



Queensland
Government

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Mr Tony Giugni
Solicitor Assisting
Royal Commission into Institutional
Responses to Child Sexual Abuse
GPO Box 5283
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Dear Mr Giugni

RE: Royal Commission into Institutional Responses to Child Sexual Abuse

I gave evidence at the public hearing in Rockhampton on 22 April 2015. In the course of examination, Ms David SC asked whether the Office of the Director of Public Prosecutions (ODPP) considered that there is a need for legislative reform in the area of prosecuting child sexual offences or historical sexual offences. Further, whether the ODPP could consider any recommendations it would like to see from the Royal Commission that would assist in the prosecution of such cases and address the impediments to those prosecutions (C8084 - C8085). I took the questions on notice and indicated the ODPP would provide a written response. The particular areas of focus from the Rockhampton public hearings were the provision of particulars and joinder and severance of multiple complainants' charges.

The ODPP's function is relevantly to prepare, institute and conduct criminal prosecutions for all criminal or statutory offences. It is the duty of the prosecution to act fairly and impartially and to ensure the trial is conducted according to law. Rules concerning particulars and the joining of charges against multiple complainants on a single indictment to be heard at the same time are prescribed by the *Criminal Code 1899* (Qld) ('the Code') and the common law.

The problems associated with providing particulars in relation to offences of a sexual nature are not new and were carefully considered by the Queensland Parliament in 1989 and again in 2003. The legislative response was s 229B of the *Code*. The ODPP uses this provision regularly.

In my statement to the Commission dated 17 April 2015 (Exhibit 26-037), I detail the relevant legislation and case authorities in relation to the issue concerning particulars.

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In relation to the issue of joinder, severance and separate trials on counts involving multiple complainants of sexual offences, the current state of the law in Queensland is briefly summarised below.

Section 567(2) of the *Code* provides:

“Charges for more than 1 indictable offence may be joined in the same indictment against the same person if those charges are founded on the same facts or are, or form part of, a series of offences of the same or similar character or a series of offences committed in the prosecution of a single purpose.”

Section 597A(1) of the *Code* gives the Court power to order separate trials on multiple counts on an indictment where the accused “may be prejudiced or embarrassed in the person’s defence” by reason of the joinder of the counts.

An application for separate trials by defence in respect of multiple complainants would be successful unless the evidence of the complainants is cross-admissible. It is recognised that sexual cases “are peculiarly likely to arouse prejudice” against an accused (*De Jesus v The Queen* (1986) 68 ALR 1; (1986) 61 ALJR 1). Evidence is generally mutually admissible on the basis of similar fact evidence and requires a strong degree of probative force. To be admitted, there must be no reasonable view of the evidence consistent with the innocence of the accused (*Pfennig v The Queen* (1995) 182 CLR 461 and *Phillips v The Queen* (2006) 225 CLR 303).

These principles were discussed in the course of the evidence of the Queensland Director of Public Prosecutions (DPP), Anthony Moynihan QC at the hearings of the Commission in Sydney on 14 July 2014 (see transcript 8872 – 8875).

Section 597A (1AA) of the *Code* and section 132A of the *Evidence Act 1977* (Qld) were inserted in 1997. Those provisions make irrelevant the possibility of the collusion or suggestion in the consideration for ordering separate trials (s597A (1AA)) and admissibility (s132A). The sections reverse the law in *Hoch v The Queen* (1988) 165 CLR 292.

In 2000, the Queensland Law Reform Commission in its report “*The Receipt of Evidence by Queensland Courts: The Evidence of Children*” (Report 55 (Part 2) Chapter 17), considered the issue of the discretion to order separate trials. I attach a copy of Chapter 17 of the report.

The Commission made the recommendation in the following terms (17.1):

“The Commission recommends that legislative provision should not be made to modify the existing law in relation to the circumstances in which it is appropriate for a court to order separate trials in respect of a count or counts in an indictment charging an accused person with sexual offences in relation to a child or a number of children.”

The report of the Queensland Reform Commission was considered by the Australian Law Reform Commission in its report “*Family Violence – A National Legal Response (ALRC Report 114)*”, which was published on 11 November 2010. The report also considered various other reports and submissions, and the relevant legislative provisions of a number of States. The issue of joint or

separate trials was discussed at Chapter 26 (Reporting, Prosecution and Pre-trial Processes) at paragraphs 26.129 to 26.153. I attach a copy of those paragraphs of the report.

On that issue, the Australian Law Reform Commission made the following recommendation (Recommendation 26-5):

“Federal, state and territory legislation should:

- (a) establish a presumption that, when two or more charges for sexual offences are joined in the same indictment, those charges are to be tried together; and
- (b) state that this presumption is not rebutted merely because evidence on one charge is inadmissible on another charge.”

In Queensland, there have been no further legislative amendments on the issue of separate trials for sexual offences against multiple child complainants, with the exception of the *Hoch* amendments.

In response to the question posed by Counsel Assisting, it is respectfully submitted that the Royal Commission consider making a recommendation similar to that made by the Australian Law Reform Commission at Recommendation 26.5.

I hope this has been of some assistance. Should you have any queries, please do not hesitate to contact me on (07) 3235 9233.

Yours sincerely,



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OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS