

Special Inquiry into St Andrew's Hostel

Preliminary Hearing

Held at: Courtroom 3, Level 18,  
111 St Georges Terrace, Perth

Thursday, 15 December 2011 at 10am

Before: The Hon Peter Blaxell

1 HIS HONOUR: I will take appearances from counsel,  
2 firstly, from you, Mr Urquhart.

3  
4 MR P URQUHART: I am Counsel Assisting for the Inquiry,  
5 thank you, your Honour.

6  
7 HIS HONOUR: Very good, and we have Mr Jenkin.

8  
9 MR M JENKIN: Yes, if your Honour please, I appear on  
10 behalf of the Country High School Hostels Authority and the  
11 Chief Executive Officer of the Education Department.

12  
13 HIS HONOUR: Very good, and Mr Hammond.

14  
15 MR HAMMOND: Yes, Mr Inquirer. I appear on behalf of  
16 21 clients. I have already provided a list of those names  
17 to the Inquiry and I won't read them out unless you would  
18 like me to.

19  
20 HIS HONOUR: No, I have seen those, thank you very much.

21  
22 MR J HAMMOND: May it please you.

23  
24 HIS HONOUR: Before calling on counsel, I will make some  
25 brief introductory remarks. Today's hearing is a  
26 preliminary hearing and I will not be receiving any  
27 evidence. The purpose of the proceedings today is to set  
28 down a program for my Inquiry and to hear from the counsel  
29 for interested parties who wish to be represented.

30  
31 My terms of reference require that I report on my  
32 findings by the end of May. In order to meet that  
33 deadline, it will be necessary to commence hearing evidence  
34 during February next year. In the meantime, the Inquiry is  
35 in an investigatory phase and my investigators have  
36 commenced the task of gathering facts and identifying  
37 potential witnesses.

38  
39 I wish to make it clear that the Government has  
40 provided me with all of the resources I need to carry out  
41 the Inquiry and there is no request I have made which has  
42 not been met. Accordingly, I am confident that I have all  
43 of the staff and resources I need to get to the bottom of  
44 the matters the subject of the Inquiry.

45  
46 Yes, Mr Urquhart.

47

1 MR URQUHART: Thank you very much, sir. This Special  
2 Inquiry has been established pursuant to section 24H of the  
3 Public Sector Management Act of 1994. That section  
4 provides for the holding of an inquiry into any matter  
5 related to the public sector.  
6

7 It is therefore not an inquiry which has been created  
8 for the purpose of investigating alleged sexual abuse at  
9 the St Andrew's Hostel in Katanning. Parents,  
10 nevertheless, did entrust St Andrew's with their children.  
11 Breaches of untold magnitude of that trust occurred to a  
12 number of teenage children.  
13

14 A matter for the Inquiry's determination is whether  
15 this offending was perpetrated by the offender not only  
16 taking advantage of his position of authority and the  
17 isolation of his victims from their families, but whether  
18 there was an advantage created by the high regard that the  
19 offender was held in within the community at the relevant  
20 time.  
21

22 This Inquiry is primarily concerned with an  
23 investigation of public officers who were allegedly  
24 notified of sexual abuse of children which had either taken  
25 place or was taking place at the St Andrew's Hostel.  
26

27 The Inquiry is concerned about when such public  
28 officers were told, by whom they were told, why they were  
29 told, and what action they took as a result of being told;  
30 and if there was no action taken, why was that the case? .  
31

32 The question that will loom large is whether greater  
33 weight was given to the reputation of the hostel and any of  
34 its staff rather than the safety and wellbeing of the  
35 students who boarded there.  
36

37 If I may now, your Honour, turn to the Inquiry's terms  
38 of reference. The terms of reference for this Inquiry are  
39 not limited to the St Andrew's Hostel in Katanning. The  
40 Inquiry may consider, if it was to emerge, any evidence of  
41 allegations of sexual abuse by any person at or connected  
42 with a related organisation at any time.  
43

44 Such considerations could extend to other hostels that  
45 were run by the Country High School Hostels Authority, and  
46 though I have said that this Inquiry has not been  
47 established to investigate allegations of sexual abuse of

1 children at St Andrew's Hostel or other such entities,  
2 I wish to make it clear that this Inquiry will refer any  
3 evidence of criminal behaviour that is uncovered by its  
4 investigations to the WA Police, and such criminal  
5 behaviour need not necessarily be confined to allegations  
6 of sexual abuse upon children.  
7

8 As specified by its terms of reference and section 24K  
9 of the Public Sector Management Act, the Inquiry will  
10 provide a report to the Public Sector Commissioner, with  
11 its findings as to why children who were boarders at  
12 St Andrew's Hostel were sexually abused for such an  
13 extended period of time.  
14

15 It would appear that, at this hostel, there was  
16 systemic abuse of a sexual nature on a large of children  
17 over a period from the mid-1970s to 1990, and the  
18 preliminary investigations of the Inquiry to date indicate  
19 that, during the course of those years, a number of public  
20 officers, some in positions of authority, were advised that  
21 this type of offending was taking place.  
22

23 The Inquiry will also make recommendations in its  
24 report as to whether any disciplinary action should be  
25 taken against a public officer as a consequence of its  
26 findings, and recommendations will also be made as to  
27 whether any changes should be made to the policies,  
28 procedures, or operations of government agencies as a  
29 consequence of the findings.  
30

31 I just may make a comment about the passage of time.  
32 The Inquiry is only too aware of the historical nature of  
33 the matters it will be investigating. This is particularly  
34 so with respect to the St Andrew's Hostel. As I have said,  
35 the timeframe there begins in or about 1975 and ends in  
36 1990. Witnesses' memories are not infallible and, with the  
37 passage of time, it is envisaged that people's  
38 recollections of events will undoubtedly differ. For that  
39 reason, the Inquiry which will make every endeavour to  
40 locate any documentary material that was generated during  
41 this period which may corroborate or support one  
42 recollection over another.  
43

44 I turn now to the hearings that the Inquiry will be  
45 undertaking. A central feature of the Inquiry will be the  
46 calling of witnesses to give evidence at hearings.  
47 Wherever possible, those hearings will be conducted in

1 public. It is envisaged, however, that there may well be  
2 times when hearings will have to be conducted in camera.  
3 Such hearings will only take place if required for legal  
4 reasons and/or in circumstances where it is appropriate  
5 that the witness's details or evidence not be made public.  
6

7 As the Inquiry recognises the importance of conducting  
8 hearings in public, any decisions to hold hearings in  
9 private will not be made lightly.

10  
11 There may also be occasions when portions of evidence  
12 given in public hearings will be the subject of a  
13 suppression order. Once again, those circumstances will be  
14 limited, but it is anticipated that they will occur from  
15 time to time.  
16

17 It is expected that the transcript of the public  
18 hearings will be made available on the Inquiry's website by  
19 late in the afternoon of each day's proceedings. The  
20 Inquiry regards that as an important requirement so that  
21 those who are unable to attend the hearings can readily  
22 access all the evidence that was led. It is also  
23 anticipated that such transcript will assist in the  
24 accurate reporting of the proceedings.  
25

26 Turning now to the location of the hearings: a  
27 majority of the hearings will be conducted on this floor,  
28 either in this hearing room or in hearing room number 2.  
29 Proposed dates for public hearings will be made available  
30 on the Inquiry's website.  
31

32 As your Honour has already identified, it is envisaged  
33 that the first round of public hearings will commence  
34 sometime in the second half of February next year. The  
35 hearings will not run continuously from that time. The  
36 Inquiry which will make every effort to ensure that its  
37 hearings will be completed by the end of April 2012.  
38

39 In order to facilitate the media, a room is to be set  
40 up within this building for the media which will have a  
41 direct feed of the proceedings. The media are encouraged  
42 to utilise this room as there may well be occasions when  
43 seats in the hearing room will be limited.  
44

45 A media protocol has been prepared by your Honour,  
46 which has been made available in hard copy here today and  
47 on Inquiry's website, and I would urge all representatives

1 from the media to read that document.

2  
3 Though the hearings will be conducted predominantly in  
4 this building, it is expected that some hearings will be in  
5 Katanning. Once again, notification of when that is to  
6 take place, together with the premises that are to be used  
7 will be given.

8  
9 I now wish to make some brief remarks about witnesses  
10 who may be the subject of adverse evidence. In the  
11 interests of transparency and fairness, those persons who  
12 may be the subject of adverse evidence will be advised by  
13 letter in advance of when and by whom such evidence is  
14 expected to be given, and when I say "adverse evidence",  
15 that is specifically related to the terms of reference of  
16 the Inquiry.

17  
18 This letter will also contain a brief summary of the  
19 expected evidence that is of an adverse nature. Persons  
20 receiving such correspondence will be invited to obtain  
21 legal representation who will have a right to question that  
22 witness at the hearing.

23  
24 Those public officers who are the subject of adverse  
25 evidence will not only have the opportunity through their  
26 legal representative to cross-examine those witnesses who  
27 have given such evidence, but they will have the  
28 opportunity of speaking to the Inquiry's investigators  
29 should they wish to do so.

30  
31 Whether such persons avail themselves of that  
32 opportunity or not, the Inquiry will retain its right to  
33 summons those persons to give evidence at its hearings.

34  
35 Once again, if that is to eventuate, sufficient notice  
36 will be provided to those persons to enable them to seek  
37 legal representation should they wish to do so. If legal  
38 counsel is engaged, then they will have the right to  
39 question their client at the conclusion of Counsel  
40 Assisting's examination.

41  
42 In conclusion, I want to say this: from the time of  
43 this Inquiry's formation last month and through to the  
44 provision of the final report due on 31 May of next year,  
45 its investigations will be ongoing. The Inquiry welcomes  
46 any information that any member of the public wishes to  
47 provide that falls within its terms of reference.

1  
2           Considerable information has already been provided  
3 through the Inquiry's hotline which will remain open.  
4 Though it is the Inquiry's preference, it will not be  
5 necessary that any caller provides his or her details and  
6 if information is provided in strict confidence, then the  
7 Inquiry will, of course, respect that.

8  
9           The Inquiry is very mindful of the fact that it has  
10 arisen in the context of the very emotive and traumatic  
11 subject matter of child sexual abuse. The damage suffered  
12 by victims cannot be quantified. Regrettably, nothing this  
13 Inquiry finds will change what happened at St Andrew's  
14 Hostel more than two decades ago. The Inquiry will do  
15 everything in its power to minimise the impact for any  
16 witness who could be potentially vulnerable by recommending  
17 avenues of support and, as I have said earlier, allowing  
18 them to give evidence at a private hearing and otherwise  
19 facilitating their participation in the hearings in a way  
20 that will avoid undue embarrassment or pressure.

21  
22           It is also acknowledged by this Inquiry that there  
23 will no doubt be a fear of publicity on the part of those  
24 who will come under investigation and who, in no way it  
25 could be said, were directly involved in the serious  
26 offending that took place at St Andrew's Hostel.  
27 Accordingly, from the outset, this Inquiry emphasises the  
28 need for a calm and impartial approach to the evidence, an  
29 approach which must refrain from speculation and avoid an  
30 overreaction to the issues which emerge.

31  
32           Thank you, sir.

33  
34 HIS HONOUR:   Thank you. Mr Jenkin, do you wish to say  
35 anything?

36  
37 MR JENKIN:    No, that's all right. I don't wish to at this  
38 time, thank you.

39  
40 HIS HONOUR:   I wonder if I could just clarify. The  
41 materials available so far indicate that most of the  
42 officials of your department who received complaints or  
43 allegedly received complaints have now retired. Will you  
44 be representing such persons?

45  
46 MR JENKIN:    That remains to be seen, sir. At this stage  
47 I don't have instructions to do so. My office does have a

1 set of guidelines which relate to legal assistance which  
2 can be provided to present or past employees and so any of  
3 those potential witnesses would be welcome to contact my  
4 office and then an assessment could be made in accordance  
5 with those guidelines as to what assistance, if any, could  
6 be provided.

7  
8 HIS HONOUR: Very well, thank you. Yes, Mr Hammond.

9  
10 MR HAMMOND: Yes, if it please your Honour. As  
11 I previously indicated, I act for 21 people who are all the  
12 victims of Dennis McKenna. Every one of those persons who  
13 I represent thoroughly welcomes this Inquiry and thoroughly  
14 welcomes the bipartisan political support that has been  
15 given to this Inquiry.

16  
17 I believe it is important to remember that every one  
18 of the persons who I represent was a child - that is under  
19 the age of 18 years - at the time that this sexual abuse  
20 was perpetrated by Mr Dennis McKenna.

21  
22 Over the years from the date that abuse was committed,  
23 each of those children, now adults, had to come to terms  
24 with the terrible events of what happened at St Andrew's  
25 Hostel in Katanning and, as they came to terms with what  
26 had happened in Katanning, they started to question why so  
27 many of them were involved and why, for so many who had  
28 reported this either to their parents or to others, nothing  
29 had happened because, as Counsel Assisting the Inquiry has  
30 correctly stated, the abuse endured for 15 years.

31  
32 Your Honour, to understand the anger, the frustration  
33 and the humiliation of my clients, some of whom are sitting  
34 in the rear of this room today, it is necessary to  
35 understand the context in which this abuse occurred.

36  
37 As I have said, every one of the victims that was at  
38 St Andrew's Hostel was a child. Each of the victims had a  
39 family and was a long way from home. By day, most of them  
40 attended Katanning Senior High School and by night they  
41 were entrusted to the care of Dennis McKenna, who was the  
42 warden of the hostel. Each of them as children, without  
43 doubt, were extremely vulnerable in that situation,  
44 particularly given that they were not with their family or  
45 close friends.

46  
47 Again to put this into context as to the seriousness

1 of what you, Mr Inquirer, are investigating in terms of the  
2 terms of reference, I take you to the term "sexual  
3 abuse" as that term is defined in the Children and  
4 Community Services Act of 2004, and in that Act, sexual  
5 abuse in relation to a child is defined as:

6

7 *Sexual behaviour in circumstances where the*  
8 *child is the subject of bribery, coercion,*  
9 *a threat, exploitation or violence; or.*  
10 *the child has less power than another*  
11 *person involved in the behaviour; or.*  
12 *there is a significant disparity in the*  
13 *developmental function or maturity of the*  
14 *child and the other person involved in the*  
15 *behaviour.*

16

17 We say without question each of those elements of sexual  
18 abuse, as it has been defined by Parliament, occurred at  
19 St Andrew's; indeed, there was coercion to perform sexual  
20 favours and the child had little or no power; and there was  
21 a significant disparity in the maturity of the children and  
22 that of Dennis McKenna, who was at least double their age.

23

24 In the District Court on 19 October this year,  
25 Martino CJ noted that McKenna was in a position of trust  
26 over vulnerable and isolated children and that he had  
27 abused that trust by taking advantage of these children for  
28 his own sexual gratification.

29

30 Your Honour, I briefly pause to outline, and I will do  
31 it very quickly, the blunt and chilling factual terms of  
32 this sexual abuse and what it comprised. There was anal  
33 and oral sex. There was inappropriate fondling. There  
34 were acts which occurred at St Andrew's and at camping  
35 trips away from St Andrew's. There was the watching and  
36 filming of children in their showers. There was the wilful  
37 and indecent exposure by McKenna of his own body. There  
38 was the viewing of pornographic movies. There were sexual  
39 gains, which included scragging, as we will come to learn,  
40 of boys who were required to run nude in front of fully  
41 dressed boys. There was the encouragement of promiscuous  
42 behaviour and, even worse, there was the plying of children  
43 with alcohol prior to Dennis McKenna taking advantage of  
44 them in a drunken state.

45

46 Your Honour, the anger and the frustration is best  
47 summed up by Mr Steve Parkin, who has authorised me today

1 to read from his victim impact statement and I will  
2 sanitise some of the words used in the statement for the  
3 purpose of this Inquiry. This is a statement that  
4 Mr Parkin provided that he wanted provided to Dennis John  
5 McKenna when he was seated in court awaiting Mr McKenna's  
6 sentencing, and in his own handwriting, he writes as  
7 follows:

8  
9 *Sitting here in court today, just waiting*  
10 *for your sentencing. The joy of one sick*  
11 *human being who has preyed on so many*  
12 *innocent young men and boys whom you*  
13 *thought would never say a word in future*  
14 *years. You took away the trust that our*  
15 *parents bestowed on you. You took away all*  
16 *the little things in life that I hope now*  
17 *you will never do to any other man or boy.*  
18 *You have taken away my brother Brad, who*  
19 *committed suicide, and only you know what*  
20 *you did to him. No-one except the very few*  
21 *believed what you were and still are.*  
22 *Actually, there is probably no explanation*  
23 *of what you really are. You believe in*  
24 *God. I can't, for the plain reason God*  
25 *would not have let you take away boys'*  
26 *pride and dreams. You had most of the*  
27 *parent and board of Katanning Hostel and*  
28 *the high-flying community and people of*  
29 *Katanning and various government*  
30 *departments of Katanning, and beyond,*  
31 *believe that you were the pillar of the*  
32 *community, and there are still people here*  
33 *today that still believe in you. They too*  
34 *belong along the side. Instead, you are*  
35 *living out your fantasy of a very sick*  
36 *person.*

37  
38 He goes on, relevantly, your Honour, to note:

39  
40 *It took me 30 years to come forward and*  
41 *finally have you put before the courts*  
42 *again, and along with the men of today that*  
43 *stood up alongside me to put you away,*  
44 *I take my hat off to them.*

45  
46 He concludes his statement, and I don't read it all, by  
47 saying:

1  
2 *I could say a lot more, but I just want to*  
3 *finish up in here watching you get taken*  
4 *away and enjoy the jubilation of all the*  
5 *people in this court.*  
6

7 Your Honour, moving from the initial setting of where this  
8 occurred, the type of abuse that occurred and then now to  
9 the coercion that was used by Dennis McKenna in grooming  
10 young men for his sexual gratification, and from all the  
11 statements that have been provided to the police over the  
12 years, they can be summed up shortly as follows:  
13 Ridiculing those that threatened to expose McKenna; issuing  
14 unpleasant tasks to boys that were not compliant; expelling  
15 boys that were not sexually compliant or had complained;  
16 falsely accusing boys of theft; depriving them of their  
17 privileges, encouraging other boys to tease non-complaint  
18 boys; applying Denkorub to the genitalia of boys.  
19

20 It is well documented, your Honour, about the effects  
21 of this type of behaviour on young men - aggression, broken  
22 and dysfunctional relationships, suicide, depression,  
23 hospitalisation.  
24

25 Prominent child psychiatrists, Paul Mullen and Jillian  
26 Fleming wrote in 1996, after a comprehensive study of the  
27 literature, and indeed their own studies, that sexually  
28 abused children face an assault on their developing sense  
29 of sexual identity and a blow to their construction of the  
30 world as a safe environment and their developing sense of  
31 others as trustworthy. Their study went on to say that up  
32 to 84 per cent of those who are treated for alcohol abuse  
33 have been the subject of child sexual abuse. They go on to  
34 say there is an established body of knowledge linking child  
35 abuse oppressive symptoms, anxiety symptoms, substance  
36 abuse disorders, eating disorders and post traumatic stress  
37 disorders, and that sex abuse of children is best viewed as  
38 a risk factor for a wide range of subsequent problems.  
39

40 So, your Honour, the importance of this Inquiry, I  
41 believe, is highlighted by the factual setting in which all  
42 this took place, and term of reference number 1 of this  
43 Inquiry is directed towards examining when allegations were  
44 made about the sexual abuse and what action was taken in  
45 response to those allegations.  
46

47 My clients maintain that the State of Western

1 Australia, through its officers - be they police, teachers,  
2 local councillors, and other senior civil servants - had  
3 received reports at the very least of misconduct at the  
4 hostel, at the very highest, of sexual misconduct, and that  
5 nothing was done whilst this occurred.

6  
7 Had the first reports been taken seriously, it is  
8 arguable that at least dozens of boys would not have been  
9 subjected to any sexual abuse whatsoever because there  
10 would have been an investigation. So my clients' argument  
11 is that the State was on notice that there was sexual abuse  
12 occurring at St Andrew's Hostel. My clients have lodged  
13 applications for ex gratia payments from the State of  
14 Western Australia in respect of the long-term harm that  
15 they have suffered by reason of the State failing to watch  
16 out for them.

17  
18 Your Honour, I note that since 2004, the Children and  
19 Community Services Act has required mandatory reporting of  
20 children suspected to be at risk of sexual abuse, and that  
21 mandatory reporting applies to a doctor, a nurse, a  
22 midwife, police officer or teacher under 124B of that Act.

23  
24 That legislation was not there at the time of this  
25 abuse, but what we do say is there was an obligation,  
26 indeed, legal, on those who knew of that behaviour to  
27 report it to those in authority and to the police.

28  
29 The important function of this Inquiry, as my clients  
30 see it and as Counsel Assisting has aptly put it is; what  
31 did people do when they were told about what was happening  
32 at St Andrew's? My clients themselves as children reported  
33 the behaviour to officers and indeed to their parents and  
34 they were not believed on most occasions.

35  
36 Arguably the greatest tragedy surrounding St Andrew's  
37 is that young children who were speaking up were not heard,  
38 and the children, and even a social worker, Maggie Dawkins,  
39 who reported abuse, were not believed at the time. My  
40 clients praise Maggie Dawkins for coming forward without  
41 the protection of the Inquiry. They praise farmer Bruce  
42 Carmichael for what he has said in relation to him  
43 reporting allegations to the hostel board and they praise  
44 school psychologist, Nikola MacLennan, who didn't know  
45 quite what was going on but was marched out of her position  
46 summarily once she raised concerns.

47

1 My clients welcome the third limb of the Inquiry,  
2 which, amongst, other things is to report this behaviour to  
3 the police or to consider what action may be taken as a  
4 result of people standing by.

5  
6 The Inquiry will serve, at the very least, as a useful  
7 reminder to those who are in positions of authority to  
8 immediately report the sexual abuse of minors.

9  
10 What my clients sincerely hope, Mr Inquirer, is that  
11 public officials, who did stand by with knowledge of this  
12 sexual abuse occurring, are sanctioned and we say that  
13 justice demands that, for those children who have been  
14 wronged by the sexual abuse perpetrated on them in the  
15 1970s and 1980s, something now happens to bring those to  
16 account.

17  
18 In conclusion, Mr Inquirer, my clients welcome this  
19 Inquiry with open arms and I believe sincerely that this  
20 Inquiry will go a long way to healing the wrongs of the  
21 1907s and 1980. I think this is a very welcome move by  
22 this State. Thank you, Mr Inquirer.

23  
24 HIS HONOUR: Thank you. Before you sit down, as you know,  
25 I visited Katanning and spoke to some of your clients and  
26 they were able to provide me with some useful information.  
27 But there are other clients, I am sure, who would be in a  
28 position to provide information and material to the terms  
29 of the reference to the Inquiry.

30  
31 MR HAMMOND: Yes.

32  
33 HIS HONOUR: Are you happy for my investigators to contact  
34 them direct?

35  
36 MR HAMMOND: Very happy, your Honour.

37  
38 HIS HONOUR: Very good.

39  
40 MR HAMMOND: If it please your Honour.

41  
42 HIS HONOUR: Thank you. Before I adjourn, I will  
43 re-emphasise what was stated by Mr Urquhart, that the  
44 Inquiry does have a hotline. There have been many calls by  
45 members of the public and much of the information provided  
46 has been of use. However, it is clear that there are some  
47 people with relevant information who are reluctant to come

1 forward and that that reluctance is due to a fear of being  
2 publicly identified. So I want to emphasise that  
3 information can be given on the hotline and to the Inquiry  
4 in confidence.

5  
6 The Inquiry is very sensitive to the needs of victims  
7 of sexual abuse and I am in the position to make  
8 suppression orders, or, in limited circumstances, to hear  
9 evidence in camera.

10  
11 The task of this Inquiry is very important to the  
12 wellbeing of the community and to the wellbeing of the  
13 community in the Great Southern area in particular.  
14 I therefore urge any member of the public with material  
15 information to come forward.

16  
17 I will now adjourn until a date to be fixed  
18 in February, thank you.

19  
20 **AT 10.32AM, THE INQUIRY ADJOURNED ACCORDINGLY**

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