

COMMISSION OF INQUIRY INTO QUEENSLAND'S CHILD SAFETY SYSTEM

RULING ON CLAIMS OF PUBLIC INTEREST IMMUNITY

8 April 2026

Introduction

1. The State of Queensland resists disclosure, on public interest immunity grounds, of forty documents that Counsel Assisting the Commission seeks to tender during the upcoming hearing block. Each of the documents was produced by either the Department of Child Safety, Seniors and Disability Services or Queensland Treasury in response to notices issued by the Commission.¹
2. The State's claim for public interest immunity is a "class claim" — that is, a claim made on the basis that the documents fall within the class known as "cabinet documents".² The State contends that the recognised public interest in not disclosing cabinet documents (so as to preserve the confidentiality and candour of Cabinet decision-making) outweighs any public interest in disclosing the documents for use in this Commission.
3. Importantly, the State does not make, in respect of any of the contested documents, a "contents claim"³ — that is, a claim that disclosure of the contents of any document would in any way prejudice the proper functioning of government.⁴
4. The State bears the onus of establishing its claim. In the context of a "class claim", this usually involves establishing, as a matter of fact, that the documents have a sufficient "connection with the processes of Cabinet".⁵
5. The State was initially directed to file and serve an affidavit setting out the factual basis for each claim. The State was unable to prepare an affidavit in time for the hearings. Accordingly, I directed that the State identify by way of an unsworn Aide-Memoire the basis for each claim.
6. Shortly before the hearing, the State filed and served a document styled "Further Amended Aide-Memoire". That Aide-Memoire set out (on the basis of instructions) the basis for its claims over 18 of the 40 contested documents. No basis was identified for the remaining 22 documents.

¹ The documents are contained in a "Public Interest Immunity Tender Bundle".

² State's Written Submissions, Annexure A at [2]–[3].

³ Ibid.

⁴ See, eg, *Australian Competition and Consumer Commission v NSW Ports Operations Hold Co Pty Ltd* [No 3] [2020] FCA 1766 at [46]–[47] (Wigney J).

⁵ *Re Timor Sea Oil & Gas Australia Pty Ltd (in liq)* (2020) 389 ALR 545 at [16] (Leeming JA).

7. Of the 18 documents, none were identified in the Aide-Memoire as documents which directly recorded Cabinet deliberations or decision-making. A small number were identified as being documents that were submitted to a Cabinet subcommittee.⁶ The balance neither record Cabinet deliberations nor show the material Cabinet considered — they are a mix of third-party reports, and correspondence and briefings at the Departmental and Ministerial levels, typically with some connection to the budgeting process in the financial years 2020 to 2023.
8. At the hearing, the parties informed me that I need not rule on two of the forty documents, because Counsel Assisting would not seek to tender them. Those were documents 2 and 7 in the “Child Safety Documents” section of the Aide-Memoire.
9. I turn now to the balance of the documents.

Principles

10. The principles are well established and were not in dispute between the parties. They are conveniently summarised in Annexure A to the State’s written submissions and need not be repeated here.
11. In short, the ultimate question is whether the public interest favours, on balance, disclosure of the documents, or non-disclosure.

Terms of Reference

12. It was not in dispute that the question where the public interest lies, in the particular circumstances of this Commission, is shaped by the Commission’s Terms of Reference.
13. Relevantly, the Terms of Reference task me with conducting a “*full and careful inquiry*” into a range of identified matters, including the residential care system. In that connection, I am obliged to investigate the “factors contributing to the growth and reliance on a billion-dollar residential care sector”.⁷ An aspect of that task is to address issues of “accountability”, including “Ministerial accountability”.⁸

Submissions

14. Mr Hastie KC, Senior Counsel for the State, took me to the Aide-Memoire and to a series of representative documents. His submission, in substance, was that each of the contested documents is a “Cabinet document” because each has some connection to the processes of a Cabinet subcommittee, the Cabinet Budget Review Committee (**CBRC**). In broad terms, he contended that these were documents that the CBRC commissioned,

⁶ See, eg, Documents 1, 2, 4 and 6 in the “Queensland Treasury Documents” section of the Aide-Memoire.

⁷ Terms at [3](a).

⁸ See, eg, Terms at [3](a)(iv), [3](b)(xi) and [5](b).

or which recorded steps taken by Departmental officials and the Minister in connection with CBRC reviews. As mentioned, a small subset of documents were said to be documents actually submitted to and considered by the CBRC during previous review cycles. Mr Hastie KC properly conceded that the documents were mainly historical, relating mainly to the period 2020 to 2023, and did not suggest — having been given an opportunity to do so — that the disclosure of the *contents* of any document would prejudice any State interests.

15. Mr Forrest, as Counsel Assisting, opposed the claims. He contended that irrespective of whether each of the documents was a Cabinet document, public interest weighed in favour of disclosing each of the relevant documents from 2019 to 2023 for five reasons. *First*, there is a strong public interest in the Commission fully discharging its statutory task, and in particular locating where accountability lies for any identified failings in the residential care sector. *Secondly*, those documents are highly relevant and highly probative because they go to what each of the relevant actors — frontline officers, Departmental leadership, the responsible Ministers, and Cabinet — knew during a “window of opportunity” from 2019 to 2023, and what they did or did not do with that knowledge during that time. *Thirdly*, the documents are not available from any alternative source. *Fourthly*, none of those documents directly records Cabinet deliberations, and the documents are relevant to decisions now at least three budget cycles in the past. *Fifthly*, the inability to refer to the documents may cause unfairness to certain witnesses who may wish to refer to them to properly contextualise or explain their own conduct.
16. Mr Forrest dealt separately with the small subset of documents which post-date 2023. He contended that while those documents are self-evidently more sensitive, they are also highly probative, because they reveal that long-known problems in the residential care sector remained extant many years later, and because they show the belated arrival of solutions to certain longstanding issues in respect of residential care.

Disposition

17. I have reviewed and considered each of the documents. I have concluded that I should reject the State’s claim over the documents which remained in contest, for substantially the reasons advanced by Counsel Assisting. Those documents may be tendered in full.⁹
18. While it appears to me to be doubtful that all of the contested documents are “Cabinet documents”, it is unnecessary for me to decide that question. That is because *even* if the documents are Cabinet documents, in my view, the public interest weighs in favour of their disclosure in the particular circumstances of this Commission.

⁹ I have been informed since the hearing of argument that claims in respect of some of the documents have, in any event, since resolved or narrowed on the basis of redactions.

19. Put simply, it appears to me that those documents are critical to discharging my statutory task, including to investigate the factors contributing to the growth and reliance on a billion-dollar residential care sector, and to properly evaluate, and make recommendations, if necessary, in respect of Departmental, Ministerial, and Governmental accountability.

Commissioner
8 April 2026