

Lawrie v Lawler [2015] NTSC 19

PARTIES: LAWRIE, Delia Phoebe

v

LAWLER, John

TITLE OF COURT: SUPREME COURT OF THE
NORTHERN TERRITORY

JURISDICTION: SUPREME COURT OF THE
NORTHERN TERRITORY
EXERCISING TERRITORY
JURISDICTION

FILE NO: 68 of 2014

DELIVERED: 1 April 2015

HEARING DATES: 27, 28, 29 and 30 January 2015

JUDGMENT OF: SOUTHWOOD J

CATCHWORDS:

ADMINISTRATIVE LAW – Judicial review - procedural fairness – inquiry into proposed Government Grant of Lease of Crown Land – whether plaintiff given a fair hearing – requirement to provide notice of adverse findings – whether right to any greater procedural fairness waived

Inquiries Act 1985

Crown Lands Act 1992

Legislative Assembly (Members' Code of Conduct and Ethical Standards) Act 2008

Ainsworth and Another v Criminal Justice Commission (1992) 175 CLR 564

Annetts v McCann (1990) 170 CLR 596

Briginshaw v Briginshaw (1938) 60 CLR 336

Commissioner for Australian Capital Territory Revenue v Alphaone Pty Ltd (1994) 49 FCR

Craine v Mutual Fire Insurance Co Ltd (1920) 28 CLR 305

Escobar v Spindareli (1986) 7 NSWLR 51
Grundt v Great Boulder Pty Gold Mines Ltd (1937) 59 CLR 641
Jones v Dunkel (1959) 101 CLR 298
Mahon v Air New Zealand [1984] AC 808
MH6 v Mental Health Review Board (2009) 25 VR 382
National Companies and Securities Commission v News Corporation (1984)
156 CLR 296

REPRESENTATION:

Counsel:

Plaintiff:	A Young, A George
Defendant:	M Maurice QC, D McLure

Solicitors:

Plaintiff:	Halfpennys
Defendant:	P Maher

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IN THE SUPREME COURT
OF THE NORTHERN TERRITORY
OF AUSTRALIA
AT DARWIN

Lawrie v Lawler [2015] NTSC 19
No. 68 of 2014

BETWEEN:

DELIA PHOEBE LAWRIE
Plaintiff

AND:

JOHN LAWLER
Defendant

CORAM: SOUTHWOOD J

REASONS FOR JUDGMENT

(Delivered 1 April 2015)

Introduction

- [1] On 5 December 2013, under s 4A of the *Inquiries Act* (NT), the Legislative Assembly of the Northern Territory resolved that a person be appointed to inquire into and report to the Administrator on the following matter.

The circumstances of the purported decision of the then Minister for Lands and Planning to grant a lease over Lot 5260 Town of Darwin known as Stella Maris to Unions NT on or about 3 August 2012.

- [2] On about 3 August 2012 the Minister for Lands and Planning of the previous Labor Government made the decision to grant a lease of the Stella Maris site to Unions NT in accordance with a Cabinet decision made on 10 July 2012.

It is this decision that was the subject of the Inquiry into the Stella Maris site (the Inquiry).

[3] On 18 December 2013 the Administrator appointed Mr Lawler as Commissioner to inquire into and report on the following matters.

1. The circumstances of the purported decision of the then Minister for Lands and Planning to grant a lease over Lot 5260 Town of Darwin known as Stella Maris (the site) to Unions NT on or about 3 August 2012.
2. The public policy and public accountability considerations involved in making the purported decision to grant a lease of the site to Unions NT without putting the matter out to expressions of interest or public tender.
3. The performance of relevant persons, including the then Minister for Lands and Planning, in carrying out their obligations under the relevant regulatory regime and *ensuring the proper accountability processes were applied in the tenure management of the site* [emphasis added].
4. The adequacy and effectiveness of the regulatory regime in ensuring transparency, good governance and community input into the process of leasing or granting Crown land.
5. The provision and accessibility of relevant information to affected stakeholders and the public in relation to the proposal and purported decision to grant the lease of the site to Unions NT.
6. Any measures that might help ensure transparency, good governance and community input into the process of leasing or granting Crown land with particular reference to the purported decision to grant the lease of the site to Unions NT.
7. Any other suggestions or recommendations the Commissioner considers relevant to the above matters.

[4] On 12 February 2014 the formal hearings conducted by the Inquiry started, Mr Lawler made his opening statement, and the first witnesses were called before the Inquiry. An audio recording of Mr Lawler’s opening statement and the evidence of each witness was placed on the Inquiry website. On 26 May 2014 Mr Lawler presented his Report entitled “Inquiry into Stella Maris – 2014” to the Administrator. On 19 June 2014 the Report was tabled in the Legislative Assembly of the Northern Territory. His report contained a number of criticisms of Ms Lawrie’s conduct.

Plaintiff’s claim

[5] Ms Lawrie claims that Mr Lawler’s Report contains adverse findings and recommendations which damage her reputation. On 30 July 2014 she filed an Originating Motion in the Supreme Court claiming the following relief.

1. A declaration that, in reporting adversely to the plaintiff in his report entitled “Inquiry into Stella Maris – 2014” (“the Report”) purportedly pursuant to s 4A (3) of the *Inquiries Act*, the defendant failed to observe the requirements of procedural fairness.
2. An order in the nature of certiorari to quash the Report.

[6] Ms Lawrie says that she is entitled to the relief claimed because she was denied an opportunity to respond to the adverse findings about her before Mr Lawler finalised his Report. It is common ground between the parties that Ms Lawrie had standing to make an application for a declaration.¹

¹ *Ainsworth and Another v Criminal Justice Commission* (1992) 175 CLR 564; *Annetts v McCann* (1990) 170 CLR 596 at 599 and 608.

- [7] Counsel for Ms Lawrie, Mr Young, submitted that as the Inquiry was an inquisitorial inquiry with quite wide terms of reference, Mr Lawler's potential findings were open ended. In the circumstances, Mr Lawler was required to define the issues² and give Ms Lawrie (1) adequate notice of any adverse findings which he tentatively reached,³ and (2) a further opportunity to show why the findings should not be made.⁴ Mr Lawler failed to do so and Ms Lawrie was left in the dark as to the risk of the adverse findings being made and thus deprived of the opportunity to make further submissions which might have deterred him from making those findings.⁵
- [8] In particular, Mr Young says that Mr Lawler failed to give Ms Lawrie notice of his findings about (1) Ms Lawrie's preference for Unions NT over another community group; (2) Ms Lawrie was biased in favour of Unions NT; (3) Ms Lawrie's or her office's failure to inform the Department of Lands and Planning clearly and in writing of her decision that a Crown lease of the Stella Maris site should be granted to Unions NT without an expression of interest; (4) the manner of Ms Lawrie's intervention and influence over Cabinet; (5) Ms Lawrie's failure to justify the decision to grant a Crown lease to Unions NT without an expression of interest; (6) Ms Lawrie's intervention was not proper and unfair; and (7) Mr Lawler's recommendation that the Legislative Assembly consider whether

² *Annetts v McCann* (1990) 170 CLR 596 at 601.

³ *National Companies and Securities Commission v News Corporation* (1984) 156 CLR 296.

⁴ *Annetts v McCann* (1990) 170 CLR 596 at 608 – 09.

⁵ *Mahon v Air New Zealand* [1984] AC 808 at 821.

Ms Lawrie's conduct amounted to a breach of the Members Code of Conduct and Ethical Standards.

- [9] Mr Young submitted that Ms Lawrie's predicament was aggravated by the neutral manner in which Mr Lawler asked her questions and his failure to specify the above matters before Mr Wyvill and Ms Lawrie made their final statements to the Inquiry. I do not accept this submission. Mr Lawler's questioning style was assertive without being aggressive and it was persistent. Further, it is apparent from the closing submission of Ms Lawrie and Mr Wyvill that they understood what the issues were.
- [10] In my opinion, for the following reasons which are developed in full below, Ms Lawrie's claim that she was denied procedural fairness cannot be sustained. I find that she was accorded procedural fairness.
- [11] I accept the submission of junior counsel for Mr Lawler, Mr McLure that the content of the duty to provide procedural fairness depends on all of the circumstances of the case. There are no immutable rules about the content of the duty to provide procedural fairness. In most cases, a decision maker is not required to define issues which are obvious to a party who may be affected by any decision. Nor is a decision maker obliged to invite comment on his evaluation of a potentially affected party's case. Further, a person who may be affected by a decision to which the requirements of procedural

fairness apply cannot complain if the argument that they have contended for is not accepted by the decision maker.⁶

[12] The issues in the Inquiry were very clear and must have been obvious to Ms Lawrie. It must not be forgotten that Ms Lawrie is a very senior and experienced politician who would naturally be acutely aware of the kinds of issues referred to in [8]. The manner in which the decision was made to grant a Crown lease of the Stella Maris site to Unions NT without an expression of interest was inherently unfair. It completely favoured Unions NT at the expense of other community groups. They were not even given the opportunity to compete for the site. The Cabinet decision meant that, unlike other community groups, it was not necessary for Unions NT to go through the 'proper' process for applying for a community land grant. Unions NT's proposal was not subject to the 'proper' Departmental assessment processes. Further, the Cabinet decision making process was not transparent.

[13] Ms Lawrie was integral to all matters leading up to Cabinet decision and the making of the Cabinet decision on 10 July 2012. For all intents and purposes, Ms Lawrie was the Minister who sponsored the Cabinet decision. When the Cabinet decision was made she had been involved in the Stella Maris site for a period of five years. She was aware that the Department of Lands and Planning had a procedure for processing applications for community land grants. The decision to grant the lease to Unions NT was

⁶ *Commissioner for Australian Capital Territory Revenue v Alphaone Pty Ltd* (1994) 49 FCR 576 at 591.

made in the way it was because Ms Lawrie and her office mishandled Union NT's concept proposal for the future development of the Stella Maris site. Ms Lawrie was warned by the Department of Lands and Planning a number of times that she and the Labor Government would be criticised if a decision was made to grant a Crown lease of the Stella Maris site to Unions NT without an expression of interest.

[14] If Ms Lawrie had forgotten any of the details of how the Cabinet decision came to be made, Mr Lawler gave her an opportunity to refresh her memory by providing her with all relevant documents. Those documents, which form part of exhibit P1 in this proceeding, largely and clearly defined the issues. They raised all of the issues referred to in [8]. It is only necessary to see what occurred to understand the issues. Mr Lawler had a preliminary conference with Ms Lawrie during which he raised the key documents and the issues they gave rise to. At all times Ms Lawrie was represented by Mr Wyvill SC who is an experienced senior counsel. He was present at the preliminary interview and during the taking of Ms Lawrie's evidence before the Inquiry. During the taking of her evidence before the Inquiry, Mr Lawler painstakingly went through the relevant documents and asked Ms Lawrie questions about the issues set out in [8]. The documents defined the issues.

[15] Ms Lawrie and Mr Wyvill elected to deal with the issues which obviously arose in the Inquiry by putting forward a considered and well developed justification for Ms Lawrie's conduct based on Unions NT's attachment to the site, their capacity to maintain the site, and the rapidly approaching

caretaker period of government. Ms Lawrie and Mr Wyvill were granted a fair opportunity to articulate that justification. The fact that Mr Lawler did not accept that justification does not mean that Ms Lawrie was denied procedural fairness.

Background to the Inquiry

- [16] The Stella Maris site is at 1 McMinn Street in the Central Business District of Darwin. Today there are three buildings on the site: the heritage listed railway house, the accommodation building, and the bar building. The railway house is at least 73 years old. It was one of many houses built in this area to accommodate employees of what became the North Australian Railway.
- [17] From 1979 to 2007 an agency of the Catholic Church which cares for seafarers, the Apostleship of the Sea (Darwin) Inc. (the Apostleship of the Sea), held a Crown lease over the Stella Maris site to run a seafarers centre. The lease was surrendered to the Northern Territory in 2007 and compensation of \$630,000 was paid to the Apostleship of the Sea.
- [18] Thereafter, the Stella Maris site has largely remained vacant. It remained vacant from the surrender of the Crown lease by the Apostleship of the Sea until the Cabinet decision of 10 July 2012 because the Department of Lands and Planning was awaiting the decision of Cabinet about the future of the site.

[19] On 3 September 2007 Ms Lawrie sent a memorandum to the then Chief Minister Claire Martin confirming that she had written to Apostleship of the Sea making an offer of \$630,000 as compensation for the improvements on Lot 5260, subject to the surrender of the whole Crown lease. The memorandum also stated:

My office will brief Unions NT and the local member on the proposed surrender of the lease [emphasis added].

Following the surrender, Lot 5260 will revert to Crown land *and Government will need to consider the future use of this site.* I note that the 24HR Art Board of Management is aware of the proposed surrender of the lease and has written to you expressing an interest in the site [emphasis added].

I would appreciate your views, particularly on the future use of the site.

[20] On 2 October 2007 the Chief Minister asked Ms Lawrie to provide a note to Cabinet about all issues to do with Stella Maris.

[21] On 8 November 2007 Ms Lawrie received a draft note to Cabinet which had been prepared by the Department of Planning and Infrastructure. The Department recommended that Ms Lawrie endorse the note to Cabinet. The draft note raised the following options for consideration by Government.

1. Possible commercial/residential development.

The significant costs in providing access to the site, other than a restricted delivery or drop off access, suggests that only a substantial commercial/residential development would be viable.

While such a development is required to justify the cost of providing an access, it is likely to have a detrimental impact on Travellers Walk and the amenity of adjoining existing residential development. At this stage, there seems to be little prospect of the site being developed in accordance with its current CB zoning.

2. Low scale commercial development.

Continued use of the buildings would avoid problems of illegal occupation/vandalism. In the short term, some low key commercial development, café/kiosk type establishment, which only has pedestrian access in a park like setting may be appropriate. There may at a later date also be potential to integrate such a development with the existing heritage structure on the site, depending on the facilities provided within the Waterfront and the rest of the locality.

This option may result in the NT Government having to expend funds to bring the buildings up to a standard, to enter into a commercial leasing arrangement and any change in the use of the land, will need to take into consideration car parking requirements under the NT Planning Scheme.

3. Offer leasehold tenure of the site to the National Trust of Australia (Northern Territory).

The National Trust is aware that the site is being returned to the Northern Territory Government, and along with some options mentioned above, has suggested further possible options for consideration being:

- To highlight the importance of Travellers Walk as a historic link between the wharf and the city;
- The preservation of the whole site (except the accommodation unit) on which Stella Maris is located, would provide a point of interest and information on the way from the waterfront to the city; and
- Railway House could be reconstructed to its original design and possibly used as an interpretive centre for the past railway use at the waterfront or a wider story of the working waterfront; and

possibly a site to house the Sandfly in the long term. The Sandfly is historically significant to the Northern Territory as the first and longest serving locomotive to operate on the North Australian Railway (NAR). The Sandfly operated on the NAR between 1887 and 1950 and was instrumental in its construction. The Sandfly is currently on display at the Cruise Ship Terminal at Stokes Hill wharf.

A copy of the National Trust's letter is at Attachment B

It is not known at this stage if the National Trust is seeking to secure the site.

This option would be consistent with the proposal by the Planning Action Network that the site be set aside as a park. Note that, as a "park", management and/or ownership of the site would need to be vested in an appropriate body such as Darwin City Council or the Waterfront Corporation. However, this option may have the potential to alienate the site for any future proposed development.

4. Given the shortage of Crown land within the Central Business zoning – land bank the site.

The residential component of the Waterfront Development and the potential for future residential development on the adjacent old railway yards will increase the number of people living in the locality. In the absence of any compelling immediate use of the land, it may be prudent for the Northern Territory Government to "land bank" the site pending the completion of current construction in the locality.

In the interim, use of the existing demountable accommodation should be limited to occupation by a caretaker. DPI is in the process of formalising this arrangement with two current residents. The grounds will also continue to be maintained by the proposed caretakers as they are adjacent to Travellers Walk, however, public access to the site would be precluded.

[22] On 10 December 2007 Ms Lawrie determined not to endorse the draft note to Cabinet about the Stella Maris site. Instead, Ms Lawrie determined to

request the Department of Planning and Infrastructure to set up a working party to investigate options for the future development of Stella Maris with the Departments of Natural Resources Environment the Arts and Sport, and Tourism and provide a report by mid-2008.

[23] In accordance with Ms Lawrie's request, it appears that a working party was set up, comprised of six people, with two people coming from each of the three Departments. It is unclear how often the working party met. It seems that the working party was either unable or reluctant to develop any ideas beyond those contained in the draft note to Cabinet.

[24] On 7 March 2008, Ms Janette Steele, who was a Senior Project Officer with the Department of Planning and Infrastructure, sent the following email to Mr Wolf Loenneker, who was an adviser to Ms Lawrie.

Wolf

Were you chasing me about Stella Maris? We paid \$630,000 acquisition/compensation to the Apostleship of the Sea in December 2007.

There is no caretaker; we just have a security company checking the place twice each night. *If the right type of community group came up we could probably let them use it in the meantime (a group that did not have clients coming and going – because of the access issues).* Delia has requested that a working party provide options and advice back to Cabinet by June this year. But, a paper went to Cabinet in December and there aren't any other options.... I've met with Tourism and Heritage and the ideas that were in that cabinet submission are it [emphasis added].

Was there any other information you required?

[25] On 31 March 2009 Mr Matthew Gardiner, Secretary of Unions NT, wrote to Ms Lawrie and stated the following.

Dear Minister

Unions NT request a meeting with you to discuss *our concept proposal* for the further development of the Stella Maris site and buildings in the wharf precinct [emphasis added].

A sub committee has been formed with the initial aim to provide strategic level guidance and recommended action to Unions NT's Council on this initiative.

The overarching concept is to set up a business division run along commercial lines and operating under the auspices of Unions NT as a not for profit organisation. The Business Division will provide programs and services that are not provided through other entities for the benefit of workers in the NT.

Unions NT's goal is to ensure that there is effective and sustainable multiple use of the site.

The concept is consistent with Unions NT's not for profit objectives and these objectives are articulated through our recently endorsed Strategic Plan.

We anticipate meeting with you soon to discuss our proposal and to progress this initiative.

[26] On 8 April 2009 Ms Lawrie decided to have a meeting on 22 April 2009 with Unions NT to discuss their proposal. On 9 April Ms Lawrie met with Mr Gardiner to informally discuss Unions NT's proposal.

[27] On 15 April 2009 the Executive Director Lands Services of the Department of Planning and Infrastructure sent a Meeting Brief to Ms Lawrie about her

proposed meeting with Unions NT. After referring to the proposed date and attendees, the Meeting Brief stated the following.

REASON FOR THE MEETING

Unions NT has requested the meeting to discuss a proposal for Lot 5260, Town of Darwin, known as Stella Maris, and buildings in the wharf precinct (letter attached).

LIKELY ISSUES

ISSUE 1

This Department is currently preparing a Cabinet Submission outlining options for the future of Stella Maris for Government consideration. The Cabinet Submission is now with the Executive Director, Lands Services for approval. *Entering into any arrangements with Unions NT at this stage would pre-empt Cabinet's deliberation on this issue. Previous applications to utilise Stella Maris received by this Department have been denied for this reason [emphasis added].*

Recommended Position: The future of Stella Maris is a matter being debated by Cabinet. Until a decision has been made, no management or other arrangement with Unions NT can be considered [emphasis added].

[28] The meeting brief then made three further recommendations. First, there is a current contract for conservation works to the heritage building on the Stella Maris site and this building is currently not fit for occupation. Second, the wharf precinct is the responsibility of the Waterfront Corporation; therefore any agreement entered into over the buildings in this area must be negotiated with the corporation. The Meeting Brief ended with the following recommendation.

ISSUES TO AVOID

Any commitment to Unions NT for management or use of the Stella Maris site or the wharf precinct buildings

- [29] As matters transpired the meeting planned for 22 April 2009 was adjourned to 27 May 2009.
- [30] On 25 May 2009 there was a meeting of the Unions NT Council. During the meeting Mr P Shepherd presented a Stella Maris/NT Workers Club Report and updated the Council members on the progress of the application. During the meeting it was noted that Stella Maris was to be known as NT Workers Club and that there was to be a meeting with Ms Lawrie on 27 May 2009.
- [31] On 26 May 2009 Business and Community Development NT prepared a proposal document for Unions NT. The document was entitled, “*Unions NT Proposed re-development of the Stella Maris site, Unions NT in association with other community groups*”. The document contains a detailed concept proposal for the future development and use of Stella Maris, including future community use of the site.
- [32] On 27 May 2009 there was a meeting in Ms Lawrie’s boardroom. At that meeting Ms Lawrie received Unions NT’s written proposal for the development of the Stella Maris site and was supportive of the initiative. Mr Glen Williams, who was the Chairperson of the NT Workers Club sub-committee of Unions NT, was informally notified that Ms Lawrie had the support of the Chief Minister for Unions NT’s initiative for the Stella Maris site. Ms Lawrie raised the possibility of a working party to explore any

issues that may need to be resolved before the next step could progress. No such working party was ever established.

[33] In about May 2009, Ms Lawrie formed the view that the Stella Maris site should be granted to Unions NT, and the grant should be made without calling for expressions of interest from other community groups or organisations. Her view did not change between then and the Cabinet meeting on 10 July 2012. She was aware that other community groups and organisations were interested in the site.

[34] On 29 June 2009 there was a further meeting of the Unions NT Council. At the meeting it was reported that there had been a meeting with the Treasurer [Ms Lawrie] and it was noted that the Government had given support to Unions NT's proposal for Stella Maris and a formal recommendation would be made to Cabinet. The minutes of the meeting of the Unions NT Council potentially reflect a development in Ms Lawrie's plans. In addition to the proposed working party, it seems that there was also to be a recommendation to Cabinet that the site be granted to Unions NT.

[35] On 30 July 2009 there was a telephone conversation between Ms Jackie Stranger, a public servant within the Department of Lands and Planning, and Mr Wolf Loenneker about the Cabinet submission being prepared on the options for development of the Stella Maris site. Ms Stranger made a file note of the telephone conversation. During the telephone call Mr Loenneker advised Ms Stranger of the following.

- ... although the original Cab decision was to provide a Cab Sub outlining options, it is now agreed that the site will be offered to Unions NT and not as an expression of interest.
- Unions NT would make the buildings available to other community groups
- Unions NT would take on responsibility for all the buildings.
- The accommodation block should stay (even though the plan was to remove, landscape and provide more parking)
- We should mention the itinerant problem in the Cab sub but not a recommendation to remove the accommodation block
- No need to include Tourist NT or NRETAS in preparing this updated Cab sub.

[36] Ms Stranger noted that she had some concerns about not involving NRETAS as that Department had spent money on the old heritage building and last NRETAS knew the site was being offered for commercial/community use through an expression of interest process. They were not aware that the site would be offered to one party without an expression of interest process being followed.

[37] Mr Loenneker did not confirm his instructions to Ms Stranger in writing and he did not give her a copy of Unions NT's proposal for the development of the Stella Maris site.

[38] On 10 August 2009 Mr Terry Lawler, who was an Industry Development Officer of Unions NT, sent the following email to Mr Wolf Loenneker.

Dear Wolf

Re: Stella Maris Heritage site

On behalf of the subcommittee I want to thank you for your time for the meeting and discussion this morning.

I will draft a letter of thanks for the meeting that we held with Delia recently. This will include a reference to Delia holding a discussion with the Chief Minister to get his [Mr Henderson's] endorsement of our initiative. There was informal feedback to the Union members that the CM was very supportive of the initiative. I will also refer to the commitment that Delia made to Unions NT to convene a working group to canvass any issues relating to a handover to Unions NT of the redevelopment site. If there should be anything else you think I should include just let me know.

In relation to the formation of a working group could you draft a list of who you think may be the key stakeholders. I think they should include the Minister responsible for Natural Resources Environment and Heritage given the investment in the restoration of the Old Railway House. I also think that there should be someone included who represents the Railway Institute who would have a keen interest in the heritage building and if necessary Darwin City Council. As we progress with Unions NT's initiative beyond the concept proposal through to the working group's outcomes, we should keep in mind those with an interest in the immediate vicinity such as the Wharf Precinct residents and businesses.

I have forwarded to you the picture of the lot number 5260 that seems to identify the boundaries of the site. It appears that DCC may own the land where the easement is and the walkway including the lawn area.

Could you please try and confirm the boundaries through a current survey map?

This has emerged as an important element in relation to the redevelopment of the site as I was recently informed anecdotally that DCC were unaware of the ownership of land other than the walkway. DCC future plans will impact on the amenity of this area.

I will await your investigation as to the delineation of the boundaries and will discuss with you how to progress discussions/letter with DCC if necessary in relation to their input.

Cheers
Terry

[39] On 11 August 2009 Mr Loenneker sent the following email reply to Mr Terry Lawler.

Terry

The boundaries of the Stella Maris site were surveyed in 1979 when it was subdivided from the land held by Australian National Railways. ANR sold the balance of the land which included Arkaba House in 1988 and in 1996 it was subdivided to allow for the three unit developments. That subdivision also created the parcel of land covering the walkway which was then transferred to Council. The Stella Maris title was not affected.

If you want to drop by sometime this week, I can give you copies of the relevant survey plans.

Regarding the working group, I will need to confirm with the Minister as to what she has in mind and then get back to you.

Regards Wolf

[40] It appears that Mr Loenneker never got back to Mr Terry Lawler.

[41] Before 1 October 2009 Mr Michael Wells, who was employed in the Heritage Division of the Department of Natural Resources Environment the Arts and Sport, requested an update from the Department of Planning and Infrastructure about the Cabinet Submission on the Stella Maris site. He was advised of Ms Lawrie's directive that the site was to be offered to Unions NT without an expression of interest. On 1 October 2009 Mr Wells emailed the Lands Administration Section of the Department of Planning and Infrastructure and stated that it was highly unlikely that the proposed

Cabinet Submission would get a “clean blue” from his Department. He advised that a number of heritage and arts related organisations had made enquiries about the site. There was an expectation amongst these groups that there would be a process for deciding who would occupy the site and, if that did not occur, it would invite controversy.

[42] On 19 October 2009 Mr Terry Lawler provided a report to Unions NT in which he stated the following about the Stella Maris site.

Stella Maris Subcommittee

A thank you letter to Minister Lawrie is attached for endorsement by the Council. The Ministerial Adviser Mr Wolf Loenneker is currently arranging confirmation with the Minister of the formation of a working group to explore any issues related to Unions NT’s development proposal.

Work on the heritage building has been completed. The NT Government has begun road works at the Stella Maris site to improve traffic access in conjunction with the McMinn Street road works leading to the waterfront.

[43] On 30 November 2009 the Secretary of Unions NT sent the following letter to Ms Lawrie.

Dear Minister

I am writing to say thankyou for meeting with Unions NT’s delegation on 27th March 2009 to discuss our concept proposal for the further development of the Stella Maris site and buildings in the wharf precinct.

Your support for our initiative is warmly appreciated.

As we discussed at our meeting, Unions NT's goal is to ensure that there is effective and sustainable multiple use of the site. Your vision is one we share and understand. We also believe that the future redevelopment of the site should be community focused with the site redeveloped in a way that will preserve the social, cultural and heritage value of an iconic Darwin site.

The current status of the site is that the Railway Heritage building has been restored and road works are being upgraded to provide improved access to the site from McMinn Street. Darwin City Council have additionally upgraded the lighting along Travellers Walk behind the buildings.

Your Ministerial Advisor Mr Wolf Loenneker, met on August 10th 2009 with Mr Terry Lawler for a briefing on our earlier meeting. Mr Loenneker subsequently obtained additional information on the title and boundaries of the Stella Maris site.

Unions NT would like to meet with you again to discuss the setting up of the proposed working group of key stakeholders to progress the redevelopment of this iconic site.

[44] It appears that there was no meeting between Ms Lawrie and the Secretary of Unions NT about the proposed working group. Nothing happened.

[45] On 31 May 2011 the Executive Director of Land Services of the Department of Lands and Planning prepared a Ministerial Brief for a meeting on 2 June 2011 which was to be attended by Chief Minister Henderson, Mr Gerry McCarthy, Ms Lawrie, Dr Chris Burns and Unions NT. Of relevance, the brief stated the following.

In December 2007 the Chief Minister directed that a Cabinet submission on options for the future of the Stella Maris site be prepared by the then Department of Planning and Infrastructure in consultation with Tourism NT and Heritage Branch of the Department of Natural Resources, Environment, the Arts and Sport (NRETAS).

....

Four preliminary options have been outlined below for Government consideration. The Department of Lands and Planning has prepared a draft Cabinet submission for Cabinet consideration which is being finalised. An alternative option Government may wish to consider is to retain the site until such time as the demand for this high profile CB zoned site is identified. Given the shortage of Crown land in Darwin city this site is an attractive long term asset for Government. This approach does however present challenges with respect to vandalism and use by itinerants in the short term while it remains unoccupied. Options are detailed below.

It should be noted that the Department has some concerns that the building may not be adequately certified and obtained the required Certificate of Occupancy. The site has been identified through the Taskforce on Government Building Certification as one which is outstanding. A key consideration of leasing the building without the required certificate for Government is one of liability and Government has advised in the media that with respect to building certification it is leading by example. The Department will discuss progressing a building certification assessment with the Department of Construction and Infrastructure (DCI) who has responsibility for this task.

OPTION 1 – Offer the site as freehold title through a competitive process – Commercial/residential development or low scale community use.

This is not the preferred option as the site is in a high profile strategic location with strong economic and heritage value; however should this outcome be desirable the land would need to be offered through a public competitive process for a Crown Lease term convertible to freehold on completion of the development.

OPTION 2 – Offer the site as Crown Lease in Perpetuity – Low scale community/commercial use

This is not the preferred option as it would restrict the opportunity for Government to utilise the site in the future. While Government has the right to revoke the lease should the terms and conditions of the lease not be met, there is an expectation by the holder of the Crown Lease in Perpetuity that tenure will be ongoing. Should this

option be desirable the land as above would need to be offered through a public competitive process for a Crown lease term convertible to a Crown lease perpetual on completion of development.

OPTION 3 – Offer the site as Crown Lease Term for 10 years – Low scale community/commercial use.

This is the preferred option as the call for an Expression of Interest will likely attract a broad range of community and commercial interest and ensure the site's future use is low impact and supportive of the heritage values [emphasis added].

Representatives from Tourism NT and the Heritage Branch of NRETAS would be invited to contribute to the development of the Expression of Interest and participate on any Expression of Interest assessment panel.

This option would enable Unions NT to participate in the process. This option enables short term use of the site preserving future development for such a high profile site. Legal advice would need to be obtained regarding the successful proponent taking on the liability and indemnifying the Government against any uncertified buildings [emphasis added].

OPTION 4 – Offer leasehold tenure (Term or Perpetuity) of the site to the National Trust of Australia (Northern Territory) or Unions NT.

This is not the preferred option as any decision to offer the site to one particular group does not reflect Government transparency policies and is likely to attract criticism. It should be noted that Option 3 would provide the National Trust and Unions NT the opportunity to submit an Expression of Interest along with other groups for consideration [emphasis added].

Lot 5260 was valued at \$1.35 million in November 2007 by the Australian Valuation Office. It is likely that this valuation has increased since that time. It would be prudent prior to any release for a revaluation to be undertaken.

Recommended Position: *Advise Unions NT that Government will be considering future development options for the site noting Unions NT interest in the site.* The Department of Lands and Planning is also checking on the status of the buildings in terms of building certification [emphasis added].

[46] It is unknown whether the meeting which was organised for 2 June 2011 took place or, if it did, what was resolved at the meeting.

[47] On 6 July 2012 a Cabinet submission about the future of the Stella Maris site was completed and the document was signed by Mr Gerry McCarthy who was then the Minister for Lands and Planning. The cover page of the submission contained the recommended option for use of the site. It stated the following.

The Future of the Stella Maris Site – Lot 5260 Town of Darwin
(1 McMinn Street)

The Hon Gerry McCarthy MLA Minister for Lands and Planning

Consider the options for the future of the Stella Maris site Lot 5260
Town of Darwin (1 McMinn Street)

Release the Stella Maris site for a low scale community/commercial use through an expression of interest process for a Crown Lease term for a period of 10 years [emphasis added].

Determining a future use/development of the site would assist in avoiding current problems of illegal occupation and vandalism, offer a level of protection to the Heritage listed Old Railway Residence on site and provide a viable use of currently unoccupied buildings.

[48] The Cabinet submission contained three options for the development of the Stella Maris site. Option 1 was to offer the site as freehold title through a

competitive process for commercial or residential development. The preferred option was option 2 which was as follows.

OPTION 2: Offer the site as Crown Lease Term for 10 years – Low scale community/commercial use

As an interim use, low key commercial development such as a café/kiosk or use of the existing buildings by a community organisation, with pedestrian access and limited parking in a garden setting may be an appropriate use of the site. The Old Railway Residence and bar building are both suited for this. Consideration could be given to removal of the accommodation block to allow for landscaping and provision of some additional car parking. Funding would be required if this position was taken.

An expression of interest for a 10 year Crown Lease Term for the site would be the most appropriate method for releasing this high profile site [emphasis added].

Any improvements or modifications to the Railway Residence would require approval in accordance with the *Heritage Conservation Act* to ensure the historical integrity of the building is maintained.

In accordance with the *Crown Lands Act*, the lease document may include provisions relating to the lessee's rights in improvements should the Crown Lease Term not be extended on the value of the improvements.

This option could provide landscaped open space and promote the historical significance of the site, complementing the Pump House and WWII Tunnels being preserved within the Darwin Waterfront Precinct, and enhance the linkages between the city and the Darwin Waterfront Precinct.

This is the preferred option as the call for an expression of interest will likely attract a broad range of community and commercial interest, and ensure the site's future use is low impact and supportive of the heritage values. It is proposed that representatives from Tourism NT and the Heritage Branch of NRETAS would be invited to contribute to the development of the expression of interest, and participate on any expression of interest panel [emphasis added].

[49] Option 3 in the Cabinet submission dealt with an offer of a leasehold tenure to either Unions NT or the National Trust. This was not the preferred option. The Department of Lands and Planning advised Cabinet that option 3 would attract criticism for preferential dealing and lack of transparency. It would, in effect, deny the expression of interest by a broad range of commercial and community groups, which may be of advantage to government and the taxpayer.

[50] As to option 3, the Cabinet submission stated the following.

OPTION 3: Offer leasehold tenure (Term or Perpetuity) of the site to the National Trust of Australia (Northern Territory), Unions NT or other community group

The National Trust is aware that the site has been returned to Government, and has expressed an interest in participating in any discussions on the future of the site and may have an interest in being involved in its management.

It has suggested preservation of the whole of the site to provide a point of interest and historic information on the route from the Darwin Wharf Precinct to the city. Additionally, the National Trust has suggested that the Old Railway Residence could possibly be used as an interpretive centre for the past railway use at the Waterfront, or a wider story of the working waterfront; and to house the Sandfly locomotive, which was recently moved from Stokes Hill Wharf and is now on display in the old Qantas Hangar at Parap.

Unions NT has also expressed an interest in taking on the whole of the Stella Maris site and utilising the Old Railway Residence as office space. Unions NT has not indicated its intentions regarding the bar building or the accommodation block. This option would require consultation with the Heritage Branch of NRETAS to ensure that any alterations for office use maintain the historical integrity of the Old Railway Residence.

Option 3 is not the preferred option as Government may attract criticism for dealing preferentially with select groups for such a high profile site. Option 2 would provide the National Trust, Unions NT or any other community group the opportunity to submit an expression of interest for a lease for Government consideration and would be a more transparent process [emphasis added].

- [51] The Cabinet submission recommending option 2 was supported by the Department of Natural Resources Environment the Arts and Sport, the Department of Tourism and the Department of Local Government. The Department of Justice also supported the Cabinet submission. However, it suggested that before the expression of interest process was approved, Cabinet should give consideration to the site being offered as compensation to address outstanding compensation obligations associated with the Kenbi Land Claim. The Northern Territory Treasury made neutral comments. The Department of The Chief Minister simply noted the Cabinet submission.
- [52] On 6 July 2012 Mr McCarthy sought Chief Minister Henderson's approval to waive the six day lodgement rule relating to the submission of Cabinet documents. This would allow the Cabinet submission about the future of the Stella Maris site to be considered by Cabinet at the Cabinet meeting on 10 July 2012. He did so at the request of Ms Lawrie. Mr Henderson approved the waiver of the time limit on the same day.
- [53] Even though it was not part of her portfolio responsibilities, Ms Lawrie acted to have the Cabinet submission regarding the Stella Maris site brought forward to be considered by the Cabinet meeting on 10 July 2012. Her concern in doing so was the preservation of the site and, in particular, the

Old Railway House. She believed that if a Country Liberal Party Government was formed after the 25 August 2012 election the site was likely to become a commercial or residential development.

[54] On 9 July 2012 Mr Wolf Loenneker sent an email to Ms Lawrie which stated as follows.

The Cabinet submission on Stella Maris is on the business list for tomorrow. The recommendation in the submission is that Cabinet approve option 2 and release the site through an expression of interest process for low scale community use or commercial development.

To allow the site to be granted directly to Unions NT, Cabinet needs to approve option 3 and approve the grant of a Crown lease for a term of ten years to Unions NT.

[55] On the same day Mr Loenneker sent a similar email to Mr McCarthy which stated the following that is of relevance.

The Cabinet submission on Stella Maris is on the business list for tomorrow. *I discussed this with Delia on Friday and she asked that it go to Cabinet tomorrow so that the Cabinet can approve the grant of the site to Unions NT.* The recommendation in the submission is that Cabinet approve option 2 and release the site through an expression of interest process for low scale community use or commercial development.

However, to allow the site to be granted directly to Unions NT (Delia's preference), Cabinet needs to approve option 3 in the submission and approve the grant of a Crown lease for a term of 10 years to Unions NT. I have advised Delia of this and hopefully it will go through as planned.

[56] Before the Cabinet meeting on 10 July 2012, and after Ms Lawrie had received and read the Cabinet submission provided by the Department of

Lands and Planning, Ms Lawrie met with Chief Minister Paul Henderson.

They both agreed to recommend to the other members of Cabinet who were at the meeting that Unions NT be granted a lease without the Government calling for an expression of interest.

[57] On 10 July 2012, despite the advice in the Cabinet submission and the paucity of the information about Unions NT's proposal, Cabinet decided to offer a lease of the Stella Maris site to Unions NT by way of a community land grant. At the time the Cabinet decision was made Union NT's proposal was three years old.

[58] The Acting Secretary of Cabinet made the following record of the decision.

- (a) Noted the options for the future use and/or development of the Stella Maris site at Lot 5260 Town of Darwin (1 McMinn Street), and
- (b) Approved that a Crown Lease term over the Stella Maris site at Lot 5260 Town of Darwin (1 McMinn Street) be offered to Unions NT for a term of 10 + 10 years on an "as is, where is" basis.

[59] On 13 July 2012 Ms Ann-Marie Dooley, a Senior Project Officer in the Land Administration section in the Department of Lands and Planning, sent the following email to Mr Loenneker, who was then Mr McCarthy's Ministerial Adviser.

Wolf

As discussed this morning, I would like to contact Unions NT *to request they submit a proposal in relation to the above site* [the Stella Maris site] [emphasis added].

The Cabinet submission notes their interest in the land however no further information is specified. We require Unions NT to submit a proposal clarifying the intended use of the land through a detailed application in order to include appropriate lease conditions [emphasis added].

Could you please provide a contact for Unions NT so I can request further information from them?

Thank you.

[60] On 17 July 2012 Mr Loenneker replied to Ms Dooley as follows.

Ann-Marie

Attached is the proposal put forward by Unions NT to use and redevelop the Stella Maris site. Cabinet has now considered the proposal and approved the grant of a Crown lease for 10 + 10 years so we need to make a formal offer ASAP.

Alan Paton is the contact at Unions NT and can be contacted on Alan can provide any further information you might need to draft the lease conditions.

Regards Wolf

[61] The proposal attached to Mr Loenneker's email was the written proposal that Unions NT gave to Ms Lawrie in May 2009. This was the first time that Ms Lawrie's office had provided Unions NT's proposal to the Department of Lands and Planning. While Ms Lawrie was familiar with the written proposal put forward by Unions NT in 2009, there is nothing to suggest that the proposal was before the Cabinet when the decision was made to offer the Crown lease to Unions NT.

- [62] On 23 July 2012 Mr Loenneker sent an email to Mr McCarthy informing him about Cabinet's decision to offer to grant Unions NT a Crown lease over the Stella Maris site. Mr Loenneker also advised Mr McCarthy that the Department of Lands and Planning was working with Unions NT so that a formal letter of offer could be made by Mr McCarthy to Unions NT.
- [63] Minister McCarthy, as he then was, treated the decision of Cabinet as determinative of how he should exercise his discretion under s 12(3) of the *Crown Lands Act*. By letter dated 3 August 2012, Minister McCarthy offered Unions NT a grant of a lease of the Stella Maris site.
- [64] The offer was accepted by Unions NT on 3 August 2012.
- [65] It is apparent that Ms Lawrie had been integrally involved in all these matters over a period of about five years. Throughout the period she was warned a number of times that the Labor Government would be criticised if it granted a lease over such a high profile site to Unions NT without an expression of interest because such a decision involved preferential dealing with a particular group and was inconsistent with Government transparency policies.
- [66] On 25 August 2012 there was a general election and the Labor Government of which Ms Lawrie was a Minister was defeated. Prior to the election, the public was not informed of the Labor Government's decision to grant a Crown lease of the Stella Maris site to Unions NT.

[67] On 29 September 2012 a notice of the offer of the Crown lease of the Stella Maris site was published in the Government gazette.

[68] Ultimately, the offer of a Crown lease to Unions NT was withdrawn by the current Country Liberal Party Government.

The course of the Inquiry into Stella Maris

[69] On 20 December 2013, which is two days after Mr Lawler was appointed to conduct the Inquiry, Ms Lawrie retained the firm of Halfpennys as her solicitors for the purpose of the Inquiry. Shortly after that, Ms Spurr, who is a partner in the firm, retained Mr Wyvill SC as counsel for Ms Lawrie and Mr Gerry McCarthy. Both Ms Spurr and Mr Wyvill agreed to act for Ms Lawrie on a pro bono basis after they were informed that the Northern Territory Government would not fund Ms Lawrie's representation at the Inquiry.

[70] On 14 February 2014 Ms Spurr emailed a letter dated 14 February 2014 to Mr Lawler. Of relevance to this proceeding, the letter stated the following.

Dear Mr Lawler

STELLA MARIS INQUIRY

We act for Ms Delia Phoebe Lawrie, the Leader of the Opposition in the Territory's Legislative Assembly and Mr Gerry McCarthy, Deputy Leader of the Opposition. Please address all further inquiries of our clients to this firm. We also confirm that we have instructions to accept service of any documents in relation to the inquiry on their behalf.

Request for submissions

We note that you have called for public submissions which relate to the terms of the reference. We believe it may be helpful to set out our clients' position in general terms in relation to the proposal to grant a lease to Unions NT over the Stella Maris site in August 2012 as a submission in response to this request:

1. The decision to offer a lease of Stella Maris to Unions NT was a decision made by Cabinet. You will appreciate that both of our clients are obliged to maintain cabinet confidentiality and cannot say anything about what cabinet considered and what was discussed by its members unless and until that confidentiality is waived by the Attorney. *Our clients will be writing to the Attorney seeking that waiver [emphasis added].*
2. When Mr McCarthy wrote to Unions NT on 3 August 2012, he was fulfilling his duty as a Minister to carry out a decision of Cabinet. *If the decision to make the offer set out in the letter is to be criticised, that criticism should be directed towards Cabinet [emphasis added].*
3. In discharging their functions as members of Cabinet in this respect, neither of our clients acted otherwise than bona fide and, they believed, consistent with Government policy on community land grants. They believed at the time – and still believe – that this decision was in the best interests of the Territory in order to best preserve and promote the heritage values of Stella Maris. They did not believe that they were offering Unions NT an asset which was likely to generate any substantial net financial benefit or which could be sold to realise a substantial net return. They had no knowledge of any agenda on the part of Unions NT to obtain any such benefit.
4. Unions NT was not in fact receiving an asset which was likely to generate any substantial net financial benefit or which could be sold to realise a substantial net return. If a lease of the kind proposed had been entered into between the NT Government and Unions NT, it is unlikely to have produced any substantial net financial return for Unions NT, quite the opposite. Further, the proposed lease did not

have any value as a saleable interest in real property and could not have been sold to generate any funds.

5. As subsequent events demonstrate, the acceptance of the letter of 3 August 2012 and the payment of the fee mentioned in that letter by Unions NT did not give rise to an agreement to enter into a lease between the NT Government and Unions NT enforceable by action in the courts. The offer was a non-binding indication of an intention to exercise a statutory power for a public purpose on terms which are insufficiently precise (particularly in relation to the development proposal referred to in paragraph (c) of the letter) to create enforceable contractual rights. Consistent with this legal position, the new NT Government has not to proceed with the transaction and Unions NT has not demonstrated any appetite for contesting that decision. The result is that whatever view one may take of Cabinet's decision to offer the lease of Stella Maris to Unions NT, it was left to be implemented by the new Government, and, as a result, nothing came of it.

The conduct of the inquiry

We note that:

1. apart from the summons referred to below, no formal contact has been made by you with either of our clients. *Particularly we note that no warning has been given that you are considering making any particular finding of wrong-doing against either of our clients.* Further, no invitation has been received by them from you inviting our clients to comment on the procedure you propose to adopt for the inquiry or to attend the hearings and listen to the evidence and if appropriate ask questions themselves of the witnesses [emphasis added];
2. you have announced how you intend to conduct the inquiry, started hearing evidence, have completed several witnesses and appear to be intent on proceeding to a prompt conclusion.

Our clients support any approach which will lead to the prompt conclusion of this inquiry which, with respect, they see as (a) pointless (b) politically motivated and (c) a waste of tax payers' money.

They also note that, by proceeding like this, you appear to share the view that it is not open for you to reach any view on the evidence to the effect that either or both our clients had been guilty of any misconduct. Given that the inquiry must be conducted in accordance with the rules of natural justice, was it otherwise the matter would have needed to have been approached by you very differently [emphasis added].

Attendance of our clients

Our clients are prepared to attend and give evidence at the inquiry on reasonable notice. However, given their public duties, they will need to be called outside Parliamentary sitting weeks which, in the first half of 2014, are the weeks commencing 17 and 24 March, 5 and 12 May, and 9 and 16 June.

[71] The letter then went on to request access to documents and deal with the summons to Ms Lawrie to produce documents dated 7 February 2014.

[72] Ms Spurr's letter does a number of things. The letter reveals: (1) Ms Spurr and Ms Lawrie had heard or been informed about the opening statement of Mr Lawler and were aware of how he intended to conduct the inquiry; (2) Ms Spurr and Ms Lawrie were aware that the two main issues during the Inquiry were (a) the manner or procedure by which the decision to offer the lease of the Stella Maris site to Unions NT was made, and (b) whether Unions NT was wrongly granted a benefit; (3) Ms Spurr and Ms Lawrie were aware that the manner or procedure by which the decision to grant the lease was made, may be criticised, and they suggested to Mr Lawler that any

criticism should be directed towards Cabinet; and (4) Ms Spurr and Ms Lawrie knew enough about the Inquiry to set out Ms Lawrie's position in general terms and to request access to the documents that Ms Lawrie needed to peruse before giving evidence at the Inquiry.

[73] As to the procedure by which the decision to grant the lease was made, Ms Spurr, and through her Ms Lawrie, stated that the decision was a bona fide Cabinet decision which was consistent with Government policy on community land grants. The decision was made in the best interests of the Territory in order to best preserve and promote the heritage values of Stella Maris. As to whether Unions NT wrongly obtained a benefit, Ms Spurr, and through her, Ms Lawrie, stated Unions NT was not receiving an asset which was likely to generate any net financial benefit and, in any event, no harm was done as ultimately the lease was not granted.

[74] Finally, Ms Spurr, and through her Ms Lawrie, expressed the opinion that the Inquiry was pointless, politically motivated and a waste of tax payers' money.

[75] Despite the complaint in her letter, Ms Spurr made no request to Mr Lawler for Ms Lawrie to have a lawyer present throughout the Inquiry or to cross examine witnesses who were called before the Inquiry.

[76] There was no basis for the assertion in Ms Spurr's letter that Ms Lawrie was entitled to have input into the manner in which Mr Lawler conducted the Inquiry and, in any event, Ms Spurr did not ask to be given an opportunity to

make submissions to Mr Lawler about how the Inquiry should be conducted. Nor was there any basis for the assertion that it was not open to Mr Lawler to find that Ms Lawrie had been guilty of misconduct. The Inquiry had barely started at the time Ms Spurr sent the letter to Mr Lawler. Section 6 of the *Inquiries Act 1945* (NT) states that a Commissioner shall make a thorough investigation without regard to legal forms and solemnities and shall not be bound by any rules of evidence, but may inform himself on any matter in such manner as it or he thinks fit.

[77] Subject to the availability of all relevant documents, it was open to Ms Lawrie at the beginning of the Inquiry to provide a detailed statement and submissions to Mr Lawler setting out the full history and background to Cabinet's decision to offer a lease of the Stella Maris site to Unions NT. Ms Lawrie and her lawyers elected not to do so.

[78] On 17 February 2014 Mr Lawler sent a letter to Ms Spurr in which he stated the following which is of relevance.

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 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 5 pm 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 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 still are 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 finding of wrongdoing against any person or organisation. The suggestion that the Inquiry is considering making any adverse findings 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 [emphasis added].

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 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 [emphasis added].*

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 [emphasis added].*

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.

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 [emphasis added].

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 is 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 [emphasis added].

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 to 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 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 necessary to their preparations.

Please contact the Inquiry on ... 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 documents, and the proposal that you provide the documents on their behalf is acceptable.

....

I look forward to your response.

[79] Mr Lawler's letter does a number of important things. First, the letter notes that Ms Lawrie was aware of the Inquiry's Terms of Reference, public website and hearing schedule. Second, the letter points out that a person who claimed to be from Ms Lawrie's Office has been present during all public hearings. Third, the letter informs Ms Spurr, and through her Ms Lawrie, that: (1) the Inquiry was being conducted on an inquisitorial basis not an adversarial basis; (2) subject to the requirements of natural justice, the Inquiry was entitled to inform itself in such a manner as it thought fit; (3) it was too early to determine if any adverse findings should be made against Ms Lawrie; (4) ultimately, it was open to the Inquiry to make findings which could be adverse to any person relevant to the Inquiry's Terms of Reference; (5) Ms Lawrie could make an application to be legally represented during all public hearings; (6) Mr Lawler was willing to discuss Ms Lawrie's testimony with her before the hearing so as to

prevent her being surprised by the matters that would be put to her; (7) to the fullest extent possible, Mr Lawler would make any document that he intended to have Ms Lawrie comment on provided to her in advance of her testimony; and (8) Cabinet documents would be made available in the Inquiry's offices and Ms Lawrie and her legal advisers would be permitted to take copies upon appropriate undertakings being given.

[80] On 24 February Mr Lawler sent a letter to Ms Spurr. Of relevance, the letter noted that, although Ms Spurr had requested to inspect and take copies of Inquiry documents, she had not as yet done so, and asked if Ms Spurr wished the Inquiry to make the audio recordings of the hearings available to her.

[81] On 10 March 2014 Ms Lawrie and Mr McCarthy provided Mr Lawler with a written submission about the publication of evidence and documents received by the Inquiry. The submission stated:

We believe that this inquiry cannot be conducted properly or fairly if the public is excluded from any of the hearings and not allowed to see and review all of the documents and other evidence which is given to the Commissioner.

This inquiry was established in highly controversial circumstances and, we believe, motivated purely by a desire on the part of the CLP to try and cause political damage to ourselves as the leader and deputy leader of the opposition.

Further, the conduct of the inquiry to date by the Commissioner causes us great concern that we may not be fairly treated by him in this inquiry or in his report. Examples of what we believe is unfair treatment to date include deciding how he would conduct the inquiry without giving us an opportunity to comment, hearing evidence

which he knew or should have known was evidence which we may want to challenge but without giving us any warning and refusing to provide us with a transcript of the evidence received by him to date.

In these circumstances it is critical for us to be able to put our own case to the public as to why this decision was the right decision and for members of the public to be able to form their own view about the evidence and other material which has been put before the Commissioner. That is why we believe that all evidence and documents should be made public.

However, that should only be done if it can be done lawfully. We note from Mr Wyvill's note to the Commissioner that it seems there has been a serious breach of public interest immunity which applies to the large number of Cabinet Documents which have been released by the Territory to the Commissioner. That too is a matter of grave concern and appears to be another regrettable consequence of the Commissioner proceeding without first consulting properly those affected by this inquiry.

[82] There is absolutely no basis for the criticism of the Inquiry contained in the above submission of Ms Lawrie and Mr McCarthy. Mr Lawler was entitled to inform himself on any matter in such a manner as he thought fit and neither Ms Lawrie nor her legal advisers asked to make legal submissions about how the Inquiry should be conducted or to cross-examine witnesses in circumstances where the Inquiry website set out the names of witnesses, the dates when they were to be called and audio recordings of their evidence. Further, so far as Ms Lawrie was concerned, Cabinet confidentiality did not in any way prevent her from putting her case to Mr Lawler. What Ms Lawrie wanted to say publicly was of no concern to Mr Lawler in the conduct of the Inquiry.

[83] On 10 March 2014 there was a prehearing interview which was attended by Ms Lawrie, Mr Wyvill and Mr Lawler. The purpose of the interview was for Mr Lawler to inform Ms Lawrie of the matters he was interested in asking her questions about and to take her to the specific documents that he would question her about at the hearing of her evidence.

[84] At the outset of the preliminary interview Mr Lawler told Ms Lawrie the following. The purpose of the prehearing was to help Ms Lawrie assist the Inquiry. As best he could, Mr Lawler would try to avoid any surprises. It was not an adversarial process. It was not a criminal investigation. At the hearing he would ask Ms Lawrie about the background and history of the decision to offer the Crown lease of the Stella Maris site to Unions NT. He would then put a whole series of documents to Ms Lawrie. Mr Lawler then told Ms Lawrie that during the prehearing interview he would tell her about the matters he was going to question her about at the hearing so that she had an opportunity to reflect on those matters before the documents were formally put to her during the course of the Inquiry.

[85] During the course of the preliminary interview Mr Lawler briefly went through all of the matters that he would be raising with Ms Lawrie during her evidence before the Inquiry, including the following matters.

1. Background and history
2. The surrender of the Crown lease by the Apostleship of the Sea - Ms Lawrie was taken to a memorandum recommending she approve the payment of a certain amount of compensation to the

Apostleship of the Sea for the surrender of the Crown lease of the Stella Maris site.

3. The community land grant business process – Ms Lawrie was taken to the *Community Land Grant Business Process* document. Mr Lawler told Ms Lawrie that the document was authorised by the Chief Executive Officer of the Department of Lands and Planning. The process had been in use for a decade, and it contained the standard of how the Department responded to such matters.
4. The number of community groups who had expressed an interest in the Stella Maris site – These groups included 24Hr Art, Plan NT, the National Trust, ... Ms Lawrie was taken to correspondence from or about these groups and informed that the purpose of going to them was to establish there were other community groups who were interested in the site for community purposes.

Ms Lawrie and Mr Wyvill could have been in no doubt about the significance of the above issue.

5. A memorandum dated 3 September 2007 from Ms Lawrie to Chief Minister Claire Martin. In the memorandum Ms Lawrie states that *my office will brief Unions NT*. Mr Lawler told her that he was interested in finding out why she was going to brief Unions NT.

Likewise, Ms Lawrie and Mr Wyvill could not have been in any doubt about the significance of this issue.

6. The Meeting Brief dated 31 May 2011 and to the recommendation contained in that brief.
7. Ms Lawrie's involvement in bringing the Cabinet submission forward to the 10 July 2012 Cabinet meeting in the absence of Mr McCarthy.
8. Whether Ms Lawrie knew what a conflict of interest was.

9. Mr Loenneker's emails of 9 July 2012 to Ms Lawrie and Mr McCarthy and to the fact that in the email to Mr McCarthy, Mr Loenneker states what he thinks Ms Lawrie's preference was.
10. The paucity of the information before Cabinet on 10 July 2012 about Unions NT's proposal. There are only two sentences in the Cabinet submission which refer to Unions NT. Ms Lawrie was informed she would be questioned about how Cabinet could make a decision based on two sentences.

[86] At the prehearing interview Ms Lawrie was also informed by Mr Lawler that at the end of the hearing of her evidence she would be granted an opportunity to say anything further that she might wish to state.

[87] The prehearing conference was consistent with Mr Lawler's duty to disclose all relevant documents to Ms Lawrie and to provide notice of areas where it was possible that he make adverse findings. All of the matters raised with Ms Lawrie were relevant to various aspects of the terms of reference.

[88] If Ms Lawrie was not already aware, then Mr Lawler's statements to her during the prehearing interview must have made it clear to her that there were serious questions about whether proper processes had been followed and whether she had acted unfairly in favour of Unions NT.

[89] Ms Lawrie gave evidence before the Inquiry on 13 and 14 March 2014. At the start of her evidence Mr Lawler asked her if she would like to make an opening statement. She said, "No, I am fine."

[90] At the end of her evidence before the Inquiry Ms Lawrie was given an opportunity to make a closing statement. They had also been given the

opportunity to call further evidence. Both Ms Lawrie and Mr Wyvill made closing statements and they also called evidence about the valuation of the Stella Maris site.

Consideration of Ms Lawrie's complaints

[91] Ms Lawrie complains about the following adverse findings which she says she was not given an opportunity to respond to before Mr Lawler finalised his report.

1. Minister Lawrie directed her office to brief Unions NT over another community group that had expressed an interest in the site when it was surrendered to the government in 2007.
2. Minister Lawrie acted with bias over many years, forming a view in 2009 that Unions NT should be exclusively granted a lease over the site without an expression of interest process.
3. Ms Lawrie formed this view in 2009 after a meeting with Unions NT representatives and receiving a redevelopment proposal for the site, which became the application document.
4. Minister Lawrie should have ensured that her office provided this application to the Department following this meeting. This did not occur. The first time the Department received the application was 17 July 2012, by which time it was three years out of date and largely irrelevant.
5. Minister Lawrie should have made it clear to the Department that it was her intention to grant the site to Unions NT without an expression of interest process. This should have been done in writing from either the Minister or a member of staff.
6. The Inquiry has found no evidence to suggest that this was done.
7. Years after the 2009 meeting with Unions NT, in July 2012, Minister Lawrie intervened to bring the submission to the

10 July 2012 cabinet meeting, even though Minister G McCarthy was the Minister for Lands and Planning at the time. It is unlikely that the submission would have gone to that Cabinet meeting or that the letter of offer would have been made on 3 August 2012 without Minister Lawrie's intervention.

8. Minister Lawrie maintained that this intervention was due to her concern that the incoming government could sell the site for commercial or residential high rise development and her long standing preference was to grant the site to Unions NT.
9. This concern and preference did not justify the decision that was ultimately made by Minister G McCarthy: a decision that would not have been made without Minister Lawrie's intervention.
10. Notwithstanding that Minister Lawrie may have genuinely believed that granting the site exclusively to Unions NT was in the public interest, the way she involved herself in the process was not proper and was unfair to the public and other community groups.
11. The fact remains that Minister Lawrie acted with bias in favouring Unions NT over other community groups.
12. From her time as Minister for Planning and Lands in 2007 up until the Cabinet meeting of 10 July 2012, Minister Lawrie acted in a biased way by favouring Unions NT in its attempts to be granted a lease of the site.
13. Mr Loenneker's interventions, on Minister Lawrie's behalf, with the Department in 2009 were not proper.
14. Notwithstanding her knowledge of the Northern Territory, Minister Lawrie could not have possibly known who else might have expressed an interest in the site and what partnership arrangements that might have involved.
15. If Minister Lawrie was so biased as to be unable to allow other interested community groups to advance their proposals to be compared and properly assessed against Union NT's application,

then she should have excluded herself from participating in the Cabinet decision-making process.

16. The approaching caretaker period, the potential for a change of Government and a view that this would mean the site would be used for commercial/residential high rise, does not adequately justify Minister Lawry's conduct.
17. As such I find that Minister Lawrie exerted influence over the Cabinet process and over Minister G McCarthy and his office in a way that was designed to further her view that Unions NT should be offered an exclusive lease to the site. By acting in such away, Minister Lawrie deprived the public and other community groups of an opportunity to have their claims for the site properly and fairly considered.
18. As the Minister for Planning and Lands, Minister Lawrie must also take responsibility for the actions of her senior lands advisor at the time, Mr Loenneker, whose conduct was not of the highest standards expected.
19. I find that notwithstanding Minister Lawrie may have genuinely believed that granting the site to Unions NT was in the public interest, the way she involved herself in the process was not proper and was unfair to the public and other community groups.
20. I recommend that the Legislative Assembly consider whether there has been an alleged breach of the Northern Territory of Australia *Legislative Assembly (Members' Code of Conduct and Ethical Standards) Act 2008*, by Ms Delia Lawrie MLA ... and whether under the provisions of s 5(1) it wishes to refer any alleged breach of the code to the Privileges Committee.

[92] The adverse findings made by Mr Lawler, about which Ms Lawrie complains, are based on the following substratum of facts, which are either not in dispute, or clearly established by the documents which were provided to Ms Lawrie by Mr Lawler on 10 March 2014 and form part of exhibit P1

and by the transcript of Ms Lawrie's evidence during the Inquiry which also forms part of exhibit P1.

Preference for Unions NT

[93] As to Mr Lawler's finding 1 in [91] – *Ms Lawrie's preference for Unions NT over another community group*, the following facts are unequivocally established.

[94] At the end of 2007 Ms Lawrie briefed Unions NT and no other community group about the Stella Maris site becoming available. On 30 August 2007 Mr Steve Eland, the Director of 24HR Art, sent an email to Chief Minister Clare Martin stating that 24HR Art would like to use the site for an artist's residency and short term accommodation facility for artists. Ms Lawrie was copied into the email to the Chief Minister.

[95] On 3 September 2007 Ms Lawrie sent a memorandum to Chief Minister Clare Martin in which she states, "My office will brief Unions NT and the local member on the proposed surrender of the lease." At that time the Government had not received an expression of interest from Unions NT.

[96] On 8 October 2007, which is a month after her memorandum the Chief Minister, Ms Lawrie sent the following letter to 24HR Art.

Thank you for your email of 30 August 2007 to the Chief Minister, the Hon Clare Martin MLA, requesting the use of Stella Maris facility on Lot 5260, Town of Darwin for an artist residency and short term accommodation for visiting artists. The Chief Minister has asked me to respond as this matter falls within my portfolio as the Minister for Planning and Lands.

At this stage, I am advised that the site is unsuitable for occupation.

The Catholic Church is surrendering the Crown lease over the property however, to date, the facility has not yet been handed back to the Government. *Your interest in the site has been noted.*

If you wish to discuss this matter further, please contact Mr Brian Dobie at the Department of Planning and Infrastructure.

[97] Clearly, Unions NT were preferred to 24HR Art.

Bias

[98] As to Mr Lawler's findings 2, 3, 11, 12 and 15 in [91] – *the findings of Ms Lawrie's bias*, the following facts are unequivocally established.

[99] Ms Lawrie had a clear preference for the Stella Maris site being granted to Unions NT without an expression of interest. She told Mr Lawler so during the course of her evidence before the Inquiry. She briefed Unions NT in 2007.

[100] On 27 May 2009 Ms Lawrie met with Unions NT and received a proposal from them for the development of the Stella Maris site. She told Unions NT that she supported their proposal and that Chief Minister Henderson also supported their proposal. In 2009 Ms Lawrie formed the view that Unions NT should be exclusively granted a lease over the Stella Maris site without an expression of interest. Between 2007 and 2012 six or seven community groups expressed an interest in the Stella Maris site. At the time Ms Lawrie formed her view in favour of Unions NT, she was aware that other community groups had expressed an interest in the site. On 6 July 2012 a

Cabinet submission prepared by the Department of Lands and Planning about the Stella Maris site was finalised and signed by Mr McCarthy who was then the Minister for Lands and Planning. The Cabinet submission recommended against a grant of a lease to Unions NT without an expression of interest. The recommendation was supported by the majority of other relevant Government Departments. An expression of interest process did not exclude Unions NT from competing for the site. Despite the recommendation against the grant of a Crown Lease to Unions NT, Ms Lawrie arranged for Cabinet's consideration of the 6 July 2012 Cabinet submission to be expedited. She met and spoke to Chief Minister Henderson before the Cabinet meeting on 10 July 2012 to ensure that she had his support for the grant of a Crown lease over the site to Unions NT without an expression of interest. On 10 July 2012 Cabinet approved granting a lease of the Stella Maris site to Unions NT without an expression of interest.

[101] The 10 July 2012 Cabinet decision approving that a Crown lease term of the Stella Maris site be offered to Unions NT for a term of 10 plus 10 years meant that Unions NT did not have to go through the established Departmental process for a community land grant. The Cabinet decision also precluded other community groups who were interested in the site from competing for the site.

[102] Ms Lawrie conducted herself in the above manner despite being aware:
(1) that the Stella Maris site was a high profile site in the Darwin Central Business District; (2) a number of community groups had expressed an

interest in the site and had been told, in effect, to await the outcome of the Cabinet decision (For example, when Ms Hinton advised Mr Loenneker, who was then Ms Lawrie’s adviser, that Birds Australia had expressed an interest in the site and the Department supported it, Mr Loenneker sent her an email in which he stated, “This is not a good idea. Other groups have expressed an interest in the site, so why are we giving a preference to Birds Australia. We should wait until Cabinet has considered the future use of the site before giving any group exclusive access.”); (3) there was an established process for dealing with community land grants; (4) Unions NT was not precluded from competing for the site if the Government adopted an expression of interest process for determining who should be granted a Crown lease of the Stella Maris site; and (5) the warnings by the Department of Lands and Planning on a number of occasions that the Labor Government would be criticised if the Stella Maris site was granted to Unions NT without an expression of interest.

Failure to inform the Department of Lands and Planning

[103] As to Mr Lawler’s findings 4, 5 and 6 in [91] – *the findings of Ms Lawrie’s failure to ensure that the Department of Lands and Planning was informed of her decision that Unions NT should be offered a Crown lease without an expression of interest*, while finding 5 may be wrong, the following facts are unequivocally established.

[104] The Department of Lands and Planning first became aware that Unions NT were interested in the Stella Maris site when they were asked to prepare a

Meeting Brief for Ms Lawrie in April of 2009 for a proposed meeting with Unions NT on 22 April 2009. The Meeting Brief was prepared and is dated 15 April 2009. Among other things, it stated:

This Department is currently preparing a Cabinet Submission outlining options for the future of Stella Maris for Government consideration. The Cabinet Submission is now with the Executive Director, Lands Services for approval. *Entering into any arrangements with Unions NT at this stage would pre-empt Cabinet's deliberation on this issue. Previous applications to utilise Stella Maris received by this Department have been denied for this reason* [emphasis added].

Recommended Position: The future of Stella Maris is a matter being debated by Cabinet. Until a decision has been made, no management or other arrangement with Unions NT can be considered [emphasis added].

And –

ISSUES TO AVOID

Any commitment to Unions NT for management or use of the Stella Maris site or the wharf precinct buildings

[105] As matters transpired, the meeting between Ms Lawrie and Unions NT only took place on 27 May 2009. At that meeting, Unions NT gave Ms Lawrie a well prepared and detailed written proposal. That proposal was not given to the Department until after the Cabinet decision which was made on 10 July 2012. No reference is made to Unions NT's proposal in 6 July 2012 Cabinet submission.

[106] On 17 July 2012, Mr Loenneker sent Ms Dooley the following email with Unions NT's proposal attached to it.

Ann-Marie

Attached is the proposal put forward by Unions NT to use and redevelop the Stella Maris site. Cabinet has now considered the proposal and approved the grant of a Crown lease for 10 + 10 years so we need to make a formal offer ASAP.

Alan Paton is the contact at Unions NT and can be contacted on Alan can provide any further information you might need to draft the lease conditions.

Regards Wolf

[107] Following Ms Lawrie's meeting with Unions NT on 27 May 2009, neither Ms Lawrie nor her office informed the Department in writing that Ms Lawrie had rejected their advice and had told Unions NT she supported their proposal. It was not until 30 July 2009 that the Department of Lands and Planning was informed at all about the decision to support Unions NT's proposal.

[108] On 30 July 2009 Ms Stranger telephoned Mr Loenneker and she was advised of the following.

- ... although the original Cab decision was to provide a Cab Sub outlining options, it is now agreed that the site will be offered to Unions NT and not as an expression of interest.
- Unions NT would make the buildings available to other community groups
- Unions NT would take on responsibility for all the buildings.
- The accommodation block should stay (even though the plan was to remove, landscape and provide more parking)

- We should mention the itinerant problem in the Cab sub but not a recommendation to remove the accommodation block
- No need to include Tourist NT or NRETAS in preparing this updated Cab sub.

[109] Ms Stranger was not provided with Unions NT's proposal and she was not instructed to contact Unions NT and assist them to make an application for a community land grant for the Stella Maris site.

[110] Further, at the meeting on 27 May 2009, Ms Lawrie suggested to Unions NT that a working party should be set up to progress the development of their proposal for the Stella Maris site. Neither Ms Lawrie nor her office informed the Department of Lands and Planning that it should set up a working party to progress Union NT's proposal. Indeed, even when Unions NT came back to Ms Lawrie's office with some suggestions about who should be on the working party, the Department was not informed and no working party was established.

[111] At no stage prior to 17 July 2012 was the Department given any written instructions about Ms Lawrie's decision to grant a Crown lease of Stella Maris to Unions NT without an expression of interest. Nor was the Department given any instructions to assist Unions NT make an application for a community land grant.

[112] At the time the Cabinet decision was made to offer a Crown lease of the Stella Maris site to Unions NT, Ms Lawrie must have known (1) that a work

party had not been established to progress Unions NT's proposal, (2) no application had been received from Unions NT for the development of the Stella Maris site and processed by the Department of Lands and Planning, (3) Unions NT's proposal was out of date and had been allowed to get out of date because there has been inadequate communication with the Department of Lands and Planning, and (4) none of standard processes for consideration of an application for a community land grant had been undertaken by the Department of Lands and Planning. This is apparent from the 6 July 2012 Cabinet submission which makes no mention of Unions NT's proposal and says very little at all about Union NT's plans for the site.

Ms Lawrie's intervention and influence

[113] As to Mr Lawler's findings 7 and 17 in [91] – *Ms Lawrie's intervention and her influence on Cabinet*, the following facts are unequivocally established.

[114] Ms Lawrie accepts that without her intervention the 6 July 2012 Cabinet submission would not have been considered at the 10 July 2012 Cabinet meeting. She also accepts that (1) prior to the Cabinet meeting on 10 July 2012 she spoke to Mr Henderson and obtained his support for Union NT's proposal, and (2) at the Cabinet meeting on 10 July 2012 she endeavoured to persuade her Cabinet colleagues to support Union NT's proposal.

[115] Mr McCarthy, who was the Minister for Lands and Planning in July 2012, was absent from Darwin from 24 June 2012 to 22 August 2012. He was at the Alice Springs show on 6 July 2012 and in Elliot on 10 July 2012. He

authorised his signature to be placed on the 6 July 2012 Cabinet submission which recommended against a grant of a Crown lease of the Stella Maris site to Unions NT without an expression of interest. He did not attend the Cabinet meeting on 10 July 2012.

[116] On 9 July 2012 Mr Wolf Loenneker sent an email to Ms Lawrie which stated as follows.

The Cabinet submission on Stella Maris is on the business list for tomorrow. The recommendation in the submission is that Cabinet approve option 2 and release the site through an expression of interest process for low scale community use or commercial development.

To allow the site to be granted directly to Unions NT, Cabinet needs to approve option 3 and approve the grant of a Crown lease for a term of ten years to Unions NT.

[117] On the same day Mr Loenneker sent a similar email to Mr McCarthy which stated the following that is of relevance.

The Cabinet submission on Stella Maris is on the business list for tomorrow. *I discussed this with Delia on Friday and she asked that it go to Cabinet tomorrow so that the Cabinet can approve the grant of the site to Unions NT.* The recommendation in the submission is that Cabinet approve option 2 and release the site through an expression of interest process for low scale community use or commercial development [emphasis added].

However, to allow the site to be granted directly to Unions NT (Delia's preference) Cabinet needs to approve option 3 in the submission and approve the grant of a Crown lease term of 10 years to Unions NT. I have advised Delia of this and hopefully it will go through as planned [emphasis added].

[118] At the time he sent the two emails, Mr Loenneker was Mr McCarthy's adviser. Before that he had been Ms Lawrie's adviser. In July 2012 Ms Lawrie was Deputy Chief Minister.

[119] On 10 July 2012, despite the Cabinet submission to the contrary, Cabinet resolved to grant a Crown lease of the Stella Maris site to Unions NT. The effect of the Cabinet decision was to deprive the public and other community groups of an opportunity to have their claims for the site considered.

Failure to justify

[120] As to Mr Lawler's findings 8, 9, 14 and 16 in [91] – *Ms Lawrie's failure to justify the decision that was ultimately made by Mr McCarthy to grant a lease of the Stella Maris site to Unions NT*, these findings are essentially expressions of Mr Lawler's opinion.

[121] However, Ms Lawrie and Mr Wyvill were acutely aware that this was Mr Lawler's view and that he considered that this was an important issue for the Inquiry to consider. As I have stated, in par [141] to par [226] below, this view of Mr Lawler's very much influenced the advice that Mr Wyvill gave from 31 March 2014 onwards and the strategy of abandonment of the Inquiry that Ms Lawrie thereafter adopted.

[122] Ms Lawrie was accorded an extensive opportunity by Mr Lawler to justify the basis on which she made her decision and she did so, as did Mr Wyvill on her behalf. Her justification for granting a Crown lease of Stella Maris to

Unions NT without an expression of interest was as follows. It was important to preserve the site. Unions NT had a substantial historical attachment to the site and the financial resources and other additional capacity to maintain the site. There would be no ongoing cost to the Government for maintenance of the site if a lease was granted to Unions NT. The other community groups had neither the attachment to the site nor the capacity to maintain the site that Unions NT had. It was not necessary to obtain expressions of interest from these community groups as the members of Cabinet were familiar with these community groups. The executive knew best. Ms Lawrie had been let down by either her office or the Department of Lands and Planning because they had failed to progress Unions NT's proposal. There was no time left for an expression of interest process because the caretaker phase of government was rapidly approaching prior to the next Northern Territory election.

[123] The fact that Mr Lawler did not accept this justification and expresses the opinions he does in findings 8, 9, 14 and 16 does not mean that Ms Lawrie was not accorded a fair opportunity to be heard. Mr Lawler's conclusions have not been challenged on the basis that they were unreasonable or that he failed to take into account relevant considerations.

Not proper and unfair

[124] As to Mr Lawler's findings 10 and 19 in [91] – *Ms Lawrie's intervention was not proper and unfair*, the following facts are unequivocally established.

[125] By not proper, Mr Lawler means, not in accordance with the established business process for processing an application for a community land grant. At page three of the transcript of Ms Lawrie's evidence on 14 March 2014 there was the following exchange between Mr Lawler and Ms Lawrie.

MR LAWLER: 2014/98-3-21 is the Community Land Grant Business Process, and I think the proposition that Mr Wyvill spoke about, *it is fair to say that in accordance with this particular process, proper and due process, it is clear was not followed* [emphasis added]?

MS LAWRIE: Yeah. I would like to know why the department did not do it.

MR LAWLER: *But do you agree with that?*

MS LAWRIE: *It was not followed and I want to know why the Department did not do it* [emphasis added].

[126] At the time the Cabinet decision was made there were Government policy guidelines for the sale or grant of Government land. The guidelines were set out in a document entitled, *Policy Guidelines – Sale or Grant of Government Land*. It is apparent from that document that different approaches may be taken to the sale of real property for commercial, residential and agricultural purposes, on the one hand, and a direct grant of real property for community purposes, on the other hand. The meaning of real property in the document included a grant of a Crown lease. The document stipulated a public competitive process including inviting expressions of interest was the usual method for the sale of real property for commercial, residential or

agricultural purposes. Whereas the document recognised that the Minister may make a direct grant of real property for community purposes. This is also consistent with s 12(3) of the *Crown Lands Act*.

[127] Paragraphs 11, 12 and 13 of the *Policy Guidelines – Sale or Grant of Government Land* stated the following.

11. The Minister may make a direct grant of real property for community purposes.
12. The title to real property subject to a grant for community purposes at no cost shall be a Crown lease for the term of the proposed development period, convertible to a Crown lease in perpetuity. The holder of such a Crown lease can convert to freehold title on payment of the current market value of the land.
13. Applications will not be accepted for a direct sale or land grant for community purposes over land that the Government proposes to release by a public competitive process or has particularly set aside for future purposes.

[128] Clause 16 of the *Policy Guidelines – Sale or Grant of Government Land* also provides that if a particular application has merit but does not comply with the policy the Minister shall refer it to Cabinet for determination.

[129] The Department of Lands and Planning also had in place, in writing, a *Community Land Grant Business Process* for dealing with community land grants under s 12(3) of the *Crown Lands Act*. By July 2012 the process had been in use by the Department for about eight to 10 years. There was testimony before the Inquiry that it was considered to be “the Bible” as to

how staff in the Department of Lands and Planning responded to an application for a community land grant. The process was as follows.

1. *Expression of interest received.*
2. *Qualification criteria checked.* The applicant must be an incorporated association, society, or institution which undertakes one of the following activities in whole or in part in the Northern Territory: a religious, educational, benevolent or charitable purpose; the purpose of promoting or encouraging literature, science, art or a cultural activity; or the purpose of sport or recreation for a period of three years. The applicant must also determine the source of finance and other resources necessary to complete the proposed development within a reasonable time.
3. *Preliminary assessment.* Status and availability of the land checked. Consultations regarding planning, environmental and service authority requirements are undertaken. Native title implications are reviewed.
4. *Submission of the Community Land Grant Application by the applicant.* Payment of application fee.
5. *Formal assessment of the application.* Formal request for submission from service authorities and public advertisement of the application (14 day comment period).
6. *Minister considers application.* The Minister determines the grant of an estate in fee simple or lease of Crown land to the applicant, pursuant to s 12(3) of the Crown Lands Act. If applicable, the Minister also determines the rent payable pursuant to s 28 of the Crown Lands Act.
7. *The Minister makes a formal offer to the applicant subject to any relevant conditions.*
8. *The applicant accepts the offer.*

9. The Minister or his/her delegate causes a notice of the determination made for the purposes of s 12(3) of the Crown Lands Act to be published in the Gazette within 60 days after the date on which the determination was made (s 12(6) of the Crown Lands Act).

[130] The above business process was the standard which was invariably applicable to community groups who were interested in obtaining a community land grant. Mr Lawler took Ms Lawrie to this document both at the preliminary interview on 10 March 2014 and during her evidence at the Inquiry. He made it very clear to her that he considered the document to be a very important document.

[131] While Ms Lawrie may not have been aware of all of the details of the community land grant process she was aware that such a process existed. At one point in her evidence to the Inquiry she stated that it was her understanding that the Department of Lands and Planning would have followed the process if they had done what she requested of them. However, it must have been apparent to her at the time the 10 July 2012 Cabinet decision was made that no such process had been followed.

[132] The Community Land Grant Business Process was not followed in this case. The natural consequence of the failure of Ms Lawrie to follow the process was that, unlike other community groups, Unions NT were excused from having to follow the process, Union NT's proposal was not subject to public scrutiny and all stipulated and necessary assessments of their proposal were

not undertaken before a decision to grant the Crown lease was made. In my opinion, Ms Lawrie must have been aware of these consequences.

[133] As to fairness, Mr Lawler asked Ms Lawrie about whether she thought the process she adopted had been unfair. Her answers variously were to the effect that the Cabinet decision was fair because of the extent of the union movements' attachment to the Stella Maris, government decisions often involved preferring one group over another, and her decision was consistent with the mandate of an elected Labor Government.

[134] The facts of course are that the other community groups were deprived of an opportunity to compete with Unions NT and that Unions NT's proposal did not have to progress through the 'proper' process and assessment required of all other applicants for a community land grant.

Mr Loenneker's interventions

[135] As to Mr Lawler's findings 13 and 18 in [91] – *Mr Loenneker's interventions, on Ms Lawrie's behalf with the Department were not proper and Ms Lawrie was responsible for Mr Loenneker's actions*, these statements are expressions of opinion.

[136] The intervention of Mr Loenneker being considered by Mr Lawler in findings 13 and 18 in [91] is Mr Loenneker's telephone discussion with Ms Stranger on 30 July 2009 on Ms Lawrie's behalf. What was conveyed by Mr Loenneker was not in accordance with the established process for administering applications for community land grants. During the telephone

call Mr Loenneker appears to be giving Ms Stranger a direction inconsistent with the wishes of Cabinet which was for a submission to be prepared about all of the options for the Stella Maris site. He did so without Cabinet so resolving and without advising Ms Stranger about Ms Lawrie's precise position. Mr Loenneker also told Ms Stranger that there was no need to include Tourism NT or NRETAS in preparing the updated Cabinet submission. These were Departments which would be asked to comment on the submission under the usual Cabinet processes. Mr Loenneker gave these instructions in circumstances where he would be presumed to be acting on Ms Lawrie's behalf.

[137] As the relevant Minister, under the Westminster Parliamentary System which operates in the Northern Territory, Ms Lawrie was responsible for Mr Loenneker's conduct.

Members Code of Conduct and Ethical Standards

[138] As to Mr Lawler's finding number 20 in [91] – *the recommendation that the Legislative Assembly consider whether Ms Lawrie's conduct amounts a breach of the Members Code of Conduct and Ethical Standards*, this is merely a recommendation.

[139] Mr Lawler does not make a finding that Ms Lawrie has breached the Members Code of Conduct and Ethical Standards. So the question is unresolved. If there were to be a reference to the Privileges Committee Ms Lawrie would be given an opportunity to be heard.

Defining the issues

[140] As I have said, the facts to which I have referred define the issues. The facts referred to above clearly give rise to the issues about which Mr Lawler's criticisms of Ms Lawrie's conduct were made. Ms Lawrie must have been aware of these facts given her integral role in the decision to grant a Crown lease of the Stella Maris site to Unions NT. To the extent that Ms Lawrie may not have been aware of all of the facts from her own knowledge, the documents Mr Lawler gave her on 10 March 2014 establish most of the facts to which I have referred. So that at the very least, by 10 March 2012 Ms Lawrie must have been aware of the relevant facts. Given her political experience, her experience as Minister for Lands and Planning, and the Departmental advice and submissions that Ms Lawrie received, Ms Lawrie must have also been aware of the issues that gave rise to Mr Lawler's criticisms. The issues were further defined by Mr Lawler during the preliminary interview and by his questions during the course of Ms Lawrie's evidence to the Inquiry. The Inquiry's Terms of Reference also assist in defining the issues which Ms Lawrie confronted during the course of the Inquiry. In addition, Ms Lawrie and her lawyers were provided with audio recordings of each witness who gave evidence before the Inquiry and Mr Maher's letter of 26 March 2014 which is discussed at [147] – [148]. Ms Lawrie also had an adviser who sat in through all of the oral evidence that was received by the Inquiry and she was represented by senior counsel.

Did Ms Lawrie waive any claim to greater procedural fairness than she was accorded by Mr Lawler?

[141] In addition to submitting that Ms Lawrie was accorded procedural fairness, Mr McLure on behalf of Mr Lawler also submitted that Ms Lawrie and her lawyers had waived the right to claim procedural fairness beyond what Ms Lawrie was in fact accorded by Mr Lawler. Put more specifically, if the Court was of the opinion that procedural fairness in this case required Mr Lawler to provide Ms Lawrie with specific notice of his adverse findings about her conduct and an opportunity to be further heard about them before Mr Lawler presented his final report to the Administrator, then in this case Ms Lawrie and her lawyers had, by their conduct, abandoned the entitlement to any such notice and further opportunity to be heard.

[142] For the following reasons, I accept the respondent's submission about waiver. I have found that Ms Lawrie was accorded procedural fairness by Mr Lawler. However, if am wrong about that, I find that Ms Lawrie and her lawyers, on her behalf, waived the right to any greater procedural fairness for Ms Lawrie than Mr Lawler accorded her.

[143] Waiver is an intentional act or conduct done with knowledge, whereby a person abandons a right by acting inconsistently with that right.⁷ There is no reason in principle and no authority to doubt that full observance of the

⁷ *Craine v Mutual Fire Insurance Co Ltd* (1920) 28 CLR 305 at 326, *Grundt v Great Boulder Pty Gold Mines Ltd* (1937) 59 CLR 641 at 658 (Latham CJ).

hearing rule may be waived.⁸ It is well established that a party's lawyer may waive a party's procedural or forensic rights.⁹

[144] Mr McLure submitted that from on or about 31 March 2014 Ms Lawrie and her lawyers made a conscious decision to change their strategy and withdraw from further participation in the Inquiry. He submitted that Ms Lawrie and her lawyers engaged in a deceptive strategy to ignore, disengage and discredit the Inquiry. The words "ignore, disengage and discredit" are words that were used by Mr Wyvill when developing the strategy. I accept the respondent's submission. I find that by engaging in that strategy Ms Lawrie and her lawyers waived her right to any greater procedural fairness. They intentionally and knowingly abandoned any further participation in the Inquiry by engaging in conduct inconsistent with a right to be further heard by Mr Lawler. Instead of further participating in the Inquiry, Ms Lawrie chose a political course of action.

[145] The strategy was implemented in the following way.

[146] On 26 March 2014 Mr Lawler sent the following letter to Ms Spurr.

Dear Ms Spurr

The Inquiry into Stella Maris is now in its third of four phases, which involves analysis and consolidation of the testimony and information, the Inquiry has received to date. I wish to raise a number of matters with you and I would be grateful if you would bring these to the attention of Mr Alistair Wyvill of Counsel, and Ms Delia Lawrie MLA and Mr Gerald McCarthy MLA.

⁸ *MH6 v Mental Health Review Board* (2009) 25 VR 382 at [53].

⁹ *Escobar v Spindareli* (1986) 7 NSWLR 51 at 62 (Samuels JA).

Firstly, I have sought a further report from Mr Mark Harris of the Australian Valuation Office in relation to the analysis of Mr Brian Scarborough of the Stella Maris Crown Lease. The report of Mr Harris is due to be provided by Wednesday 2 April 2014 and when that report is available I will provide you with a copy.

On the same issue of the cost or value of the Crown Lease for Stella Maris, I have requested further information from the Department of Lands Planning and Environment. The information sought endeavours to quantify any (1) capital expenditure, and or (2) ongoing expenditure on maintenance, required to bring the Stella Maris site up to a standard so as to be effectively utilised by the lease (sic). In this regard you should note paragraphs 6-9 inclusive of Cabinet Submission 4033.

Secondly, your letter of 11 March 2014, states that the audio files relating to the evidence given to the Inquiry are of no help in assisting your clients. Notwithstanding, I have included the remaining audio files from the hearing process. You now have all the audio files, (sic) of all witnesses, who have provided testimony to the Inquiry.

Thirdly, I have attached the following documents to this letter.

The letter then set out the attached documents.

The above documents seem to establish that Mr McCarthy was in Elliot on 10 July 2012. This supports the Cabinet attendance record for Cabinet Meeting No 479 which considered the Future (sic) of Stella Maris. The information obtained to date does not support the definitive sworn testimony of Mr McCarthy when he gave evidence on Thursday 13 March 2014, that he was physically present at the Cabinet Meeting No 479. I have included a copy of a transcript that the Inquiry has prepared in relation to the evidence Mr McCarthy gave on this point.

Given Mr McCarthy was not excused at his last appearance, I intend to recall him before the Inquiry to have him explain this discrepancy and other issues that flow from him not being in attendance at the Cabinet meeting. I was intending to do that at 9am on Thursday 3 April 2014. If you can confirm or otherwise if this time and date is suitable by Friday 28 March 2014.

I have also attached the transcript of Ms Delia Lawrie on this issue and given she was more equivocal (with the assistance of Mr Wyvill), I do not intend to recall her.

I have also attached the audio files of the conversations between Ms Lawrie and Mr McCarthy and myself of 10 March 2014. I have also included a transcript of the taped conversation between Mr McCarthy and I where the issue of me forming a 'final view' was canvassed. You will see from the transcript that Mr Wyvill is the only person to utter the words 'final view'. Given Mr McCarthy subsequently raised this issue in his sworn testimony, I will be asking Mr McCarthy to withdraw that statement as being untrue.

I would also ask you draw to Mr McCarthy's attention the relevant provisions of S 14 of the *Inquiries Act* (NT) before he returns to provide testimony to the Inquiry.

I look forward to hearing from you on the above matters.

[147] On 26 March 2014, Mr Paul Maher, the solicitor who assisted the Inquiry, provided a written advice about whether the decision to grant the Crown Lease to Unions NT was in accordance with s 12(3) of the *Crown Lands Act*. In his advice Mr Maher concluded that:

Considering that:

- a. The Minister departed from the usual practice of offering a Crown lease of a high profile site pursuant to s 12(2) rather than s 12(3), without apparent reason,
- b. In doing so he acted against the advice of his department,
- c. The factual basis for offering the lease to Unions NT as opposed to other community groups appears to be questionable, and
- d. The decision appears to favour Unions NT over other community groups who had expressed interest,

my advice is that there is a respectable argument that the Minister's determination was unreasonable and that it would be set aside by the court.

[148] On 28 March 2014 Mr Lawler signed a letter to Ms Spurr enclosing Mr Maher's advice and stating that if Ms Spurr wished to make a submission to the Inquiry the submission should be forwarded to the Inquiry by 14 April 2014. At 3.33 pm on 28 March 2014, Mr Lawler's letter and Mr Maher's advice were sent to Ms Spurr as an attachment to an email. Mr Maher's conclusions raise the core aspects of Mr Lawler's 20 adverse findings about Ms Lawrie's conduct. The provision of Mr Maher's letter to Ms Lawrie and Mr Lawler's invitation to her to respond to it gave Ms Lawrie a further opportunity to deal with these matters in full.

[149] At 3.39 pm on 28 March 2014 Ms Spurr forwarded Mr Lawler's letter and Mr Maher's advice to Mr Wyvill by email. The email stated that Mr Lawler had requested that any further submission about Mr Maher's letter be provided by 14 April 2014. Upon receipt of the email from Ms Spurr, Mr Wyvill requested Ms Spurr to ask Mr Lawler to send them a copy of the letter of instructions that Mr Lawler sent to Mr Maher.

[150] On 31 March 2014 Mr Wyvill sent the following email to Mr McCarthy, Ms Lawrie, Mr Michael Gleeson, Ms Mandy Taylor and Ms Spurr.

Hi all

Just to confirm that Gerry is back on tomorrow at 9am for what hopefully should be a short stint.

Can I also confirm ...

- Given what is happening elsewhere, no news from the inquiry is definitely good news?

- That said:
 - o we need to respond quite firmly to Lawler's bold suggestion that we withdraw the allegation that he has expressed a "final view" – prejudged the connection between Stella and Unions NT – by giving him both barrels including about the "urban myth" comment etc. *I thinki (sic) it is important to put a few quotes on the record which you can later use to discredit his report without risking contempt/defamation [emphasis added].*

 - o is it time to say to him that we have no confidence in the inquiry or him because of the unfairness of his conduct of the inquiry to date, Delia and Gerry have important public duties to perform to which this is a serious distraction and, given the fact that no lease was actually granted, *we consider the inquiry to be a pointless waste of time and will not be co-operating with it any further?? And then to ignore him from now on? By staying engaged we may actually be giving him the opportunity to try to fix up the messes we say he has created and also more chance to verbal us [emphasis added].*

Gerry, do you want to pick me up from chambers at 8.30 so we can discuss how to deal with tomorrow on the way out there?

[151] The email signals the commencement of the strategy to ignore, disengage and discredit the Inquiry. In my opinion, the strategy is adopted because Mr Wyvill had formed the view that Mr Lawler could not be persuaded by Ms Lawrie's explanation about why it was necessary to make the decision to grant a Crown lease of Stella Maris to Unions NT in the manner the decision was made. This is made clear by Mr Wyvill's 8 April 2014 email to Ms Spurr set out below and by other comments he makes in other emails set

out below. It must have also been obvious to Mr Wyvill that the Inquiry was not going well for Ms Lawrie and Mr McCarthy. Mr McCarthy had just been caught out misinforming the Inquiry about a key part of his evidence. Much of Ms Lawrie's evidence was dissembling and it was apparent that she was not conscientiously endeavouring to assist the Inquiry.

[152] The strategy suggested by Mr Wyvill involved two components. First, Ms Lawrie and her lawyers would ignore Mr Lawler in the future and disengage from the Inquiry. Second, they would discredit the Inquiry. It followed that there had to be some explanation or justification for Ms Lawrie ignoring and disengaging with the Inquiry. The explanation or justification was to be a political one which involved discrediting the Inquiry as being an unfair Inquiry that was merely serving the Country Liberal Party's purposes.

[153] Obviously, if Ms Lawrie did not disengage from the Inquiry, there would be less opportunity or a much weaker basis to assert that she had been denied procedural fairness during the Inquiry. This is a point that was acknowledged by Mr Wyvill a number of times as the strategy he devised was developed and implemented.

[154] Ms Lawrie responded by email to Mr Wyvill's email as follows.

I fully concur with your advice [emphasis added].
This has been a political stunt premised on lies.
I caught up with Hendo today. He did not ask for no white.
I still suspect Rod Applegate.
Hendo has agreed it should have been pre Cabinet not BSC.

The person creating that ruse is Rod Applegate.
Give it to them both barrels.

[155] Ms Lawrie was in full agreement with Mr Wyvill's suggested strategy to ignore Mr Lawler in future, disengage from further participation in the Inquiry and discredit Mr Lawler.

[156] On 1 April 2014 Mr McCarthy was recalled. The reason Mr McCarthy was recalled was that when examined by Mr Lawler on 13 March 2014 he had said that he personally attended the Cabinet meeting on 10 July 2012.

Mr McCarthy gave this evidence despite a written Cabinet attendance record of the Cabinet meeting on 10 July 2012 showing he was absent. As to the attendance record, Mr McCarthy had earlier said on oath, "I can't accept that. I remember the Cabinet submission. I remember the Cabinet debate and therefore I am contesting that this is wrong. I am saying the Cabinet attendance record is in error, yes."

[157] Further investigation in the course of the Inquiry established that

Mr McCarthy did not attend the Cabinet meeting on 10 July 2012.

Mr McCarthy's telephone records, fuel card purchases, travel acquittal details and a letter from the Speaker of the Northern Territory Legislative Assembly about access to Parliament House established that Mr McCarthy was at the Alice Springs Show on 6 July 2012, in Elliot on 10 July 2012 and absent from Darwin between 24 June 2012 and 22 August 2012, a period of almost two months.

[158] This discovery gave rise to the following issues which Mr Lawler questioned Mr McCarthy about on 1 April 2012. Why was Mr McCarthy so adamant about being present at the Cabinet meeting on 10 July 2012 when he first appeared before the Inquiry? Did Mr McCarthy seek the six day waiver for the Stella Maris Cabinet submission so that it could be considered at the 10 July Cabinet meeting? If Mr McCarthy was not going to be at the 10 July 2012 Cabinet meeting, why did he seek the waiver of the six day time period? When did Mr McCarthy decide to bring the Stella Maris Cabinet submission to the 10 July 2012 Cabinet meeting? Did Mr McCarthy read the 6 July 2012 Stella Maris Cabinet submission? Did he authorise his signature stamp to be placed on the 6 July 2012 Stella Maris Cabinet submission? Did Mr McCarthy lodge the 6 July 2012 Cabinet submission? If Mr McCarthy was not going to be at the Cabinet meeting on 10 July 2012, did he nominate another Minister to sponsor the Cabinet submission; and so on?

[159] If Mr McCarthy did not do those things, the potential implication was that it may have been Ms Lawrie as the Deputy Chief Minister who arranged for them to be undertaken in his absence. The Cabinet submission which contained Mr McCarthy's signature made a recommendation in favour of an expression of interest process and against a Crown lease being granted to Unions NT without an expression of interest.

[160] Relevant to the strategy proposed by Mr Wyvill on 31 March 2014, on 1 April 2014 there were the following exchanges between Mr Lawler, Mr Wyvill and Mr McCarthy.

At pages 22 to 24 of the transcript of 1 April 2014

MR LAWLER: Now, given you were not able to attend the cabinet meeting on 10 July 2012 because of your duties in Elliot, did you nominate someone to sponsor the submission on your behalf?

MR McCARTHY: No.

MR LAWLER: Why didn't you do that?

MR McCARTHY: Because I did not need to, the business of Cabinet was dealt with according to Cabinet list and the sponsoring Minister was not necessarily there from time to time.

MR LAWLER: The process is as I understand it, both the process here in the Northern Territory, and more broadly within Cabinet processes in a Westminster system, is that if a Minister cannot attend, they will seek a colleague to talk to the submission based on what discussions they have had between the sponsoring Minister, or indeed the Chair of Cabinet, if there is no sponsoring Minister, will sponsor the cabinet submission?

MR McCARTHY: The Chief Minister introduced all Cabinet submissions.

MR LAWLER: They may have introduced it, but the sponsoring Minister would talk to the submission normally under ...

MR McCARTHY: Not always the case.

MR LAWLER: No, not always, maybe not always, but that was the normal process, as I understand it. So can you tell me again why it is that you did not get someone to sponsor the submission and talk to the submission on your behalf?

MR McCARTHY: No. I can't explain why, but I remember the Chief Minister always chaired the meetings and led the discussions. The submission was on the Cabinet list and it would have been dealt with by Cabinet colleagues.

MR WYVILL: Mr McCarthy's obvious answer is he simply doesn't accept the proposition which is being assumed in your question; *and you have never, not ever, produced a single document to justify any of the assertions you have made in this Inquiry about Cabinet procedure* [emphasis added].

MR LAWLER: So were you aware at any stage, *prior to the Cabinet meeting*, what the views of Minister Lawrie and the Chief Minister were in relation to how they intended to deal with the submission [emphasis added]?

The Cabinet submission recommended against a grant of a lease to Unions NT without an expression of interest process.

MR McCARTHY: My recollection was of a discussion in the Cabinet room. As I said, I thought it was on 10 July and it was a discussion around the Stella Maris issue, the Stella Maris Cabinet submission.

MR WYVILL: *Mr Lawler, I should also note that one has to be very, very, very careful about asking any further questions about that, because we are talking about what was actually said in a Cabinet meeting* [emphasis added].

MR LAWLER: Okay, what I would like to do – I accept that Mr Wyvill and thank you for bringing that to my

attention to remind me. But I am not going to ask you about what was said in the Cabinet room Mr McCarthy, and particularly in relation to this particular matter. You were not in the Cabinet room so that won't have any immediate bearing. But I did have some enquiries undertaken to establish whether we have any record of any references to the Stella Maris matter being discussed in any other Cabinet meeting, any official record undertaken, and I would like to show you ...

MR WYVILL: *How can you possibly ask that question [emphasis added]?*

MR LAWLER: I am just going to ...

MR WYVILL: *How can you possibly ask that question [emphasis added]?*

MR LAWLER: Well ...

MR WYVILL: Aren't you inviting him to tell you what was discussed at other meetings?

MR LAWLER: No I am not.

MR WYVILL: *Well what is the point of the question then except to enquire of that very subject and therefore it is completely out of order [emphasis added].*

MR LAWLER: Thank you ...

MR WYVILL: It is completely out of order, Mr Lawler.

MR LAWLER: Thank you ...

MR WYVILL: *You cannot make enquiries into cabinet discussions and that is what you are trying to do through the back door [emphasis added].*

MR LAWLER: *Mr Wyvill, you have not even seen the document [emphasis added].*

MR WYVILL: You have ...

MR LAWLER: You are making this ...

MR WYVILL: You have described it to me.

MR LAWLER: *You are making this submission on the basis of not having seen the document and not being aware of the question I am going to ask. Now if after you have read the document and heard the question I have asked, you have an objection that that offends areas that might be subject of public interest immunity claims then please raise them with me at that time [emphasis added].*

MR WYVILL: You are using this document to suggest to Mr McCarthy that the matter had not been discussed at Cabinet on a previous occasion. Is that not correct? Is that not the case?

MR LAWLER: Mr Wyvill, I am not here to answer your questions please. What Mr McCarthy simply asserted was that there were other discussions he had within the Cabinet context that related to Stella Maris and that is where his recollection came from. And I wanted to put on the record enquiries that had been done with the Cabinet Office about the items on the agenda for the Cabinet meeting and indeed searches that were done of the Cabinet notebooks that do not record any such communication. Now that is not to say that's ...

MR WYVILL: You have just told ...

MR LAWLER: Mr Wyvill that is not to say that the communications did not occur. All it is to say is that we have done the necessary enquiries and we can find no records of them.

MR WYVILL: *Mr Lawler, you have just seriously breached Cabinet privilege. You have just told the world the results of a search of minutes of Cabinet meetings [emphasis added].*

MR WYVILL: That is a serious breach of Cabinet privilege.

MR LAWLER: Well I have explained to you, Mr Wyvill, exactly why I have done what I have done. It is to put fairly on the record what the Inquiry has initiated and that's been very transparent. So I put it on the record and I do not need to ask you any further questions about it, Mr McCarthy.

MR McCARTHY: Commissioner, if I could say that I outlined my recollections and I am sorry that I caused confusion for this Inquiry. But there were lots of Cabinet discussions with no Cabinet Secretary in the room because that was the business of government.

MR LAWLER: Okay and that is your testimony. But in putting that into context, I have also indicated what the Inquiry has done and what the outcome of those enquiries were, so I do not think that is going to take ...

MR WYVILL: *That is a serious impropriety on your part [emphasis added].*

MR LAWLER: Well, I take objection to that, Mr Wyvill; it is not an impropriety at all.

[161] The above exchange is consistent with Mr Wyvill's suggested strategy that they give Mr Lawler "both barrels" by ceasing to cooperate with the Inquiry and by indicating to him that they had lost all confidence in his ability to fairly conduct the Inquiry. It is apparent that Mr Wyvill was engaging in a tactic of attempting to divert Mr Lawler from exploring precisely what

involvement, if any, Mr McCarthy had with the Stella Maris Cabinet submission and the waiver of the six day time limit.

[162] Later on 1 April 2014 there were the following exchanges between Mr Wyvill and Mr Lawler.

At pages 34 to 37 of the transcript of 1 April 2014

MR LAWLER: Alright now, the last matter I wanted to raise with you and this might be simple, Mr Wyvill. It is not to do with those matters that we raised before, but it was in relation to some sworn testimony that was provided in your opening statement, Mr McCarthy. I wrote to Ms Spurr about the matters I wished to raise and this was one of them that you may recall, Mr McCarthy, where it went to an issue, I think as you described it, that I am not a Territorian *and it talked about me having formed a final view*. Do you remember raising that at your earlier testimony [emphasis added]?

MR WYVILL: Mr Lawler, this really isn't a new line of questioning, but Mr McCarthy has asked me to respond on his behalf to this, if I may?

MR LAWLER: Please.

MR WYVILL: (inaudible) because it is a matter which relates to various points being put in the past to him. *It is correct, it seems, assuming the accuracy of the transcript, that the words 'final view' were actually words that came from me* [emphasis added].

MR LAWLER: Indeed.

MR WYVILL: But we stand well and truly *beside* the substance of what we said, which is that that is and we repeat that we believe that that is a fair characterisation

of the words you used on that day. We agree that this is not a quote, so we agree or we maintain the position that this is an absolutely fair characterisation of the position you took in that – in that prehearing meeting. Just to make it absolutely clear, Commissioner, you made it clear there that you had formed a view. You said the words, should read them for the records, “We think we have – I think we have established sufficiently some of those to be clearly inaccurate”, and that is where we said to you – I said to you, “You have formed that view already, have you?”

MR WYVILL: And you said those statements are inaccurate and I said yes and you said yes. And that is clearly your final view. So the characterisation of that being a final view is absolutely accurate in our respectful submission and we’ve already made that point to you in correspondence.

MR WYVILL: There are additional concerns we have, which is the fact that you have not at all sought to reject or deny what Ms Lawrie put to you about the use of the term ‘urban myth’ to describe the connection between Unions NT and Stella Maris; *and we say that is a plain indication of prejudgment and appearance of bias. Based on that basis alone, you ought to disqualify yourself from going any further in this matter* [emphasis added].

MR WYVILL: So there is one further matter which is of great concern to us, and this is a great concern, particularly because it begs the question, why you have not said it. And this is the point we made to you at the last hearing, the point we put to you again now.

MR WYVILL: *When are you going to tell the people of the Northern Territory that you are enquiring into something that never happened? When are you going to tell them that no Crown lease was ever in fact granted by the Northern Territory Government? When are you going to tell them that no interest in public property was ever in fact*

given to Unions NT? When are you going to tell them that Unions NT never in fact took possession of the site, were never even given the keys? When are you going – in fact, when are you going to tell them that current Cabinet as you know from the records that have been given to you, have revoked the offer and there will never be a grant of a lease by Unions NT - sorry, by the Northern Territory Government to Unions NT and this whole Inquiry is an extraordinary waste of time into something that never happened [emphasis added].

MR WYVILL: Why is that not, from our perspective, properly seen as an inconvenient truth which this Inquiry refuses to face?

MR LAWLER: Thank you Mr Wyvill. Just in relation to your second point, you have asserted that twice now that I said ‘urban myth’. Can you point to me when and where I said that?

MR WYVILL: Well, Mr Lawler, this is another aspect of the unfairness of this Inquiry. That was reported to us by a person helping us with this Inquiry, but as we have made clear on record, throughout, you have refused to produce a transcript so we don’t have any convenient access. You know we do not have the resources to type up a transcript of several – of a large number of days’ evidence. We don’t have the ability to produce that. You do, you produce it when it suits you, and you won’t produce it for us.

MR LAWLER: *But you have raised it twice now Mr Wyvill that you have asserted that I have said that. Surely it is fair and proper and decent for you to detail when it was said and who it was said to and what the basis of where the proof is that it was in fact said [emphasis added].*

MR WYVILL: Will you produce us a transcript showing that?

There is no evidence that Mr Wyvill or Ms Spurr requested a transcript of the “urban myth” statement which was alleged to have been made by Mr Lawler before or after 1 April 2014.

MR LAWLER: No, no. Well that is quite inappropriate I might say to make those ...

MR WYVILL: On what basis is it inappropriate for us to ask you to produce a transcript of the evidence which you are relying upon to put very serious allegations?

MR LAWLER: Well, the reason – let me just start with the transcript, and I will come back to the earlier two matters and ask you some very direct questions Mr McCarthy, if I can. In relation to the transcript what the Inquiry has done, the Inquiry has not produced a transcript for its own purposes. Where we were asked and there was specific contention within the Inquiry, which is three people, we have prepared for that particular segment and for the hearing today. And indeed we have provided those transcripts to you, checked and we believe accurate.

MR LAWLER: But for the Inquiry’s purposes, we have been able to operate on the use of the audio recordings, properly tabbed and logged, that have been provided to you for each and every witness that has appeared before the Inquiry. And the Inquiry has been able to do that and one of the reasons is, that I said at the start of the Inquiry, we were going to try and conduct it as efficiently as possible and there is an array of things that we have done where we have tried to do that and one of them is in relation to transcripts.

MR LAWLER: And for your information, the transcripts – the cost to produce the transcripts from this Inquiry is in excess of \$60,000 without having to then have the staff proof read them. And we believe that was expenditure which was not necessary and the

Inquiry could achieve its outcomes without the specific reference to the transcripts and that is why we have not produced the transcripts in bulk. I am aware that this something that you are not familiar with, Mr Wyvill, from your experience, you would expect to have transcript from the Court proceedings regularly produced.

MR LAWLER: But as we have said before, this is an inquisitorial Inquiry and an Inquiry where I have seen fit not to produce a transcript, but all the material that the Inquiry has is material that you have. And indeed it will be material that will be available on the website for the public to have and I think that is an appropriate use of the Northern Territory taxpayers' funds.

MR LAWLER: Now, I am sure you will not agree with that, you have made your position clear in the written submissions to me and they have been appropriately noted and that is that. *If you are able to identify to whom and when and where you assert that I have said the words 'urban myth' and in what context, I am happy to further reflect on that in due course* [emphasis added].

There is no evidence that Mr Wyvill or Ms Spurr took up Mr Lawler's invitation and provided particulars of the "urban myth" statement he was alleged to have made so that the relevant part of the audio recording could be identified and a transcript made to confirm or deny the allegations made against Mr Lawler.

MR LAWLER: But in the absence of that, then it is not appropriate that I do so. In answer to your last statement about when is the community of the Northern Territory going to be made aware of all of those issues you have raised, that will occur when I produce, as I am required to do under the *Inquiries Act*, produce my report to the

Administrator and I have already made it clear when that is going to happen.

MR LAWLER: *But can I just ask you, Mr McCarthy, in conclusion, bearing in mind that you are busy, do you withdraw those two sentences in your sworn testimony where you had said that I had formed a final view, acknowledging what Mr Wyvill said, acknowledging that I did not say that [emphasis added]?*

MR McCARTHY: Commissioner, if it is important for you to have that corrected, *yes, I will agree with you [emphasis added].*

MR LAWLER: Thank you.

MR McCARTHY: And can you outline when this Inquiry will be actually delivered to the Administrator, because I have a lot of writing to do myself to clear up the smears and the defamation that is occurring around my name on social media and in my local newspaper as we speak?

MR LAWLER: Well I have made it clear publicly that it is the intention of the Inquiry to present its report to the Administrator on 26 May. I have made that statement quite some time ago and I have no reason, at this particular point, to suggest that won't be what occurs.

[163] What Mr Wyvill is doing during the course of this exchange with Mr Lawler is consistent with the first dot point of his email dated 31 March 2014. First, Mr Wyvill is endeavouring to respond to Mr Lawler's concern that Mr McCarthy had wrongly suggested that Mr Lawler had stated that he had reached a 'final view'. He is also asserting that Mr Lawler had wrongly described the attachment between Unions NT and the Stella Maris site as an

‘urban myth’ and thereby prejudged the issue. Second, Mr Wyvill is putting ‘quotes on the record’ for the purpose of using them to discredit Mr Lawler at a later date. In substance, Mr Wyvill was endeavouring to disparage Mr Lawler publicly on the record so that political use could be made of his comments in other places.

[164] Mr Wyvill fails on both counts. Both barrels were empty. Mr Wyvill acknowledges that it was he who used the expression ‘final view’, not Mr Lawler; and Mr McCarthy withdrew his comments to the effect that Mr Lawler had reached a final view. Further, Mr Wyvill could not provide any particulars to support his assertion that Mr Lawler had described Union NT’s attachment to the site as an ‘urban myth’. Mr Lawler also answered the disparaging comments.

[165] On 8 April 2014 Mr Wyvill sent Ms Spurr the following email.

Hi Cathy

I know we have some outstanding correspondence from Mr Lawler.

I have a strong feeling that nothing we will say is going to change his mind – he will just use what we say to try and get around the points we make [emphasis added].

Do you think it might be better simply to hold our fire and put our efforts *into preparing our own account* to be released at the same time as his?

I’m in Dili for 3 days back Thursday. *Still happy to do a response to him but I will need until early week [emphasis added].*

What do you think?

[166] The outstanding correspondence included Mr Maher's advice and the further evidence of Mr Harris. The approach raised for Ms Spurr's consideration is consistent with the strategy suggested by Mr Wyvill in his email of 31 March 2014. What is being discussed is further disengagement or non-cooperation with Mr Lawler. Mr Wyvill is concerned that further engagement will only assist Mr Lawler in forming an adverse view of their position. Mr Wyvill's email also contains a further development of his suggested strategy. They are going to address Mr Lawler's final report with a report of their own which presumably will be critical of Mr Lawler and the Inquiry.

[167] It is important to note that in his email of 8 April 2014 Mr Wyvill expressly states that he was still happy to do a response to the outstanding correspondence but he would need more time. Implicitly, he was also happy to work on preparing an alternative account to be released at the same time. There is no suggestion at all of his pro bono assistance nearing exhaustion. It has merely been interrupted by a trip to Dili.

[168] On 8 April 2014 Ms Spurr sent the following email in reply to Mr Wyvill.

Dear Alistair

I am thinking we still need to respond to him so he can't say we had an opportunity but ignored it.

I like the idea of putting our own account of the story out at the same time though.

Are you in chambers today?

[169] Ms Spurr was obviously concerned that if they were given the opportunity to comment on something and did not take it up it would be difficult to later on complain that they had been denied procedural fairness.

[170] On 11 April 2014 Mr Wyvill and Ms Spurr met and discussed strategy.

Ms Spurr made the following handwritten file note of their discussion.

Alistair Wyvill

Can't just say nothing.

- advise our clients exhausted ability to draw on pro bono legal support. For that reason we are unable
- meet Scarborough's costs
- Maher's letter – difficult to follow what it's about

Our client remains vitally interested in enquiry.

I will do a draft.

Put out our own report same time as theirs.

[171] What came out of this discussion between Mr Wyvill and Ms Spurr was a plan about what they should advise Mr Lawler so Ms Lawrie could abandon the Inquiry without it being said that she had thereby lost the opportunity to complain about how the Inquiry was conducted, or it being said that they failed to respond to Mr Maher's letter and the further evidence of Mr Harris. The statement that "our client remains vitally interested in [the] enquiry" is not a true statement of their clients' position. It is a device to deflect any

suggestion that Ms Lawrie has abandoned the Inquiry. It is a device which may also be used later to suggest that Mr Lawler failed to accord Ms Lawrie procedural fairness.

[172] On 14 April 2014, in accordance with the advice she had received from Mr Wyvill, Ms Spurr prepared the following draft letter to Mr Lawler.

Dear Mr Lawler

STELLA MARIS INQUIRY

We refer to the above and to previous communications in relation to this matter, in particular to your letter of 28 March 2014.

Our Clients have exhausted their ability to access pro bono legal assistance. In those circumstances, we do not propose to respond to the advice of Mr Maher or the subsequent valuation report of Mr Harris.

It would be our view that the enquiry should seek Mr Scarborough's opinion on the advice of Mr Harris and the enquiries cost.

Our client remains vitally interested in the outcome of the enquiry.

Please ensure that further correspondence is provided direct to our clients via post at the following address.

[173] On 14 April 2014 Ms Spurr sent her draft letter to Mr Lawler to Mr Wyvill as an attachment to an email. Mr Wyvill made the following amendments to the second and third paragraphs of the letter.

Our Clients have exhausted their ability to access pro bono legal assistance. Accordingly, we will no longer be representing Ms Lawrie and Mr McCarthy in this matter. In those circumstances, we do not propose to respond to the advice of Mr Maher or to the subsequent valuation report of Mr Harris.

It would be our view that the enquiry should seek Mr Scarborough's opinion on the advice of Mr Harris and at the enquiry's cost.

[174] In his email of 14 April 2014 to Ms Spurr Mr Wyvill stated the following.

Hi Cathy

I'm made a few minor changes – if you are happy should we send it to Delia and Gerry?

I did speak to Delia and Mike [Michael Gleeson, who was Ms Lawrie's Chief of Staff], today about it and they can see the reason why.

Regards
Alistair

[175] It may be inferred that during this discussion Mr Wyvill explained to Ms Lawrie and Mr Gleeson the development of the strategy that he and Ms Spurr discussed on 11 April 2014. Mr Wyvill does not say that he explained to them he was unable to provide any more pro bono assistance, nor did he suggest someone else who was capable of providing pro bono assistance to Ms Lawrie. Neither Mr Wyvill nor Ms Lawrie provided an affidavit stating what they discussed at the meeting.

[176] It is important to note that Mr McCarthy was *not* part of the discussion between Mr Wyvill, Ms Lawrie and Mr Gleeson.

[177] On 8 April 2014 Ms Spurr sent the following email to Ms Lawrie and Mr McCarthy, with the letter as amended by Mr Wyvill attached to the email.

Hi Delia and Gerry

Are you happy with Alistair's amended letter as attached being sent?

Regards

Cathy Spurr

[178] In her email Ms Spurr is seeking instructions to send the attached letter to Mr Lawler in furtherance of the strategy of ignoring and disengaging from the Inquiry. She is not informing Ms Lawrie that she is ceasing to act for her because she can no longer afford to provide pro bono legal assistance to her. The email does not contain any of the usual statements that lawyers make when they are unable to provide any more pro bono assistance to a client. Ms Spurr's email says nothing to the effect that she is disappointed that she can no longer provide pro bono assistance. It contains no recommendation of any other lawyer who may be able to provide pro bono assistance. It does not contain any suggestions to Mr Lawrie about how she may manage her participation in the Inquiry now that she is self-represented. Neither Ms Lawrie nor Mr Wyvill nor Ms Spurr have produced any file note or letter confirming that they informed Ms Lawrie that they were unable to provide further pro bono assistance to her.

[179] On 14 April 2014 Ms Lawrie sent the following email in reply.

Hi Cathy

I am okay with this letter, however, please amend my address to

Ms Lawrie's address was then inserted

Thanks, Delia

[180] On 15 April 2014 Ms Spurr sent the following letter to Mr Lawler.

Dear Mr Lawler

We refer to the above and to previous communications in relation to this matter, in particular to your letter of 28 March 2014.

Our Clients have exhausted their ability to access pro bono legal assistance. Accordingly, we will no longer be representing Ms Lawrie and Mr McCarthy in this matter. In those circumstances, we do not propose to respond to the advice of Mr Maher or the subsequent valuation report of Mr Harris.

It would be our view that the enquiry should seek Mr Scarborough's opinion on the advice of Mr Harris and at the enquiry's cost.

Please note that our clients remain vitally interested in the outcome of the enquiry.

Please ensure that further correspondence is provided direct to our Clients via post at the following address:

The addresses of Ms Lawrie and Mr McCarthy were then inserted.

[181] This letter to Mr Lawler is part of the strategy of Ms Lawrie ignoring and disengaging with the Inquiry. The whole of the second paragraph in Ms Spurr's letter to Mr Lawler is deliberately and knowingly false. The making of the false statements was counselled by Mr Wyvill; and Ms Spurr sent the letter after obtaining instructions from Ms Lawrie. Ms Lawrie knew the statements were false. Ms Lawrie had not exhausted her ability to access pro bono advice from Mr Wyvill and Ms Spurr. That was not the reason why she did not respond to the advice of Mr Maher or the further report of

Mr Harris. After this letter was sent to Mr Lawler, Mr Wyvill, and to a lesser degree Ms Spurr, continued to provide ongoing pro bono legal assistance, advice and representation to Ms Lawrie.

[182] The statement, “Please note that our clients remain vitally interested in the outcome of the enquiry”, is also disingenuous and misleading. As I have said, it does not represent the true position of Ms Lawrie. It is a device which has been used deflect any suggestion that Ms Lawrie has abandoned the Inquiry. It is a device which was capable of being used to suggest that Mr Lawler failed to accord Ms Lawrie procedural fairness.

[183] Significantly, Ms Spurr’s letter does not specifically ask Mr Lawler to notify Ms Lawrie if he is going to make any adverse findings against her so she and her advisers may respond before Mr Lawler finalises his report. Ms Lawrie and her advisers had forgotten about Mr Lawler’s letter of 17 February 2014 until Mr Wyvill rediscovered it; and it may be inferred from Mr Wyvill’s emails of 23 April 2014 and 10 June 2014 (set out below), they were hoping that Mr Lawler would not come back to Ms Lawrie at all before he delivered his report to the Administrator. They were concerned that if he did, and they had to respond, Mr Lawler would have time to respond and would be able to deal with any submissions that they made and “kill off their complaints”. Ms Lawrie did not tender any evidence to the Court from her or Mr Wyvill or Ms Spurr to contradict the conclusions I have reached in this regard.

[184] The Inquiry was conducted in four phases: (1) planning; (2) information gathering; (3) analysis and assessment; and (4) report preparation. When Ms Spurr's letter of 15 April 2014 was sent to Mr Lawler the Inquiry was in its third phase. In his letter to Ms Spurr of 17 February 2014, Mr Lawler informed Ms Spurr that it would be during the third phase, depending on the available evidence, that he would be making any findings of wrong doing against any person or organisation. By abandoning participation in the Inquiry at this critical stage, Ms Lawrie not only abandoned opportunities to respond to (1) Mr Maher's letter and the conclusion stated in the letter which were of some significance and (2) Mr Harris's further valuation report which dealt with an issue that was of some significance to Ms Lawrie's position, but, most importantly, she also gave up the opportunity to be notified by Mr Lawler of any adverse findings and an opportunity to respond to them before Mr Lawler's report was finalised.

[185] I have not reached any of the conclusions I have set out in [181] above against Mr McCarthy. Mr McCarthy was not a party to the proceeding before Court. He has not been given an opportunity to state his understanding of the contents of Ms Spurr's draft letter of 14 April 2014 and on 14 April 2014 he sent the following email to Ms Spurr.

Hi Cathy

All OK from me.

Thank you both for your advice and incredible professional service, much appreciated!

[186] On 23 April 2014 Mr Gleeson sent the following email to Mr Wyvill.

Hi Alistair

A couple of things,

- 1.) I know Commissioner Lawler has told us that May 26 is the date when the report will be made public. Do you think there is any likelihood of it being finalised earlier and us being ambushed in this sitting of Parliament?
- 2.) Assuming the May 26 date is adhered to, when do you need something from Chris Burns to help compile your dissenting report? What form would you like Chris' information to take?

The email then dealt with an unrelated issue.

[187] Mr Gleeson's email is consistent with the plan enunciated in Mr Wyvill's emails dated 31 March 2014 and 8 April 2014 and the discussion between Ms Spurr and Mr Wyvill on 11 April 2012. It is inconsistent with Ms Spurr's letter to Mr Lawler of 15 April 2014 in which she states that pro bono assistance had been exhausted, as it contemplates that Mr Wyvill will be drafting a dissenting report. Ms Lawrie and her Chief of Staff are clearly on board with the strategy of abandoning participation in the Inquiry and focussing their energies on preparing a dissenting report which can be released at the same time.

[188] On 23 April 2014 Mr Wyvill sent the following email in reply to Mr Gleeson.

Hi Mike

If he was smart, Lawler would show us a draft to give us (sic) a chance to comment before going public. But we obviously can't assume that.

We cannot rule anything out as such but having some idea as to the amount of work involved I would think that the chances are less than 5% of it being much earlier than 26 May.

It would be great if Chris could produce a narrative history of the labour movement and the wharf area generally, at Stella Maris site specifically and how that site has come to symbolise the history of the labour movement in Darwin.

I can incorporate it quite quickly if I had it say the week before??

The email then dealt with an unrelated topic.

[189] It is clear from Mr Wyvill's email that he is the person who will be drafting the dissenting report. He will be doing so despite the letter which Ms Spurr sent to Ms Lawler on 15 April 2014. Mr Wyvill's email is also to the effect that unless Mr Lawler comes back to them then they do not need to engage any further with the Inquiry.

[190] On 19 May 2014 Mr Gleeson sent the following email to Mr Wyvill.

Hi Alistair

In the last week's censure debate, Giles made these comments.

The email then set out what the Chief Minister had said in the Legislative Assembly.

Clearly the Chief Minister's assertion is untrue – the Member for Barkly has not be (sic) found guilty of anything and the Chief Minister's comments are highly prejudicial to the Inquiry's finding and recommendations.

Maybe the Chief Minister has received a final report which has already drawn the findings he asserts.

In the event that he hasn't, one conclusion is that he has used parliamentary privilege to pressure or influence the commission in the preparation of its final report.

In my view even though the submissions may have been closed, this would justify a strong letter to the Commissioner and could be used in the debates in the Assembly.

What do you think, Alistair?

Finally how far off is your dissenting report?

[191] On 19 May Mr Wyvill sent the following email in reply to Mr Gleeson.

Hi Mike

I would think the best point to make – in parliament – is that Giles' statements suggest he has been provided with a draft of the report apparently for his review and approval. Getting this on the record in the House will help with labelling this the CLP's report. I would prefer to adopt the position that this process never had any independence from the beginning, *they picked Lawler because they knew he would do what he was asked to do* and this just confirms that this whole process was a set up from the beginning.

Writing to Lawler suggests that he has an independence to be influenced! What do you think?

Dissenting report underway [emphasis added]!

[192] Once again, consistent with his strategy, Mr Wyvill is counselling

Ms Lawrie and her advisers against corresponding with Mr Lawler. He is, of

course, also continuing to give pro bono advice. Mr Wyvill's email establishes that he still believes that Mr Lawler was unable to be persuaded about Ms Lawrie's position. He continues to believe that the best approach is a political strategy, which now includes asserting that the process never had any independence from the beginning. I accept Mr McLure's submission that what is being counselled by Mr Wyvill is a strategy to make the incredibly serious and completely baseless allegation that the Country Liberal Party Government picked Mr Lawler on the basis that he would find what they wanted him to find.

[193] On 25 May 2014 Mr Wyvill sent the following email to Mr Gleeson.

Attached to the email was a draft copy of Mr Wyvill's dissenting report.

Subject: report

Mike

Current draft with exec summary done – rest still wip

[194] Mr Wyvill's draft report stated the following.

Overview – the CLP's Inquiry

1. This inquiry is a reflection of one thing – the desire of Adam Giles to use the CLP's control of the Territory Government to attempt to inflict political damage on the opposition.
2. Any fair-minded person looking now at the Henderson Labor Government's 2012 proposal to lease the still empty and now more dilapidated buildings at Stella Maris to Unions NT – to be

preserved for their heritage values and to be used as a community centre at Unions NT's cost – would note four things:

- 2.1 as one of the few historic buildings left in the centre of Darwin and positioned strategically on Traveller's Walk between the City Centre and Waterfront this was a good idea;
- 2.2 for this to occur at no cost to the Government made it a damn good idea;
- 2.3 it was hardly surprising that a Labor Government might have a lot of sympathy with a proposal from Unions NT to establish a community centre at a site which was known for its connection to the Territory labour movement;
- 2.4 but, regardless of your politics, as the new CLP Government decided not to proceed with the proposal and Unions NT never took and have no right to take occupation of Stella Maris, what does it matter?

3. (bullet point summary of (sic))

The connection between the ALP and the Union Movement

4. There shouldn't be a need to state the bleeding obvious but, unfortunately, our experience of Lawler suggests that we should not take anything for granted. The Australian Labor Party has a long and proud association with the labour movement, reflecting its origins as the workers' party. This is not a secret. And it is hardly a surprise that a Territory Labor Government should adopt many policies which align with those of the Territory Union movement, e.g. a commitment to safe work places (reflected in the Henderson's Government's support for the national OHS scheme which became law in the Territory in 2011) and a commitment to one of the most forward-looking and equitable workers' compensation schemes in the country.

5. Similarly, no-one could claim to be surprised that a Territory Labor Government and the Territory Union Movement might share a common goal ...

The connection between Stella Maris and the Union Movement in the Territory

6. Many people who have lived in the Territory for many years will be a little surprised *that Lawler described that connection between Stella Maris and the Union as an “urban myth”*. That (sic) might be even more surprised that he expressed that view before having heard from any of the members of Labor Cabinet who made the decision to approve the offer of a lease to Unions NT, including Dr Chris Burns.

The Henderson Labor Governments support for the Unions NT proposal

The draft report then included two paragraphs about the Henderson Government’s support for Unions NT

Why the lease should have gone – and should still go – to Unions NT

The draft report then included six paragraphs drafted by Mr Wyvill in support of the Cabinet decision to offer a Crown lease to Unions NT. The contents of those paragraphs are very similar to the evidence given by Ms Lawrie to Mr Lawler on 13 and 14 March 2014.

17. Obviously, others would have been interested in a lease of Stella Maris, but on what terms? It is telling that, as far as we are aware, Lawler never asked any of the other organisations which had expressed an interest in leasing Stella Maris whether they were prepared to match Unions NT’s terms. The answer of course is “no”. None of these organisations – the National Trust, Music NT or anyone else of whom we’re aware – had an ice cubes chance in hell of raising the kind of support – both in cash and in kind – which Unions NT could and had to raise to get Stella Maris up and running.

There were then two further paragraphs. One stating that the Territory taxpayer would save over \$1,000,000 if the site were leased to Unions NT.

The other, in effect, stating the Henderson Government understood the benefits of the site being leased to Unions NT

Lawler and his unfair inquiry

21. Lawler is an under-qualified southerner who should have never been appointed to run any Territory inquiry

[195] Mr Wyvill's draft report is consistent with the political strategy he has devised. Once again, he makes highly critical statements of Mr Lawler without any foundation. The draft report contains statements that are very similar to the submissions that were made by Ms Lawrie and Mr Wyvill to Mr Lawler during Ms Lawrie's participation in the Inquiry. That is, the draft report repeats and develops much of the justification Mr Wyvill and Ms Lawrie gave to Mr Lawler during the Inquiry about why the decision to grant the Crown lease to Unions NT was made in the manner that it was made.

[196] At 9.30am on 26 May 2014 Ms Lawrie sent the following email to Gerry McCarthy, Lynne Walker, Michael Gunner, Natasha Fyles, Nicole Manison, Ken Vowles and Kon Vatskalis. The email was copied to Mr Gleeson.

Hi team

We understand that the Stella Maris Inquiry report is being handed to the Administrator today.

This is a process to make it public.

We are unsure as to when we will receive a copy of the report but have plans in place to get it ASAP it is public. It would be good for

Caucus to receive a briefing on the report tomorrow. Today we will be busy co-ordinating a response.

You will receive our response from Michael Gleeson ASAP.

Please let Michael Gleeson know of your availability times (perhaps 11.30 am?) so we can co-ordinate a Caucus briefing.

We expect an ugly report because Lawler has shown his true colours throughout the Inquiry [emphasis added].

As I said to my children last night, desperate despotic regimes in other countries go straight to locking people up, torture et al.

This local desperate, despotic regime doesn't have that option at least.

Feel free to contact me anytime.

[197] At 12:15 pm on 26 May 2014 Mr Wyvill seems to have rediscovered a draft of the letter Ms Spurr wrote to Mr Lawler on 14 February 2014 and Mr Lawler's reply to that letter dated 17 February 2014. He highlighted a passage on page two of Mr Lawler's letter and he sent the following email to Ms Lawrie, Mr Gleeson and Ms Spurr. He attached to the email electronic copies of the two letters.

Delia/Mike

Check out the highlighted passage on page 2!

I attach a draft of the letter which we sent which prompted that response. I don't appear to have the final in the form as sent.

Cathy, would you be able to locate it and circulate?

[198] Mr Wyvill highlighted the words in italics in the following paragraph on page 2 of Mr Lawler's letter of 17 February 2014.

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.

[199] Following this discovery, there are further developments in Mr Wyvill's strategy. It is decided that based on the two letters referred to in Mr Wyvill's email, Ms Lawrie should complain about the fact that Mr Lawler has not given her an opportunity to be heard about any adverse findings before Mr Lawler's report is finalised. The development of the strategy is demonstrated by the following exchanges.

[200] At 13:35:22 pm on 26 May 2014 Mr Gleeson sent the following email in reply to Mr Wyvill's email.

Alistair

Can you please resend the letter with this paragraph highlighted instead?

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 an opportunity to make submissions in relation to the matter.

[201] Prior to this point in time, neither Ms Lawrie nor Mr Wyvill had relied on Ms Spurr's letter of 14 February 2014 or Mr Lawler's letter of 17 February 2014 in formulating their strategy for dealing with the issues that had arisen during the Inquiry. A fair indication of how little reliance they placed on Mr Lawler's letter is that Mr Wyvill appears to have highlighted the wrong paragraph. They were acutely aware that Ms Lawrie would be criticised by Mr Lawler. This is evident from Ms Lawrie's 9.30 am email in which she stated 'we expect an ugly report' and from the strategy which they had adopted since 31 March 2014. Ms Lawrie had been warned of such criticism by the Department of Lands and Planning from 15 April 2009 onwards. At no stage did Mr Wyvill or Ms Lawrie think that Mr Lawler was going to provide them with further notice of adverse findings.

[202] Ms Lawrie was not misled by Mr Lawler's letter of 17 February 2014 and she did not act to her detriment as a result of that letter. She and Mr Wyvill had forgotten about the letter until Mr Wyvill rediscovered it. This is evident from Mr Wyvill's email of 26 May 2014. During the proceeding before this Court, Mr Young unequivocally stated that Ms Lawrie had not relied on Mr Lawler's letter of 17 February 2014. Both Mr Wyvill and Ms Lawrie were of the view that Mr Lawler did not accept her explanation about why the decision to offer to grant the Crown lease of Stella Maris to

Unions NT was made in the manner it was, and they developed a political strategy to try and deal with that outcome and the criticisms which were likely to be made about Ms Lawrie's conduct.

[203] Despite being reminded of the contents of Mr Lawler's letter of 17 February 2014 and knowing Mr Lawler's report would not be made public until 19 June 2014, neither Ms Lawrie nor Mr Wyvill nor Ms Spurr contacted Mr Lawler to ask to be notified of any adverse findings against Ms Lawrie and given an opportunity to make further submissions about any adverse findings. Instead, Ms Lawrie and Mr Wyvill maintained their strategy of deliberately ignoring and disengaging from the Inquiry and further developed it by deciding to commence legal proceedings based in part on an alleged reliance by Ms Lawrie on Mr Lawler's letter of 17 February 2014 and an alleged failure by Mr Lawler to give Ms Lawrie notice of his adverse findings prior to finalising his report.

[204] Returning to Mr Gleeson's email of 26 May 2014, it is unknown whether Mr Wyvill did as Mr Gleeson requested. But at 2.24 pm Cathryn Tilmouth, Ms Lawrie's Media Adviser, sent an email to Mr Wyvill containing a draft statement to the media. Mr Wyvill amended and settled the draft media statement and sent the following email back to her and Mr Gleeson.

Mr Wyvill's amendments are underlined. This was fairly conceded by Mr Young.

To: Cathryn Tilmouth
Subject: RE: draft statement to the media
Date: Monday, 26 May 2014 3:49:00 pm

Hi
Please see below
Alistair

From: Cathryn Tilmouth
Sent: Monday, 26 May 2014 2:24 PM
To: Alistair Wyvill
Cc: Michael Gleeson
Subject: draft statement to the media

The Stella Maris Inquiry political stunts continue with the report being delivered to the Administrator but kept under wraps until mid June.

Did the CLP Government – the executive or its delegates – see a draft of this report?

Has the CLP Government – the executive or its delegates – seen the report? Has the Government been briefed by Mr Lawler?

Labor does not expect any adverse findings in the 21 recommendations because Commissioner Lawler provided an undertaking that, before considering whether to make any adverse finding against any person or organisation, he would “provide any such person or organisation with notice, all relevant materials, and opportunity to make submissions in relation to this matter”. It is normal, a matter of basic fairness, and established in the law, for any potential adverse findings to be advised to the affected parties and submissions to be made.

No such notice and subsequent opportunity to make submissions was provided to any former Labour Minister.

The Stella Maris Inquiry continues to be a political stunt purely designed to distract Territorians from how incompetent the Giles Government truly is.

Cathryn Tilmouth

[205] It is unknown how Ms Tilmouth knew that Mr Lawler had made 21 recommendations if his report had not yet been made public.

[206] The statement that “Labor does not expect any adverse findings” is clearly untrue. At 9.30 am on the same day as Ms Tilmouth sent her email to Mr Wyvill, Ms Lawrie had sent the email stating ‘We expect an ugly report because Lawler has shown his true colours throughout the Inquiry’ to some or all of the Labor Members of the Legislative Assembly.

[207] On 10 June 2014 Mr Wyvill sent the following email to Mr Gleeson.

Mike

I’ve been doing a bit more work on this. In terms of *handing out our report on Thursday*, my concerns are (not just finishing it in time, but also):

- I think we have to assume that a copy of our report will end up with the Gov and Lawler not long after we hand it out
- It is very hard to draft a response to something the precise detail of which we don’t yet know. There is a real risk that we will look silly by attacking points that aren’t made or that we will add force to the criticism in the report by not responding to those we don’t anticipate
- *We will also give them a chance to amend/explain the report to kill off our complaints* [emphasis added]
- They will also have much more time to prepare a response to our points generally/poke holes in what we say

I think it may be better just to hand out a one pager anticipating the attack on Gerry and making our other big points and perhaps giving them Chris' history of SM.

What do you think?

[208] The reference to Thursday in the first paragraph of Mr Wyvill's email is a reference to Thursday 19 June 2014, the day on which Mr Lawler's report was to be made public. Critically, what Mr Wyvill is saying in this email is that if they were to publish their dissenting report, the rug would be pulled from underneath their complaints about the manner in which the Inquiry had been conducted, including any allegations of a denial of procedural fairness.

[209] Mr Gleeson responded to Mr Wyvill by email stating that Ms Lawrie had taken his advice and that a one pager would be fine.

[210] In light of Mr Wyvill's further advice and Ms Lawrie's acceptance of it, I am unable to accept that Ms Lawrie has a genuine belief that she has been denied procedural fairness. By accepting Mr Wyvill's advice, Ms Lawrie is accepting that if she openly revealed her stated position to Mr Lawler and the Government they would poke holes in what she had to say. If there was any real concern that there had been a denial of procedural fairness, and Ms Lawrie had anything further to say of substance, the natural and logical thing to be done was to immediately take it up with Mr Lawler before the report was published.

[211] Instead, what is apparent is that Mr Wyvill was convinced that Mr Lawler was not persuaded by the explanation they had given him for making the

decision to grant the Crown Lease to Unions NT in the manner in which it was made, and it was decided to deal with that in accordance with the strategy that had been developed by Mr Wyvill. By accepting Mr Wyvill's advice it may be inferred that Ms Lawrie shared that view.

[212] On 12 June 2014 Mr Gleeson asked Mr Wyvill to send the one pager to him so it could be considered by Ms Lawrie. On 12 June 2014 Mr Wyvill sent the following email to Mr Gleeson.

Mike

Draft attached – probably a few typos sorry. Any queries please call. I also attach Chris' essay which I was proposing to hand out.

[213] The following document was attached to Mr Wyvill's email.

Stella Maris Inquiry –Key Points

1. There is no question that there is a strong connection between Stella Maris and the Union movement which goes back decades. It is not an “urban myth”.
2. It was because of this connection that Unions NT was prepared to put substantial resources into renovating Stella Maris so it could be used as a community centre for the benefit of the whole community whilst preserving its heritage values. It (sic) the first year alone, the budget it prepared projected a loss of circa \$170,000. Unions NT was aiming to cover this loss from its own funds, the work of volunteers and funding (sic) raising.
3. As the proposed lease expressly stated that no NT Government funding would be provided for Stella Maris, it imposed a substantial financial burden on Unions NT. No other organisation (including the National Trust or Music NT) had this commitment to Stella Maris or access to such resources to cover these costs.

4. Delia and Gerry, as experienced Ministers, knew this. This is why they and all other members of the Henderson Cabinet did not consider it necessary to go through an application process. Nor were they advised by any public servant at any stage that it would be unlawful *or improper* not to hold an application process. In fact, Parliament has given the Minister for Lands the express power to determine, should he wish to, that an application process need not be undertaken prior to the grant of a Crown lease: see section 12(3) of the *Crown Lands Act* [emphasis added].

5. The offer from Unions NT represented in 2012 and still represents today the best proposal for preserving Stella Maris for the whole community as a heritage site. Based on the Unions NT's budget, an independent, (sic) expert valuer has assessed the savings to the Taxpayer over the life of the proposed lease at over \$1,000,000. We call upon the Government to proceed with it.

6. The inquiry was conducted unfairly from the beginning, reflecting we believe Lawler's lack of qualifications, experience or skills to run an inquiry such as this.
 - By describing the connection between Stella Maris and the union movement as an "urban myth" before he had heard from any cabinet minister, Lawler appears to have prejudged one of the critical issues for the inquiry.

 - No funding for legal representation was made available to those against whom the Inquiry was clearly targeted.

 - No transcript of evidence was provided which has the practical effect of keeping the evidence secret.

 - No notice of possible adverse findings has been given to Delia or Gerry, yet it appears from recent statements by the Chief Minister that Lawler has made serious and quite unjustified adverse findings against Gerry.

7. Finally, as the power to grant a lease under the *Crown Lands Act* was never exercised, and Unions NT never actually got a lease, never got the keys and never moved in to Stella Maris, why have the Giles Government and Lawler wasted so much time and money on something that never happened?

[214] Mr Wyvill's one page statement, in particular par 3 and par 4, demonstrates that he was aware of the areas about which Ms Lawrie's conduct was likely to be criticised, including the adverse findings to the affect that the process adopted by her and her office was not the proper process.

[215] The one page statement is consistent with Mr Wyvill's strategy which was accepted and adopted by Ms Lawrie. In that context, Mr Wyvill is also counselling Ms Lawrie to say to the public that the Inquiry was conducted unfairly from the beginning, reflecting Mr Lawler's lack of qualifications and experience to conduct the Inquiry. I accept Mr McLure's submission that in the final dot point of par 6 Mr Wyvill makes use of the fictitious device of no notice of possible adverse findings. There is also nothing to suggest that there had been any inappropriate communications between Mr Lawler and Mr Giles. It must be remembered that an audio recording of the evidence of each of the witnesses who gave evidence during the Inquiry was on the Inquiry website and it would have been well known that Mr McCarthy was recalled because he first told the Inquiry he attended the Cabinet meeting on 10 July 2012 and that evidence was demonstrably wrong.

[216] On 18 June 2014, which was the day before the report was made public, Mr Wyvill sent an email to Ms Lawrie, Mr Gleeson, Ms Spurr and Mr McCarthy which had attached to it a draft Originating Motion seeking a declaration that in his conduct of the Inquiry Mr Lawler had failed to observe the requirements of procedural fairness. Both Ms Lawrie and Mr McCarthy were named as plaintiffs on the document. The Originating Motion was drafted in circumstances where Ms Lawrie had abandoned any further participation in the Inquiry, Ms Lawrie was expecting an “ugly report”, her solicitor had written to Mr Lawler and told him that neither she nor Mr Wyvill would be making any more submissions and Ms Lawrie had not requested to be notified of any adverse findings before Mr Lawler finalised his report.

[217] On 18 June 2014 Ms Lawrie sent the following email to Mr Wyvill, Mr Gleeson, Ms Spurr and Mr McCarthy.

Dear Alistair

Thank you for this Writ preparation which is truly appreciated. I have Charlie Phillips working further on responses for Parliament. We have received no advice, despite requests, from Government as to when it appears on the Parliament notice agenda but suspect it is first up.

The advice I received today from Michael Gleeson is that there is nothing in the law that prevents a NT Govt referral to the Privileges Committee. (We suspect they will rely on a Recommendation from Commissioner Lawler the LA Code of Conduct Act 2008) [emphasis added].

Of course the arguments go to the breach of the Inquiries law ... no forewarning of adverse finding. Ultimately the Govt has the numbers. I have asked Michael Gleeson to ensure the arguments around this are ready for tomorrow.

I thank you all for your kind assistance and dedication to the labour movement and our passion for democracy.
Bless our efforts to save Stella from the bulldozers.

[218] This is a significant email because it demonstrates that Ms Lawrie was aware before Mr Lawler's report was made public that her conduct may be referred to the Privileges Committee and she had taken advice about that very issue. It demonstrates that she thought that issue could also be picked up in their strategy that there had been no notice of adverse findings.

[219] On 19 June 2014 Mr Gleeson sent the following email to Ms Lawrie.

Alistair just called.

He says we should say words to the effect:

“We have only just received this report and clearly we will need some time to digest the findings.”

“We weren't given any notice that there would be adverse findings and these findings come as *a complete surprise* [emphasis added].”

“We won't be making any further comment now as there is a real chance we will be taking this matter to the Supreme Court.”

[220] On the same day Ms Lawrie sent an email to Mr Gleeson in which she stated that she would of course follow Mr Wyvill's advice.

[221] Mr Wyvill's advice included a recommendation that Ms Lawrie make a false statement. In his letter dated 17 February 2014 Mr Lawler had clearly stated that he may well be making adverse findings about Ms Lawrie's conduct; and any adverse findings clearly would not come as a surprise, let alone a

complete surprise. Ms Lawrie and her advisers had developed a sophisticated strategy to deal with the “ugly” report findings they had for some time anticipated Mr Lawler would make. Further, the purpose of Mr Wyvill’s advice to Mr Gleeson was to try and bolster their assertions that they had been denied procedural fairness.

[222] Ultimately, an Originating Motion which only named Ms Lawrie as a plaintiff was filed in the Supreme Court on 30 July 2014. In support of the Originating Motion, on 24 September 2014, Ms Spurr filed the Plaintiff’s Statement of Facts Issues and Contentions which contained the following pleading.

6. On 17 February 2014, the defendant wrote to the plaintiff’s solicitors stating:

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 are any 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.

7. *The plaintiff and her legal representatives relied on the defendant's statements in this letter in determining how the plaintiff ought to participate in and contribute to the Inquiry [emphasis added].*
8. As part of Phase 2 of the Inquiry and in response to a summons from the defendant dated 15 February 2014, the plaintiff attended the Inquiry and provided sworn testimony to the defendant.
9. After completing phase 2 of the Inquiry, on 27 March 2014, the plaintiff's solicitors received a letter from the defendant dated 26 March 2014 advising that he did not wish to recall the plaintiff to give further testimony.
10. At no stage did the plaintiff receive any notice from the defendant that he considered that there may be grounds to make any adverse findings against the plaintiff whether as foreshadowed in the letter referred to in paragraph 6 above or otherwise.
11. *From on or about 26 March 2014, the plaintiff did not seek to make any further contribution to the Inquiry, whether by responding to inquiries from the defendant, by seeking to put in further evidence, by making further submissions herself or via her solicitors or counsel, or otherwise. On 14 April, the plaintiff's solicitors ceased representing the plaintiff in the Inquiry [emphasis added].*
12. *The plaintiff and legal representatives acted as set out in paragraph 11 above in the belief that, by reason of the defendant's conduct (most particularly as set out in*

paragraphs 6 and 9 above), he was not considering making any findings which were adverse to the plaintiff. In the circumstances, this belief was reasonable [emphasis added].

[223] Apart from the partial admission pleaded in par 11 of the Plaintiff's Statement of Facts Issues and Contentions, the allegations pleaded in the document are untrue, as Ms Lawrie must know. It is a fair inference that Ms Lawrie would have seen the document before it was filed in Court because it was Ms Spurr's invariable practice to obtain instructions from Ms Lawrie before taking a step on her behalf. The filing of the Plaintiff's Statement of Facts Issues and Contentions appears to be the culmination of the Mr Wyvill's strategy to discredit Mr Lawler which has been approved and adopted by Ms Lawrie.

[224] In support of the pleading contained in par 6 to par 12 of the Plaintiff's Statement of Facts Issues and Contentions, affidavits of Ms Lawrie, Mr Wyvill and Ms Spurr were filed in Court but not read.

[225] During the course of this proceeding, the pleading in par 6 to par 12 of the Plaintiff's Statement of Facts Issues and Contentions were abandoned by Ms Lawrie, as they properly should have been. However, I am satisfied that, until the allegations pleaded in par 6 to par 12 of the Plaintiff's Statement of Facts Issues and Contentions were abandoned, there was a conscious and deliberate strategy adopted by Ms Lawrie to abandon her participation in the Inquiry to enable her to come to this Court and wrongly maintain that she

had been denied procedural fairness on the basis of Mr Lawler's letter of 17 February 2014.

[226] In the circumstances, as I have stated in [142], I find that Ms Lawrie has waived her right to any greater procedural fairness than she was accorded by Mr Lawler.

[227] In reaching the conclusions set out above, I have applied the principles in *Briginshaw v Briginshaw*.¹⁰ I have taken into account the seriousness of the allegations made about the conduct giving rise to the waiver and I have very carefully and closely considered the evidence before the Court. I am comfortably satisfied that the conduct on which Mr Lawler relies to establish waiver has been proved clearly, unequivocally and strictly.

[228] In drawing the inferences that I have drawn, I have applied the principles in *Jones v Dunkel*.¹¹ As a result of the failure of Ms Lawrie to give evidence and to tender any evidence from Ms Spurr and Mr Wyvill, I have inferred that their evidence would not have helped Ms Lawrie's case against the allegations of waiver and therefore I have more confidently drawn the inferences that I have drawn.

[229] The application of the principles of *Jones v Dunkel* has been complicated in this case by Ms Lawrie's proper withdrawal of her allegations based on Mr Lawler's letter of 17 February 2014. All plaintiffs are entitled to amend

¹⁰ (1938) 60 CLR 336 at 350 and 362 – 3.

¹¹ (1959) 101 CLR 298 at 308 (Kitto J), 312 (Menzies J) and 320 – 1 (Windeyer J).

the basis on which they make a claim for relief and most amendments will have an impact on the evidence that a plaintiff needs to call in support of her case. However, after Ms Lawrie was informed of the basis on which Mr Lawler put the allegations of waiver, she did not instruct Mr Young to seek to read the affidavits that had been filed. Nor did she instruct Mr Young to make an application for an adjournment so fresh affidavits could be filed on her behalf. I note that Ms Lawrie was in Court for most of the hearing.

Conclusion

[230] In the circumstances the application is dismissed and I will hear the parties as to costs.
