clients could be legally represented during these public hearings. You have chosen not to do so.

As I have stated in the media, I intend to conduct a thorough, fair, transparent and efficient Inquiry. This Inquiry is not an adversarial process, it is inquisitorial in nature, and I intend to proceed on that basis. Although it is not governed by the rules of evidence, it will not be conducted in a fashion which disadvantages any party on that account. As the Act expressly provides, the Inquiry is entitled to inform itself in such manner as it thinks fit and without regard to legal forms and solemnities, subject of course to the requirements of procedural fairness.

I am pleased to note that your clients share my desire to have the Inquiry completed promptly and I look forward to their assistance in that regard.

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I have publicly announced that I intend to submit my report to the Administrator of the Northern Territory in accordance with the Act on Monday 26 May 2014.

Attendance of your clients

You will have now received summonses for Ms Lawrie and Mr McCarthy to attend the Inquiry to give evidence. We have attempted to meet your request concerning your clients' availability by adjusting our witness schedule accordingly. I note the summons served on Ms Lawrie requires her attendance on Friday, 28 March 2014, which is at the end of the sittings period you referred to and on a non-sitting day. I should advise that I think it likely that Ms Lawrie may well carry over until Monday, 31 March 2014 given that her involvement with Stella Maris spans the period 2007-2012.

Consistent with the practice involving other witnesses, I am willing to discuss your clients' testimony with them before the hearings. These discussions will be tape recorded. This provides an opportunity for witnesses not to be surprised by matters ultimately put to them.

Documents

Concerning your request to access documents that have come into the possession of the Inquiry, I will to the fullest extent possible make any document that we intend to have your clients comment upon, provided to them in advance of their testimony. Cabinet documents will be made available for your clients to view in our offices. Your clients will be permitted to take copies of any Cabinet documents they consider necessary for their preparations upon provision of a written undertaking that access to those copies will be restricted to your clients and their legal representatives, and that they will not be more widely disseminated.

So far as other categories of document are concerned, I will endeavour to have copied those documents identified by your clients during the course of inspection as relevant and necessary to their preparations

Please contact the Inquiry on 89996011 to make the necessary arrangements for inspection.

Summons to produce

I reject your assessment of the summonses to produce documents. The summonses are narrow in their focus and provide a clear description of what material is required to be produced. I respectfully suggest that you give some further and careful consideration to the description in the Schedules. If you are still uncertain as to the requirements, I will receive a call from you to explain it further. That area of disagreement notwithstanding, I note your clients' indication that they will cooperate with the Inquiry concerning the production of the documents, and the proposal that you provide the documents on their behalf is acceptable.

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The involvement of Harold Nelson Holdings

Finally, although the matter does not arise directly from the content of your correspondence, I advise that the Inquiry intends to call you as a witness.

Information received by the Inquiry to date suggests the purpose of obtaining a lease over the Stella Maris site was for Unions NT and other related entities to move their operations to the Stella Maris location thereby creating the opportunity to redevelop 38 Woods Street, Darwin into a multi-story, multi-use complex. We understand planning and negotiations were underway to achieve this outcome.

Harold Nelson Holdings is a part owner of the 38 Woods Street property. Australian Electoral Commission records also reveal that Harold Nelson Holdings receives significant rental payments as the part owner from the tenants of 38 Woods Street, Darwin.

Harold Nelson Holdings, of which you have been a longstanding Director over the time in question, may have been involved in negotiations with Unions NT concerning the relocation and redevelopment of 38 Woods Street, Darwin.

If that is correct, Harold Nelson Holdings and Unions NT may have stood to gain a significant pecuniary benefit from the associated redevelopment.

Subject to a without prejudice discussion with you, I would consider taking testimony from another suitable officer bearer of Harold Nelson Holdings who could provide testimony on the above matters.

I look forward to your response.

Yours sincerely

A handwritten signature in black ink, appearing to read 'J. Lawler', written over a horizontal line.

John A Lawler AM APM
Commissioner
Inquiry into Stella Maris

17 February 2014