

**IN THE CORONERS COURT  
OF VICTORIA  
AT MELBOURNE**

Court Reference: COR 2014 00855

**INQUEST INTO THE DEATH OF LUKE BATTY**

**RULING PURSUANT TO S.115 OF THE CORONERS ACT 2008**

I, JUDGE IAN L GRAY, State Coroner, set out below the reasons for the Ruling I made on 3 December 2014 in respect of the application of s.115 of the Coroners Act 2008 to the release and/or use of the Child Death Investigation Report (the Report) in this matter. The Ruling is based on a revision and correction of the transcript of the proceedings in Court on 3 December 2014.

**The Ruling**

1. Ms Batty, through Ms Doyle seeks a variation of the s.115 order to permit the Report to be tendered, and to allow reference to parts four and five, or alternatively only part five, for the purposes of cross examination of one witness, Ms Beth Allen.
2. The application was opposed by the Department of Human Services. The Commission for Children and Young People (the Commission) itself made no submission on the point, but did make an application for a Suppression Order.
3. On the question of relevance, in my opinion, the Report is clearly relevant to my investigation into the death of Luke Batty. The Report contains an analysis and discussion of a number of system issues relating to the involvement of services with Luke and his family. Having read the Report and noting that it deals with topics and issues relevant to my investigation, I also note that it cannot be a substitute for the evidence heard and assessed in this inquest.
4. There is in fact a substantial overlap between the matters investigated by the Commission and the scope of this coronial investigation. In this context I note the

mandate to avoid unnecessary duplication of enquiries and investigations, and the need; as Ms Batty's submission put it, to "optimise collaboration". The provision by the Commission to the Court was an example of that collaboration and entirely consistent with that objective.

5. Ms Doyle sought to use the Report for a specified and limited purpose, namely to cross-examine Ms Allen on a limited part of the document. The essence of the objection to that is that this would, or could, enable persons who contribute to the Commission's review and report process to be identified, and that this would, or could, inhibit their full and frank contribution to the process in the future. This potentially could compromise the integrity, and ultimately the value of the Commission's investigations and reports.
6. The Commission clearly has an extremely important public function. It is intended ultimately to enhance the protection of certain children and promote the improvement of relevant systems and services applicable to them – that is, the object of the Commission's enquiries is to support policies and prevention relating to child protection and safety of certain vulnerable children and young people. This is a paraphrase of the objectives of the Commission.
7. That objective is the ultimate, and in my view the paramount public interest in this case and ultimately should prevail over other public interests, after a weighing of competing interests.
8. Ms Doyle sought to cross-examine Ms Allen by reference to parts of the report. Ultimately Ms Doyle accepted that she could do so by reference to topics covered in the Report, without necessarily quoting the Report itself, and in my view, doing so would not unfairly constrain her in her task of cross-examining this, or another witness. I am not convinced in the end that she would need to use the Report explicitly to do justice to Ms Batty's case. She will be able to make final

submissions, in any event, and final submissions may be made by others on the ultimate use of the document.

9. Ultimately, I accept that section four and at least one part of section five would, or could, enable the potential identification of persons who have contributed to the Commission's enquiry and report process. I am not convinced this would necessarily lead to their limited or compromised participation in the future, and I agree with Ms Doyle's submission that the prediction that it would do so, arises from a somewhat pessimistic assessment of the attitude of such persons. However, it is the evidence that matters, and I have the evidence of Ms Boland and Ms Allen, both highly experienced, as is made clear in their affidavits. I refer to paragraph 23 of Ms Allen's affidavit in reference to the evidence in support of the proposition that persons are or are likely to be in her words "compromised in their future work".
10. Paragraph 23 reads this way "If with the exception of provisions in the Commission Act that allow disclosure of a CDI report, the confidentiality of CDI reports is not maintained. I anticipate that child protection practitioners will" ... "refuse to participate in the enquiry process. And those who do continue to participate may not be so open, rather child protection practitioners are likely to be guarded in expressing views about their own conduct and in their assessment of others. They are likely to perceive that the information they provide may be used to draw adverse conclusions about themselves, their colleagues, or their organisation, and that such adverse conclusions will receive public scrutiny and criticism. If this was to happen, it would compromise and undermine the potential value of the Commission's work, work done in the interests of improving systems for child safety, and that in turn is the ultimate and paramount public interest to be served." I accept that evidence.
11. I accept that as I am conducting my own enquiry I should not substitute the findings of others for the findings that I am required to make. I accept the basis upon which

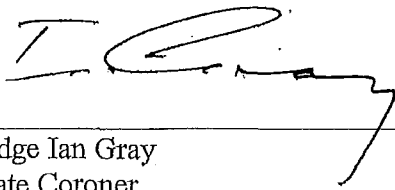
that Report is prepared is different from the basis upon which coronial findings, comments and recommendations are made.

12. I agree, of course, that I should do nothing which impairs the work of the Commission, and that the Commission's work is extremely important.
13. Therefore, for these reasons I will not allow reference to the Report in cross-examination. (I note that Ms Doyle believes that she can cross-examine without making explicit reference to it).
14. The only change I will make by way of variation to the original s.115 order is to paragraph A of that order. It is appropriate that the Report form part of the coronial brief because of its relevance. I reserve at this point any further decision, if one is necessary, about the use of any parts of the Report in my findings. In short, the Report will become part of the coronial brief. There are no other changes to be made to the original s.115 order.
15. The second issue is the application for a suppression order made by the Child Death Investigation Commission.
16. I note the submissions on the point. I take into account the presumption in favour of openness, at the heart of the Open Courts Act. Ultimately s.18(2) requires a balancing of competing, often quite finely balanced competing public interests. In each case the question always is where does the public interest ultimately lie in striking that balance.
17. The media representatives accepted that there would be a suppression of, the Report with the exception of sections four and five. The question is therefore confined to whether sections four and five should, together with the rest of the Report, be suppressed. It conceded that the balance of the Report should attract a suppression order.
18. There are clearly strongly competing interests here. There is a compelling argument that the public interest in this case supports non-suppression. There is a powerful

argument made by the applicant for the suppression order, based on the public interest in protecting the integrity of the Commission's processes and work, and by doing so, promoting the enhancement of safety and system improvement.

19. There is a very strong public interest in the enhancement of safety and system improvement, by and through the work of the Commission, to serve the interests of the children of this State who are within the scope of the Commission's work. Ultimately, that argument outweighs the strong, but less strong public interest in the disclosure of the content of the Report of the Commission in relation to Luke's death.
20. For the above reasons, I will make the suppression order applied for. I will make it in the terms sought by the Commission. The order can be varied in the future if that becomes necessary.

Signature:



Judge Ian Gray  
State Coroner  
Date: 3 December 2014

