COMMONWEALTH OF AUSTRALIA

Official Committee Hansard

HOUSE OF REPRESENTATIVES

STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS

(Subcommittee)

Reference: Crime in the community

MONDAY, 27 OCTOBER 2003

BRISBANE

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HOUSE OF REPRESENTATIVES

STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS

Monday, 27 October 2003

Members: Mrs Bronwyn Bishop *(Chair)*, Mr Murphy *(Deputy Chair)*, Ms Julie Bishop, Mr Cadman, Mr Kerr, Mr McClelland, Ms Panopoulos, Mr Sciacca, Mr Secker and Dr Washer

Members in attendance: Mrs Bronwyn Bishop, Mr Kerr, Mr McClelland, Mr Sciacca and Dr Washer

Terms of reference for the inquiry:

To inquire into and report on:

The extent and impact of crime and fear of crime within the Australian community and effective measures for the Commonwealth in countering and preventing crime. The Committee's inquiry shall consider but not be limited to:

a) the types of crimes committed against Australians

b) perpetrators of crime and motives

c) fear of crime in the community

d) the impact of being a victim of crime and fear of crime

e) strategies to support victims and reduce crime

f) apprehension rates

g) effectiveness of sentencing

h) community safety and policing

WITNESSES

Subcommittee met at 9.03 a.m.

CHAIR—I declare open this public hearing of the House of Representatives Standing Committee on Legal and Constitutional Affairs inquiry into 'crime in the community: victims, offenders and fear of crime'. Throughout the course of its inquiry, this committee has heard some serious allegations of mismanagement and corruption among high-level public officials. Today we are inquiring into evidence provided by Mr Lindeberg concerning a matter known as the 'Heiner affair'. The facts are well established: documents containing allegations of abuse of children in government care were shredded by senior public officials on the orders of the Goss cabinet, of which the current Deputy Premier, Mr Mackenroth, and the environment minister, Mr Dean Wells, who was Attorney-General at the time, were members some 13 years ago. The issue has never been resolved, although there have been a number of inquiries and referrals, such as the Forde inquiry, to deal with this matter.

However, today, the issue has taken on a new character since Pastor Douglas Ensbey has been committed for trial for guillotining evidence of child abuse in very similar circumstances—that is where no legal proceedings which required the evidence were actually on foot, although in the case of the Heiner affair there were, I think, 13 instances of the government knowing that evidence was to be required. Since Pastor Ensbey has been committed for trial, we seem to have two standards of justice. There seems to be one standard for Pastor Ensbey, who is just an ordinary member of the community, while we have a different standard for members of the Goss cabinet.

Today we will hear from Kevin Lindeberg, a citizen who has tirelessly pursued this issue. Mr Lindeberg's appearance will be followed by that of well-known journalist Bruce Grundy who, together with his journalism students at the University of Queensland, has made further inroads into uncovering the whole story. Mr Grundy and his students have called their collection of material the Justice Project. Further explanation on legal concepts involved in the Heiner affair will be provided by legal academic Alastair MacAdam. The committee has invited Mr Lindeberg back later this afternoon for some final comments. I might add that there is a definite federal connection, aside from the terms of reference, in that Mr Kevin Rudd, at the time of the destruction of the documents, was chief of staff to the then Premier, Mr Goss.

[9.07 a.m.]

LINDEBERG, Mr Kevin, (Private capacity)

CHAIR—We have received a lot of material from you. We have received a submission and additional backup documents. You have already indicated to me that you wish to make an opening statement.

Mr Lindeberg—To deliberately destroy evidence known to be required in a pending or anticipated judicial proceeding, or known to contain proof of a crime which has been perpetrated in the past, to prevent its use by police or by court is clearly a criminal act. When those in the highest office in the state commit the crime of deliberate evidence destruction and then pervert the interpretation of the law to avoid penalty or censure, this is, at best, evidence of a corrupt coterie of self-serving individuals. At worst, it is evidence of ingrained systemic corruption that acts against justice for the reasonable person. This conduct undermines good government and the central trust that citizens in a democracy must have in those entrusted to govern them and make laws. When the law-makers act illegally, then all citizens are, de facto, given a licence to act in a criminal way.

The Heiner affair—or 'Shreddergate', as it is commonly known around the world, to Queensland's shame—is about high-level, unresolved, systemic corrupt conduct by the whole of government in Queensland, attacking matters of legal and democratic principle critical to the administration of justice, the right to a fair trial, judicial and parliamentary propriety, public sector governance, impartial law enforcement by state authorities, public record keeping, protection of children in the care of the state, the role of the media and the protection of whistleblowers.

Heiner is wholly documented. It remains unresolved and the cover-up continues as I speak. We see mates looking after mates at the highest levels of government, abusing public trust and the rule of law, reaching well beyond the borders of the Department of Families, where it began. The tentacles are everywhere. Put bluntly, Heiner has caused the system to collapse—it is in gridlock. I shall elaborate on that later on, if allowed, for my two public submissions. Heiner is the black hole into which the aforesaid agencies have collapsed, either through complicity to avoid, or inaction to avoid, what the law required—indeed what the law demanded. They could not face the horrendous prospect that perhaps an entire cabinet should be criminally charged, literally within days of winning office in December 1989, after being in the political wilderness for 32 years.

Heiner still has the capacity to create a constitutional crisis in Queensland. In Heiner we have the state acting in the same manner as churches over allegations of child sexual abuse. That is, those in authority have turned every which way but loose to cover up the known crime of child abuse and not be accountable. If matters in Heiner—the shredding of public records required for judicial proceedings and known to contain evidence of child abuse; the pack rape of an indigenous minor while in state care; double standards in the application of criminal law; the dispersion of thousands of taxpayers' dollars as hush money; and the mysterious circumstances surrounding the 1990 shotgun killing in Newmarket, Brisbane—do not stir government and its

agencies into action, then Queensland with its unicameral system of government is terminally sick and in need of radical surgery, which now can only be performed under the authority of a special prosecutor working outside the system to clean it up.

In this matter the Crime and Misconduct Commission is now a protagonist. Its obligation to be independent and impartial is shot to pieces. Its own conduct should come under review. As far as I and others are concerned, the CMC cannot be trusted and has acted corruptly in Heiner. In Queensland's administration of justice, it is a blockage and not a facilitator.

The Heiner affair asks this simple question: are we, the people, governed by equality before the law or by double standards? That is, is there one law for politicians, public officials and well-connected mates and another for the rest of us? It is not a revolutionary question. But if the answer is yes, there are two laws, then you may well get a revolution. Whether we are all equal before the law is the first principle which free men and women everywhere want answered before bowing to those in positions of authority over their lives and liberty who administer the law entrusted to them either through the ballot box or by appointment. It is the ultimate contract of trust in any democracy. But it has limits, because we know that power corrupts and absolute power corrupts absolutely. If this trust is breached, it has the potential to tear society apart. The aggrieved citizen may see the state as the criminal; fear of going to and hatred of the police will exist and the citizen, in seeking justice, may take the law into his own hands—and that is not on.

I want to believe in the integrity of law enforcement authorities as the instruments of law and order in our society and I expect them to do their duty. With that belief, I put my life in their hands. I approached these instrumentalities with my disclosure only to be dismissed and ridiculed and have the law twisted and misquoted and the evidence tampered with. I experienced dissembling, conflicts of interest were engaged in by decision makers, legal duties were avoided, lies were told to state parliament, the Senate was misled and I suffered personal threats and saw my family's welfare placed in great jeopardy.

I alert you to the Justice Project and the relevant point of law, where former Supreme Court and appeal court justice James Thomas QC advised in 2003 that section 129 of the Criminal Code was never open to the interpretation that evidence could be deliberately shredded before proceedings came on foot and, for that matter, when those involved were still open to being charged. From day one, I refused to accept that cabinet or a government minister was above the law. To do otherwise is to accept rule by executive decree—and that is totalitarianism, and that I shall never do. I knew that known evidence had to be protected otherwise our courts could not function.

Queensland is now seen as an international joke and a rogue state in its public record keeping and matters of due process of law. Heiner is now taught in universities throughout the world as a classic example of how not to practise public record keeping. From the famous University of Salamanca in Spain, Manitoba University in Canada, Liverpool in England, the universities of Michigan and Pittsburgh and elsewhere, Heiner speaks authoritatively to students. Other disciplines like law and journalism also cite Heiner. Yet Mr Beattie, himself a lawyer, claims that because prior approval to shred was obtained from the state archivist it made the shredding lawful. What legal nonsense. He conveniently forgets to tell us all that the archivist was deliberately misled by cabinet and that archives' law does not and cannot ever override the Criminal Code or the discovery rules of the Supreme Court.

I am happy to rest in the view that it is the rule of law which keeps us free as a nation and not the earnest assurances of smiling media-smart politicians who may claim to be as honest as the day is long and who would never engage in covering up crime or child abuse. Getting away with misleading parliament is easy when you have the numbers, but it is a very different matter under oath before a special prosecutor. If Heiner stands unchallenged, the Queensland executive is saying to the judiciary, the legal fraternity and the business community—in fact, all people—that it will wilfully and deliberately destroy public records in its possession and control known to be required in evidence in a judicial proceedings and discoverable under the rules of court up to the moment of an anticipated writ being filed and served; and it will even do so when it knows the material contains evidence about the abuse of children in state care. Not only is that contempt of the judiciary and a major breach of the doctrine of the separation of powers but inescapably Heiner means this: a world without evidence—and that cannot stand.

I conclude on this point. Mr Beattie has publicly declared that no litigation had commenced at the time of the shredding, while knowing and accepting that the government was well and truly on notice not to shred any of the Heiner material because it was required in anticipated judicial proceedings. With that state of knowledge and the intent to prevent their use in those proceedings, on cabinet order the records were secretly and deliberately shredded on 23 March 1990. Those elements would normally trigger section 129 of the Criminal Code. Instead, the law was and has been for over a decade twisted for an improper purpose by certain public officials, including the then DPP, Mr Miller QC, suggesting that it could only be triggered when a proceeding was on foot.

In the last few days I have accessed the DPP's indictment for a Queensland citizen who has been ordered to stand trial under section 129—and, in the alternative, section 140—for destroying a record which contained evidence of child abuse some five or six years before court proceedings commenced. The indictment is signed by legal officer Mr Richard Pointing. This gentleman confirmed my long-held view of section 129, which is shared by eminent jurors like High Court Justice Ian Callanan, retired Queensland Supreme and Appeal Court Justice Thomas, Mr Tony Morris QC and the late Mr Bob Greenwood QC and others—and let us not forget Sir Samuel Griffith himself.

That same public official handled my complaint at the CJC over a decade ago. Unquestionably the same shredding elements present in the aforesaid case were present in my case against the Goss cabinet and others from day one except that in Heiner it is far clearer—it is unequivocal. In 1991 and 1992, Mr Pointing dismissed my claim and, on one of my letters in which I pointed out these facts, wrote that 'this man is irrational and nothing which this commission can do or say will satisfy him; I recommend that no reply to his letter be sent as it will only be an encouragement for further unnecessary correspondence to him'. Before our eyes, we see an ordinary citizen being charged and put before the courts—but not a cabinet. For my trouble, I have been demonised as being irrational by the same public official who has put his signature to an indictment on an interpretation of section 129 which I have stood for for 13 years in seeking justice.

The view taken by the Queensland government and its law enforcement agencies in Heiner is an affront to decent people who believe in the rule of law and who obey it. It is an affront to courageous law enforcement officers who put their lives on the line every day to uphold our justice system. Now the worm has turned, and I say this to those who mistakenly believed that I

would throw in the towel and not challenge this giant and who have taken the cover-up route for political and personal advantage or out of sheer fear of executive government over what the law always required: they must now answer for their unacceptable criminal conduct. My final message to those people is this: the game is up. I seek leave to table this indictment.

Dr WASHER—I move that it be taken as an exhibit.

CHAIR—We will take that as an exhibit. Mr Lindeberg, you have stated in your opening remarks that you have pursued this matter for 13 years. The Queensland Premier, Mr Beattie, has chosen to make the question of child abuse a high priority. He chose to attack the then Governor-General 'viciously'—some people might say—and, in choosing to table the report in the parliament, acted very politically. Why do you think he covers this up?

Mr KERR—Madam Chair, in looking at particular matters can you please avoid making those kinds of remarks? I appreciate the high-minded tone you are seeking to take, but it is extremely political and not appropriate for this examination.

CHAIR—It cannot not be political when politicians are involved.

Mr KERR—Ask the questions you wish, Madam Chair; I do not need to indulge your political campaign.

CHAIR—Mr Lindeberg, why do you think? Please answer.

Mr Lindeberg—With great respect, the trouble with Heiner is that it was political from day one. With great respect, Mr Kerr, to suggest that you can take politics out of Heiner is just not on. With due deference to you, it is a very relevant point that Madam Chairman makes. Everyone knows—and I do not really want to go into the Anglican Church and court as such—there were certain principles at stake here, and I think that is what you are on about: we do not want people in public office to engage in double standards. Mr Beattie tabled a private report brought together by the Anglican Church, which had some concern about whether or not people would be sued for defamation. With the Heiner report we are talking about public records and a lawful inquiry, established under the Public Service Management and Employment Act, where public servants were obliged to disclose misconduct. They were covered by qualified privilege, they had a duty to do what they did and, instead of tabling the documents, they shredded them. In this whole thing it becomes quite clear that the current government is quite happy to see the dirt going on behind the churches, but it has never been prepared to let the public see what was going on behind the walls of the John Oxley Youth Detention Centre and so it shredded the documents to protect various people.

Mr KERR—Wasn't there an inquiry commissioned by the former governor of this state to look at the whole issue of abuse of children in public institutions and the like?

CHAIR—She refused to take the evidence.

Mr Lindeberg—I am pleased you bring that point up, Mr Kerr. I heard today on radio Mr Beattie making the comments 'not this matter again' and 'more inquiries than hot dinners' and making noises long and loud about the Forde inquiry. I wrote submissions to the Forde inquiry

and I said that it was nonsense to look at certain examples of abuse at the John Oxley Youth Centre—very limited, may I say—but not to look at the fact that a government shredded documents nine years earlier to cover it up. Those who set the terms of reference, sitting in that cabinet at the time, were five members of that cabinet who authorised the shredding of those documents.

Mr KERR—I should apologise to the Chair in that I interrupted a series of questions I am sure she is going to ask. But I also have a series of questions that really go to the issues that you raise.

CHAIR—We will come back to those, Mr Kerr, because I am asking questions now. A lot of stress was put on the fact that there was a legal opinion given that section 129 of the Crimes Act only applies if legal proceedings have been commenced where the evidence is required. Who gave that opinion?

Mr Lindeberg—That opinion was not given at the time; it has been given subsequently.

CHAIR—Who gave it?

Mr Lindeberg—At one point in time Crown Law gave that opinion and at another point in time Mr Royce Miller, the DPP, also gave that advice. A further, earlier point than that was when certain public officials at the Criminal Justice Commission gave that advice.

CHAIR—At the Criminal Justice Commission?

Mr Lindeberg—Yes; people like Mr Michael Barnes and Mr Noel Nunan.

CHAIR—Mr Michael Barnes gave evidence to the Senate inquiry that, in fact, the cabinet knew that there were to be legal proceedings and that evidence would be required.

Mr Lindeberg—Indeed.

CHAIR—That is in the record of that inquiry. But I would ask you this: destruction also requires the permission of the archivist. Is that correct?

Mr Lindeberg—Before you destroy public records, yes.

CHAIR—And there was evidence also given, I believe, that the archivist was never told that legal proceedings were in fact to begin.

Mr Lindeberg—Yes.

Mr KERR—Madam Chair, that is not quite correct.

Mr Lindeberg—With great respect, Mr Kerr, it is correct.

Mr KERR—It is not the summation of various inquiries which say that it was not put explicitly but it was certainly indicated to the archivist that legal proceedings may have been in contemplation.

Mr Lindeberg—No. With great respect, you show me the proof of that. With great respect, I am sick and tired of myths and rubbish being peddled as fact. They are not fact. The letter that went across to the state archivist said that these documents were no longer required or pertinent to the public record. When that letter went across, the cabinet was aware that the documents were required for anticipated court proceedings, and nowhere in that letter is that stated. It may have been said in the phone call, because the archivist has never been put under oath. The CJC, in its so-called nth degree investigation, never called the archivist—a key figure—in over 10 years. It never told her that.

CHAIR—There was a particularly important document, I think, called 'Records and the public interest: the "Heiner affair" in Queensland, Australia', by Chris Hurley, which appears in a publication called *Archives and the public good: accountability and records in modern society*, which is edited by Richard J. Cox and David A. Wallace. In it they set out that, from all known evidence, the archivist was not told that this material would be needed as evidence in any legal proceedings but that in fact she had to examine it.

Mr Lindeberg—Yes.

CHAIR—That presumably means that the archivist would actually know what is in those documents.

Mr Lindeberg—Indeed, and she makes the comment that there are defamatory comments in the document. What has happened, if I may say so, which makes your inquiry here relevant with fresh evidence, is that when this matter came before the Senate in 1995 it was not told about the evidence of child abuse as we now know it. The question has never been asked: what were these defamatory comments? If one person is saying, 'This person is abusing a child and that person is covering up the pack rape of somebody,' it may be defamatory but it is of public interest and therefore you do not shred it. So the nonsense of suggesting that you have to shred the documents to prevent people from being sued is palpable nonsense.

CHAIR—From reading the documents I also understand that the cabinet from time to time expressed that they destroyed the documents because of threatened defamation action and that public servants could be sued. But I also understand that it was government policy at the time that if any public servant were sued in the course of their duty they would be totally backed by the government of the day and indemnified against costs.

Mr Lindeberg—Absolutely, and that is very critical. So you have the government giving the assurance to the public servants that 'if any litigation comes, we will look after you' and, having given that assurance, it then turns around and shreds the documents in its own cause. That is utterly outrageous. It is an affront to the administration of justice.

CHAIR—Perhaps we could go to what has become known about what sorts of allegations were investigated by Heiner and what sort of child abuse we are talking about. I understand that one case involved a 14-year-old Aboriginal girl who was allegedly pack raped by four fellow

inmates of the John Oxley Youth Detention Centre. I understand that her identity has been kept quiet because of what has happened to her in subsequent life.

Mr Lindeberg—Yes, that is indeed true. Whilst I am happy to talk on that, if I may respectfully say, that evidence might be better led from Mr Grundy, the investigative journalist who has got to the bottom of this. I have never met the girl. I am conscious of the seriousness of this hearing and I do not want to talk second-hand, if I may respectfully say so. But may I say this in relation to a matter in terms of what the government knew and what it did to cover the thing up, and it relates to the federal parliament: I hope I am not jumping but I am talking about document 13—it was provided to the Senate in 1995 and it talks about children being handcuffed to grates et cetera—which in large measure triggered the Forde inquiry back in 1998, when the *Courier-Mail* got its hands on this particular document.

What is significant about that particular document is the way it was presented to the Senate. It was not presented to the Senate in its entirety, in the sense that Mr Coyne was telling his bosses and he had put other things into it. When it was provided to the Senate it was cropped in such a way as to cause maximum damage to him and to me. In my view, that is a contempt of the Senate because the Senate is entitled, when it gets evidence, to get the entire document, not a constructed one for a political purpose.

CHAIR—So this was an allegation that two children—

Mr KERR—Sorry, Madam Chair, I am not trying to interrupt but I would actually like to ask about the document, because I did not quite understand. It is my misunderstanding—that is all—as to which document was cropped.

Mr Lindeberg—I believe it is an exhibit that was provided, Mr Kerr. It was provided by the Goss government to the Senate, to the committee which was chaired by your then colleague Senator Murphy. It is called document 13. That was the first indication that there was something going radically wrong out there. It was handed to the Senate along with a bundle of other documents. It was cropped at the top and other documents were attached to it, but it was cropped in such a way as to suggest that Mr Coyne was the one who was totally authorising the abuse of children in terms of the handcuffs and so on. But the plain fact is that he was telling his bosses higher up the tree about it. In my view, in terms of the totality of the Senate examining these things, they are entitled to have the entire document but there has been a deliberate effort gone into presenting the document in its most beneficial way to government and in a detrimental way to a witness before the Senate inquiry.

Mr KERR—Just to assist me, because in our quick consultations none of us can yet identify the document you are referring to, and you need not do it now but could you—

Mr Lindeberg—I will supply you with the document.

Mr KERR—It is just so that, when this transcript is ultimately looked at, I can actually know what assertion is being made and can test it against your document.

Mr Lindeberg—I understand.

CHAIR—Can I say this to you, Mr Lindeberg: a former Goss cabinet minister, Mr Pat Comben, told the *Sunday* program in 1999 that, at the time of the shredding, 'We were all made aware that there was material about child abuse.' Are you familiar with a document which was signed by the then acting manager of the John Oxley centre, Anne Dutney, who wrote a memorandum to the Director of Organisational Services? That was three weeks before the documents were shredded.

Mr Lindeberg—Yes, it was 1 March.

CHAIR—This document said:

... a youth worker had placed a suicidal child in shared accommodation with another child who was taunting her to kill herself;

the same youth worker—

this is a government employee presumably—

had rolled Panadol under a door to a child who was known to have previously overdosed by hoarding the same drug;

a youth worker—

another government employee—

slept on duty and during training sessions;

another youth worker was performing so poorly that she would be unlikely to be appointed on merit.

Further, it said:

Concerns about staff selection and suitability were expressed by former John Oxley Manager, Michael Tansky, in evidence to the Forde Inquiry.

I will go on a bit further. The document said:

According to Mr Tansky at one stage criminal records checks revealed that 22 staff working in Queensland youth detention centres were found to have criminal histories; and one individual—

working in John Oxley—

had been charged with the rape and abduction of a 16-year-old.

And this is the evidence that was shredded? The Forde report revealed:

... underqualified and vastly inexperienced staff who "resorted to … force …because they did not have the training to deal with problems in other ways …

Indeed, they did some of the following:

... an anal search of a 14-year-old boy by a staff member who joked and called him a "poofter" and "faggot";

archival material and witness accounts indicating physical abuse of children by staff including cigarette burns and assault causing loss of consciousness and hospitalisation ...

So this is all evidence that was shredded?

Mr Lindeberg—It was done for a particular reason—that is, so the evidence that was gathered lawfully could not be used against the careers of the public servants at the centre. That was one of the stated reasons, and another reason was to reduce the risk of legal action. As we know, this also has a spin-off in relation to McCabe type cases in the sense that, when children who have been abused get courage later on in life, they come back and sue. Indeed, the girl who was pack raped is doing so. Plainly that evidence would be relevant, but the government has shredded the documents.

CHAIR—But it is more than that. There was more than one copy of these documents, was there not?

Mr Lindeberg—Indeed.

CHAIR—And there was more than one shredding session?

Mr Lindeberg—Indeed. The point is that there was the grand shredding and then there were two shreddings thereafter in May. One was the disposal shredding of the original complaints and then there was the shredding of the photocopies of the original complaints. May I say this: that second and third disposal was done with the cooperation of Queensland crown law, when crown law and the chief executive at the time knew that Mr Coyne had a lawful entitlement to see those documents and if they were not given to him out of court—something that we as a union knew he was entitled to—he would settle the matter in court.

CHAIR—Leaving aside the question of Mr Coyne, those children who were abused also would have had rights.

Mr Lindeberg—Absolutely.

CHAIR—Mr Beattie has taken a great public stance on this, talking about the rights of abused children and doing something about it, and yet still nothing has been done about this. There is no statute of limitations for criminality.

Mr Lindeberg—Indeed.

CHAIR—Can we just clarify the time frame in which the decisions were made. The decision to shred the documents was made by the cabinet on 5 March 1990, and the Attorney-General at the time was Mr Dean Wells, who is now a cabinet minister in Mr Beattie's government.

Mr Lindeberg—He is the environment minister.

CHAIR—Permission to destroy was given to the cabinet on 23 February—that is, they are given permission to destroy by the archivist giving consent.

Mr Lindeberg—Pursuant to the Libraries and Archives Act 1988.

CHAIR—Yes. So they decide to destroy on 5 March. They do not actually destroy the first lot of those documents until 23 March, and yet during that period they pretend to Mr Coyne's lawyers that they are still in existence.

Mr Lindeberg—Absolutely, and that they are still seeking advice from crown law. They tried to refer all this business back to a piece of advice from 23 January which said that you can shred the documents, predicated on the proviso that no legal action is commenced which requires the documents' production.

Mr KERR—That was 23 January?

Mr Lindeberg—Did I say 23—

CHAIR—It was 23 March.

Mr Lindeberg—No. The piece of advice is from 23 January 1990.

Mr KERR—There are a number of attachments to this. The letter that I have that seems to authorise this is dated 16 February, from the Crown Solicitor to the then acting secretary to the cabinet. Is that the letter you are referring to?

Mr Lindeberg—With great respect, where does it say in that that the documents have been shredded? That is a very important document, and I am happy to advance arguments in relation to that. That is a most astounding document. If I may address the committee on that, particularly in the wake of the McCabe case and the decision—

Mr KERR—I want to ask you a series of questions afterwards, but I am just asking you for clarification. That is not the letter you are referring to?

Mr Lindeberg—No. I am referring to a letter dated 23 January 1990 by crown law to Ms Matchett—

Mr KERR—Which I do not have.

Mr Lindeberg—It is certainly not a hidden document.

Mr KERR—No, but it is not a part of your submission and I do not hold it. Is that correct?

CHAIR—I would be amazed if it is not.

Mr KERR—It is difficult for me to follow an argument made on the basis of a document which I do not have. You have provided other documents, including the one of 16 February, but you have not provided the document you are referring to.

CHAIR—A reading of the Senate inquiry confirms that these are the dates.

Mr KERR—Madam Chair, you might have been a member of the Senate at the time; I was not.

CHAIR—No, I was not; I have simply read the report. If we could go through the period from 5 March to 23 March, they pretended to Mr Coyne that they were still seeking advice and that the documents were still in existence, when in fact they had been destroyed.

Mr Lindeberg—The decision to destroy them had been taken. Mr Coyne was still waiting for the final advice when they were secretly destroyed on 23 March 1990. A letter on 19 March indicates:

We are still seeking advice. When the decision had been made to destroy the documents.

CHAIR—And after they were destroyed, when were Mr Coyne's advisers told that they were—

Mr Lindeberg—Mr Coyne was officially told, I believe, on 22 May 1990.

CHAIR—So, from 23 March until 22 May, they pretended that those documents still existed?

Mr Lindeberg—There was a newspaper splash but governments do not communicate to solicitors through newspaper splashes. The official letter was not sent to them until 22 May 1990, and the record is that the lawyer for Mr Coyne was outraged. He said, 'The department's in a lot of trouble. I'm going to talk to David Hamill,' and so on. Until that time, they were given every assurance that the documents were still in existence, and they were still getting advice.

CHAIR—Could that have been because they still had the copies of the documents that existed, in part?

Mr Lindeberg—Possibly, but Mr Coyne was not just after the copies; he was after parts of the transcripts which related to him.

Mr KERR—Because he wanted to bring defamation proceedings?

Mr Lindeberg—He wanted to see what was said about him.

Mr KERR—No, he wanted to bring defamation procedures against people who had effectively been whistleblowers.

Mr Lindeberg—With great respect, that is nonsense. Are you saying that he does not have a right to do that?

Mr KERR—No, all I am saying is: in his evidence to the Senate, didn't Mr Coyne say, on page 10 of his submission, that the destruction of the documents had all but extinguished the possibility of defamation proceedings being brought by him against those who gave evidence against him?

CHAIR—Yes, it is not a disputed fact.

Mr KERR—Wasn't he wishing to use the fact to sue people who had been making allegations of his misconduct against children?

CHAIR—With respect, it is alleged, and there is no reason why he should not be entitled to do so. The fact of the matter is that the documents were destroyed, but also the children—

Mr KERR—But, Madam Chair, there is a different point—

CHAIR—Excuse me—

Mr KERR—Madam Chair, there is a different point: every witness who comes before us is protected entirely. It is plain that the protections that exist, for example, for Mr Lindeberg in making his submissions to us would not extend to people who are making submissions before the Heiner inquiry—

CHAIR—Correct, but we had—

Mr KERR—and, indeed, Mr Coyne wanted to sue them for what they were saying against him about what he had done to expose children to sexual abuse and to harm. So, essentially, we were finding that people who had blown the whistle on Mr Coyne, the manager of a centre, potentially could be exposed to the consequences of defamation proceedings being brought against him. Mr Coyne wanted to seek that material so he could sue those people.

CHAIR—Correct, and we have already—

Mr KERR—That is a pretty extreme thing to happen to a whistleblower.

CHAIR—And we have already established that the policy of the government was that, should such action take place, they would be totally indemnified by the government. Further, Mr Coyne was then paid $27,000 by the same government to remain silent, with a confidentiality—

Mr KERR—Madam Chair, perhaps it would assist if I—

CHAIR—No, I am going to Dr Washer next.

Mr KERR—I am sure you will, Madam Chair.

Mr Lindeberg—Do I need to answer what Mr Kerr said?

CHAIR—You can answer when he is asking his questions of you.

Mr Lindeberg—I will.

CHAIR—Dr Washer indicated to me he has a question to ask.

Dr WASHER—Could you simplify this for me and my mind as I am not a lawyer. Basically, the basis for the shredding of these documents was to protect public servants from so-called 'blowing the whistle'—this is alleged and perhaps you could clarify this—so that it would be an impossible litigation procedure. These documents were shredded, as such, because no impending litigation had been thought of at the time; so it was an archival matter. I know it sounds confusing, but can you flesh that out for me?

Mr Lindeberg—With respect, there is more to this than that.

Dr WASHER—Yes.

Mr Lindeberg—What has become clear, and what becomes relevant, is: what did the government know at the time? It is one thing to be talking about stopping people suing each other et cetera, but what did the government know about what was going on at the centre at the time? Irrespective of whether people were threatening litigation, it is a matter of whether the documents should have been shredded, particularly if they were known to contain evidence about the abuse of children. That overrides it. Mrs Bishop's point about the government indemnifying the so-called whistleblowers which you put forward as having no protection is that they were protected. Having taken over that responsibility if any litigation were to commence, it then destroys the central evidence. That is intolerable. It goes to my point that if this can stand, if the government can destroy documents when it knows that they are going to be required for a court, we will have a world without evidence.

What makes this whole thing more hypocritical is the fact that this Queensland government now has a citizen before the magistrate's court for destroying documents six years before it got to court, and he was not even on notice. All this other humbug is just a load of tripe. I am talking about the Crown, the model litigant, who is supposed to know the law. What becomes clear is: what did the government know before it got into office? Why did it move Mr Coyne? There is evidence in the records which states that they knew about the problems at the centre before they came in and the first thing they did was remove Mr Coyne. What were those things? The evidence is—

Mr KERR—Perhaps I could take you—

CHAIR—Let Mr Lindeberg finish.

Mr Lindeberg—The evidence was what was going on out there about children. But on top of that, there is this deed of settlement—the payment of $27,000. That is unprecedented. This gentleman was getting so-called industrial entitlements to which he was not entitled. You do not need to enter into a deed of settlement to get industrial entitlements. What did the deed of settlement say? It said, 'You will not talk about the events leading up to and surrounding your relocation for the rest of your life.' Neither side would do that because neither side wanted the world to know what was going on at the centre.

CHAIR—And now we have a court case being brought by the young Aboriginal girl—she was young then—for being gang raped, and this evidence would have been available for her.

Mr Lindeberg—It has been taken away, yes.

CHAIR—Destroyed.

Mr Lindeberg—In The Queen v. Rogerson, if an act has a tendency to obstruct justice, a conspiracy can be entered into.

CHAIR—Yes.

Mr Lindeberg—On top of this, we have the cabinet documents, which I believe I have provided to you. The cabinet documents make it explicitly clear that they knew solicitors were seeking access to these documents but they have not yet served the writ.

Mr KERR—But the solicitors were seeking access to the documents on the basis of threatened defamation proceedings by Mr Coyne. Isn't that right?

Mr Lindeberg—So what?

CHAIR—Section 129 does not say what sort of legal proceeding; it just says that it is illegal and you are going to jail for three years.

Mr KERR—Obviously the legal position is not as clear as any of us would wish it to be.

CHAIR—But it is.

Mr KERR—It is not. Otherwise we would not have had the Tobacco Institute litigation in Victoria, we would not have had High Court decisions and we would not have had disputes between senior silks. The point is that at the end of this, these issues will be clarified, but they were not as clear as people assert them to be 11 years ago. The British American Tobacco Company were destroying documents and their pleadings were struck out. The High Court has re-allowed them. I do not know exactly how it dealt with that issue of law.

CHAIR—No, but we know how it held in Rogerson and the Crown.

Mr KERR—All I am saying is that the idea that these issues are capable of one answer alone is wrong. If you look at 1996, the Borbidge government—no friend of Labor—commissioned an inquiry into the shredding of these documents. That inquiry was conducted by Anthony Morris QC and Edward Howard. At the end of that process, then Premier Borbidge issued a press release stating that the DPP had advised against laying any charges under sections 132 or 140. Nothing was said then in relation to destroying the evidence.

CHAIR—Did they say anything about section 129?

Mr KERR—Nothing was said in relation to that. My point is that the DPP, everybody else, the National Party government of the time, commissioned inquiries into this. If the matter were as transparently clear as people assert it to be, there would be no such complexity.

CHAIR—Duncan, you make my case. The fact of the matter is that when it comes to an ordinary citizen, Pastor Ensbey, the DPP goes to him and he is committed for trial, but for the last 10 years there has been a state of denial—

Mr KERR—Madam Chair, you and I are lawyers—

CHAIR—for cabinet ministers.

Mr KERR—and we understand that one of the elements in criminal proceedings under most codes—and, I suspect, the Queensland code—is mens rea or intent.

CHAIR—Indeed.

Mr KERR—If a person acts on the basis of crown law advice, taking a course of action recommended to them after inquiry, it is a different matter from taking someone else's diary which contains allegations of sexual impropriety and destroying it so that it cannot be evidence. I do not want to comment in ways which would affect a trial, but one potentially suggests a certain kind of intent and the other suggests a different intent. Let us look at those matters. Let us not fall for the trap—

CHAIR—That is a nice legal argument—

Mr KERR—Of course it is, and that is the point: there are differences on this.

CHAIR—But in The Queen and Rogerson and others, Justices Mason, Brennan and Toohey very simply said:

... it is enough that an act has a tendency to frustrate or deflect a prosecution or disciplinary proceeding before a judicial tribunal which the accused contemplates may possibly be instituted ...

Justices Brennan and Toohey then said:

A conspiracy to pervert the course of justice may be entered into though no proceedings before a court or before any other competent judicial authority are then pending ...

It is quite clear that, after that, there has got to be an action taken—

Mr KERR—But all I am saying is that—

CHAIR—but none until we get an ordinary citizen.

Mr KERR—in 1996 the Borbidge government and the DPP, under that government, said that there was no appropriate basis for taking proceedings for conspiracy.

CHAIR—Pardon me, but I think Justices Mason, Brennan and Toohey have got more authority than that.

Mr KERR—This is being put up as if it is a political stitch-up.

CHAIR—Of course it is political; it has got politicians in it.

Mr KERR—The Borbidge government, which I am sure would have loved to have embarrassed its predecessors, took a course of action to have an inquiry—

CHAIR—As I said, I prefer Justices Mason, Brennan and Toohey to that report.

Mr Lindeberg—Can I answer—

Mr KERR—Madam Chair, I prefer to actually examine the facts rather than—

CHAIR—The facts are established—they were destroyed.

Mr KERR—You are putting such a political—

CHAIR—Yes, because politicians are in it.

Mr KERR—You will have people in jail because of your views, for God's sake!

CHAIR—We have already got one person in jail for putting their political views to the public. Mr Lindeberg, you were saying—

Mr Lindeberg—With great respect to you, Mr Kerr, you are talking legal dribble.

Mr KERR—Thank you.

Mr Lindeberg—You are a former law professor of Tasmania, a former Crown officer—

Mr KERR—Yes, I am, and I understand things are a little more complex.

Mr Lindeberg—Are you telling me that when a client comes in and says, 'I've got a letter from a solicitor saying that documents in my possession are required for court; they are about to issue the writ,' you would say, 'Get in quick and shred the documents'? Is that what you are saying? The ordinary punter in the street knows that that is nonsense.

Mr KERR—Can I say what I am saying, which is this: governments which deal with situations and seek advice from the Crown—

Mr Lindeberg—We are seeing two standards here—

Mr KERR—hang on—get advice from the Crown Solicitor, presumably the officer who had been the Crown Solicitor under the Bjelke-Petersen government and previous governments, and

act upon it may have made an error of judgment. Certainly I think that, in retrospect, this has caused them far more problems—in retaining the documents—

Mr Lindeberg—No, it has caused them no trouble. It has caused me trouble, because as a whistleblower I thought that evidence required for court had to be protected.

Mr KERR—All I am saying is: can't you see it from another perspective? You obviously cannot. Essentially you have a situation where—

Mr Lindeberg—You want to see it from the perspective of the raped girl?

Mr KERR—a man has been asked to conduct an investigation into a circumstance, into a particular facility. He starts to collect evidence, much of which actually points to misconduct on behalf of Mr Coyne. Mr Coyne then threatens to take defamation proceedings. They realise that the witnesses are not properly protected and they seek advice as to what to do. They are given that advice by crown law and they act upon it. Isn't that a very different situation? I understand that you have pursued this vigorously—

Mr Lindeberg—We are supposed to all be equal before the law.

CHAIR—Good try, Duncan. Mr Beattie can make up for it today and proceedings can be brought against those cabinet ministers today in the light of the action that has been brought against the pastor. Why is Mr Beattie not taking any action?

Mr KERR—Madam Chair, do you understand the point I am making—that is, that they acted on an entirely different basis than has been put to us?

CHAIR—But there is no statute of limitation—they can do it today.

Mr KERR—But there is no mens rea that goes to the same kind—

CHAIR—But that is not for you to decide.

Mr KERR—The DPP said—

Mr Lindeberg—With great respect, the criminal case as set out in—

Mr KERR—Can I please—

CHAIR—Go ahead, Duncan—ask some questions.

Mr KERR—You said that one of the key issues in relation to the new government coming in was: why did it move Mr Coyne?

CHAIR—Why did you pay Mr Coyne?

Mr KERR—The substantive question you asked was: why did it move Mr Coyne? You referred us to the situation regarding four people sexually abusing a young girl, and you said that it would be best to leave that for Mr Grundy, who has investigated it. Mr Grundy has a web site. On that web site, isn't there an account of what he says occurred?

Mr Lindeberg—Yes.

Mr KERR—Let me tell you what he says occurred in relation to that then manager. He said that that then manager received the young girl. Under 'Day one', Mr Grundy says:

But the police were not called. And no effort was made to have the girl examined or for any investigation to be commenced.

Under 'Day two', he goes on to say:

The manager then spoke with all the boys who had been involved in the excursion, and after lunch, with the girl. She told him some of the boys had had sex with her, that she had been under a lot of "pressure" from the boys (which the manager assumed to be "both peer pressure and psychological pressure") and when asked if she wanted the boys charged by the police she had "tentatively said yes".

The girl was moved "to another living area". But the police were not notified and the girl was not examined.

It goes on to talk about circumstances where, plainly, Mr Coyne, who was the manager, was not acting in a proper way. If that is the sort of evidence that was being given, and he wanted to sue people—

Mr Lindeberg—What are you talking about?

CHAIR—The evidence has been destroyed, Duncan—we do not have it.

Mr KERR—That is what Mr Grundy—

CHAIR—If Mr Grundy comes here, we will ask questions of Mr Grundy.

Mr KERR—The question was put to us that the key thing we had to know was why the new government moved Mr Coyne. Mr Lindeberg was Mr Coyne's champion. Mr Coyne wanted these documents so he could sue people.

Mr Lindeberg—With great respect, I was Mr Coyne's trade union official. I had a duty to look after his interests. Until I found out he had broken the law or what have you, I had a duty to look after Mr Coyne's interests. Whether you like it or not, Mr Coyne had a lawful right to access those documents—and Crown law recognised that right. What you are trying to say is that there is one law for government to make up its mind and there is another law for the rest of us.

Mr KERR—All I am saying is that the motive that appears to be behind the decision, rightly or wrongly, was to prevent people who had given testimony from suggesting that Mr Coyne, the manager of a facility that looked after children in which these matters apparently occurred, did not do anything to protect those kids—

Mr Lindeberg—The motive—

Mr KERR—He wanted to sue those people for defamation. In Queensland, is truth a defence in defamation?

Mr Lindeberg—So what you are saying is: 'I'll make—

Mr KERR—Mr Coyne could have sued those people who had come forward to an inquiry established by government—

Mr Lindeberg—If he wanted to spend his money to do so, let him do so.

Mr KERR—Then truth would not have been a defence at that time.

CHAIR—But that is not for you to make a decision about.

Mr Lindeberg—That is not the issue. What a stupid argument—with great respect!

Mr KERR—You have no respect, Mr Lindeberg—you are just using the words.

Mr Lindeberg—No, I am not. You have no respect for due process. If this gentleman wanted to exercise his constitutional right, he had a right to do so.

CHAIR—Quite so.

Mr Lindeberg—If he got to court and the judge threw it out, that is it. But you do not have a right to interfere with that person's day in court.

CHAIR—And that is what section 129 of the Queensland Criminal Code says and, if you break it, you go to jail for three years.

Mr KERR—Madam Chair, that plainly was not the advice that the government was then receiving.

CHAIR—It is a fairly easy section to read. Clearly, there was a disinclination to do anything about it.

Mr KERR—You have read the documentation and you know that the advice that the Queensland government received at the time was that, unless proceedings were actually in train, it was not unlawful.

CHAIR—I repeat: there is no statute of limitation.

Mr KERR—Whether that advice was right or not, it was given by the advisers to the government—the same advisers who were advisers for the Bjelke-Petersen government.

CHAIR—I do not think Kevin Rudd was an adviser there.

Mr Lindeberg—Acting on advice did not stop Di Fingleton going to jail.

Mr KERR—This has been pursued by the Borbidge government and it has been the subject of further review by the DPP. I understand you object to it. I think actually that—in the same way British American Tobacco acted in a way which was wrong morally—destroying documents generally is wrong.

CHAIR—I am glad you agree with the law, Duncan! That's a good try.

Mr KERR—But is it, as in the instance that the chair wishes to have, transparently clear that it was a criminal offence? Plainly the advice that the government received at the time was quite to the contrary.

Mr Lindeberg—Di Fingleton did not think she was engaging in a criminal offence either, and she acted on advice.

Mr KERR—Surely the proper course for you, if you think so, is to pursue these matters—as, no doubt, you have—with the DPP under different governments.

Mr Lindeberg—I do not trust the system.

CHAIR—The fact of the matter is that we are conducting this inquiry. Mr Lindeberg is giving evidence to this inquiry, not another inquiry. The fact remains: if everything you say is true, Duncan—and I do not believe it is—the government is in a position to do something about it today, because there are no limitations in criminal law.

Mr Lindeberg—Let us test it in court.

CHAIR—It has already utilised section 129 and section 140 with regard to the pastor. There is absolutely no reason why action could not begin tomorrow—or today, for that matter—to overcome the mistake that you say it made all those years ago.

Mr KERR—You know the prosecution policy of the Commonwealth and the prosecution policies of the various states. I actually have been responsible, in my time as a Crown counsel, for making decisions about whether to proceed or not in relation to indictments. It requires more than a political decision of somebody. It requires that you assess whether or not—

CHAIR—Duncan, I am dealing with your argument.

Mr KERR—there is a proper legal basis. Plainly the DPP has said there is not.

CHAIR—The DPP has said no such thing. We have got a new DPP, and the new DPP has taken action and the person has been committed. But the old DPP decided not to do so. There is room in fact to get rid of this dual standard of justice in this state.

Mr KERR—If the new DPP wishes to follow Mr Lindeberg's submissions, that is fine, but, Madam Chair, you and I, as politicians, are not appropriately telling DPPs whom to prosecute.

CHAIR—Somebody obviously tells them here in Queensland.

Mr KERR—Madam Chair, that is a gross and stupid remark, which you should withdraw. Of course, you will not. I have nothing but contempt for somebody who says that the DPP in Queensland is subject to government direction. Do you make that allegation? Do you make the allegation, under parliamentary privilege, that the DPP in Queensland is subject to political direction?

CHAIR—Fake ire will not deter the statements.

Mr KERR—You withdraw it, do you?

CHAIR—I do not withdraw anything.

Mr KERR—You say that the DPP is subject to political direction. Is that your allegation?

CHAIR—What I am saying is that there is an opportunity to remedy what are seen in this state as two standards of justice—one for ordinary citizens and one for cabinet ministers. I do not resile from that.

Mr KERR—The DPP has a proper basis for taking proceedings. Put those matters before them. Do not make a political joke out of it.

CHAIR—This is a political matter because politicians are involved.

Mr KERR—They certainly are in your case.

CHAIR—Mr Lindeberg, have you got any additional points that you wish to make?

Mr Lindeberg—I want to make a point in relation to what Mr Kerr said about the government acting on advice. The advice that he is referring to is dated 23 January 1990, when the government was not on notice. It changed within days. You do not refer back to redundant advice, as you would know as a barrister. Things can change hourly in relation to this thing. The government then asked for advice: 'What's going to happen to these documents once the writ comes in?' We had the government and the Crown Solicitor saying that the documents would have to be handed over under discovery because they are not cabinet documents. With that state of knowledge, they then destroyed the documents to prevent them from being used in those anticipated judicial proceedings. That is an absolute affront to the administration of justice. I just find it appalling that a barrister—notwithstanding, I suppose, that you are there to argue a point—

Mr KERR—I am not there to argue anything.

Mr Lindeberg—who is supposed to live by the law can in any sense suggest that, once a party—and the government, the model litigant—has been put on notice not to destroy anything, because the documents in their possession and control are going to be required for court proceedings which could commence the next day, that is a signal to go out and shred them. What arrant nonsense! That is what I have had to put up with for the last 13 years because under the

unicameral system of government here in Queensland they could not face the prospect that perhaps they might have to charge the 18 members of cabinet. They knew what they were doing. They had lawyers in that place. You do not need to tell the ordinary punter in the street that you destroy documents up to the moment of a writ being served. There would be no evidence left. That is why this issue is important to your committee—because you cannot do justice without evidence.

Mr KERR—We found in the Victorian tobacco legislation—

Mr Lindeberg—They were not on notice at the time.

Mr KERR—Of course they were. How absurd!

CHAIR—Mr Lindeberg, we are dealing with child abuse here, to which the Beattie government has chosen to take a high-minded attitude. He took a high-minded attitude in attacking the Governor-General.

Mr KERR—Haven't we all, Madam Chair? I am sick of this. Who is in favour of child abuse?

CHAIR—Apparently this government does not want to get it out.

Mr KERR—I have a high-minded attitude, and I am disgusted by this. I am disgusted by allegations that the DPP in Queensland is subject to direction of the executive government, and I am certainly disgusted by any allegation that I or any member of this committee, or any member of any parliament in Australia, is tolerant of child abuse.

CHAIR—I am very pleased you are disgusted, because Mr Beattie took a very high-minded attitude—

Mr KERR—And he should have, and in relation to any child abuse.

CHAIR—with regard to the Governor-General. He pursued him. He tabled a private Anglican report to give it parliamentary privilege, yet he destroyed evidence of children who were abused and continued the cover-up—

Mr KERR—Mr Beattie did not destroy that evidence. You understand that, Madam Chair.

CHAIR—of what happened under Mr Goss. His deputy premier was a cabinet minister at the time. I want to check something on the Forde inquiry.

Mr KERR—Can I ask you to correct what you just said? You said that Mr Beattie destroyed evidence.

CHAIR—I said Mr Beattie—

Mr KERR—'Destroyed evidence' is what you said.

CHAIR—continued the cover-up.

Mr KERR—How did he do that?

CHAIR—By refusing to deal with this case as it should have been dealt with.

Mr KERR—Nonsense.

Mr Lindeberg—With great respect, sir, I can answer that question. This is an important issue. Mr Beattie was not part of it.

Mr KERR—Of course he was not.

Mr Lindeberg—I have a petition here which sets out all the facts of 1999, post the Forde inquiry, which Mr Beattie himself examined and dismissed by saying that everything had been investigated. This involves criminal conduct of his own ministers, his misleading evidence, and he considers this petition to be in his own interest. Do not come here saying to me that Mr Beattie has no knowledge of this. That is absolute nonsense.

CHAIR—The Forde inquiry was set up to again look at this question of child abuse, and you have told us in your evidence that you made a submission to that inquiry and that Commissioner Forde refused to hear you on the ground that the Heiner affair fell outside the commission's terms of reference. But the terms of reference were set by the government of Peter Beattie, and many of its members had sat in that cabinet for the original decision to shred the documents. Is that true?

Mr Lindeberg—That is correct. I wrote to the Forde inquiry and said that that was not the end of the matter. I said that, when Mr Fitzgerald had his inquiry, he went back a number times to the government and had it extended and that this inquiry could do the same. As I said before, it is nonsense for an inquiry which is supposed to be interested in getting to the bottom of child abuse to not look at what many people would view as the more serious act of shredding documents to cover up child abuse. But she said, 'I can't do that.'

CHAIR—Why not? Did she give a reason?

Mr Lindeberg—No. She said that she could not step outside the reference. I put it in terms of a sycophantic deference to executive government—which I would not accept.

Mr KERR—It seems to me that two possible scenarios are being put forward as to the motivation for the ultimate destruction of these documents. The one that has been pursued until most recent times is that it was done in order to prevent Mr Coyne from pursuing legal remedies which were his entitlement. I accept that people have different views as to whether that was a wise or proper decision. The more recent argument that has been put forward, particularly since the 2001 reports of the abuse the young 14-year-old girl, is that they were destroyed to cover up allegations of sexual impropriety.

That suggestion has not been put and it has certainly not been put on the record until very recently. I am trying to say that nobody had in their mind at the time that this was being done to

cover up any sexual impropriety. The matters that Mr Coyne was potentially capable of pursuing by defamation action involved allegations that went to abuse occurring at the centre where he was the manager. But isn't there a big difference between seeking to prevent staff who have blown the whistle on their boss from being sued and saying that the motivation was one of covering up the acts that occurred, particularly as there were further inquiries? The substantive issues have been examined, haven't they?

Mr Lindeberg—You are asking a number of things. You say there have been a number of inquiries. I am quite happy to address the issue of there having been a number of inquiries. In fact, despite the passage of years and the comments made by Mr Beattie and others, there have not been proper inquiries into this matter. One quick example is that Mr Beattie said that EARC looked at this matter. I have a letter from an EARC commissioner saying that they did not. A commissioner would know, and Mr Beattie is saying the contrary. This is part of the myth that this matter has been investigated to the nth degree; it has not. In relation to the—

Mr KERR—It was the substance, though.

Mr Lindeberg—With great respect to the substance, there was the cover-up. It took us years to find out that in fact they knew that what was going on at the centre was child abuse. When I started this mission, Mr Coyne had a right to access these documents. It was not a question as to what was in them—he had a lawful right to access the documents. The more it went on, the more I found out it was about child abuse. Mr Coyne has gone his way and I have nothing to do with him. When the government disclosed document 13, we found out that Ms Warner knew about the abuse before she gave the documents to the government. Then the government shut down the inquiry and shredded the documents. We know that now; I did not know that before. What becomes clear is that the members out there—the union members, the members of the state service union and the AWU—wanted Mr Coyne out. He was one of the people who were 'gulagged' when the Goss government came to power. Therefore the question is: why do you gulag a middle ranking public servant and pay him money on the specific term that he will never talk about the events leading up to and surrounding his relocation for the rest of his life?

Mr KERR—Putting it no higher than this, isn't it possible because it is true? Our records suggest this: yes, it is true that the staff union—not your professional officers union—wanted to get rid of Mr Coyne. They said that Mr Coyne was responsible for administering the centre badly. They were making allegations—some of which come out in the documents in the Justice Project that I referred to earlier—that he was running it in a way which turned a blind eye to the abuse of young girls and children at the centre. There were allegations that your Mr Coyne was running the centre in a way which was sick and improper and was covering up the abuse of children. Those allegations would have been the allegations given to Mr Heiner.

CHAIR—Which in turn would have meant that criminal prosecution should have been brought against the youth workers who had molested and abused the children in addition to, not instead of, Mr Coyne. There are a whole range of people who are aggrieved who have had that evidence destroyed. They have a case against the government, in whose care and custody they were placed and abused, and they are denied access to that information.

Mr KERR—I understand that Mr Heiner is still alive, is that right?

Mr Lindeberg—Yes.

Mr KERR—If there is an issue, surely the police can talk to Mr Heiner about any specifics that were told to him regarding these matters.

Mr Lindeberg—Can I answer that? With great respect, I enlisted the system. I suggest that the system has collapsed. The police or the CMC can come to this matter. I went to the police in 1994 and gave them evidence about the government destroying records required for court. They referred the matter back to the CJC and to the officers who I was alleging were misrepresenting the law, namely Mr Barnes, Mr Newnham and Mr Le Grande. They have a vested interest in keeping a lid on the whole thing. The pack rape matter has not been properly investigated and more evidence can come out about that later on.

Mr KERR—It could never be properly investigated because at the time Mr Coyne, the man you were representing as a union official and whose documents you wanted, had actually prevented the police from seeing this girl for four days.

Mr Lindeberg—What do you mean by that?

Mr KERR—Isn't that right?

Mr Lindeberg—I am sorry. I am talking about now. There is no statute of limitations on this thing.

Mr KERR—No, of course not. But we are talking about events that happened 11 years ago.

CHAIR—Just like Mr Beattie with regard to the former Governor-General.

Mr KERR—No, we are talking about events that happened 11 years ago. Eleven years ago plainly something was happening in a centre that was very wrong.

Mr Lindeberg—In a youth detention centre.

Mr KERR—In a youth detention centre.

CHAIR—In the care and custody of the government.

Mr KERR—The union representing the workers there wanted to get rid of the manager, Mr Coyne. When those staff gave testimony pointing at him, Mr Coyne wanted to use that to sue them—to sue the staff. That was where you came in.

Mr Lindeberg—No, with great respect—

Mr KERR—That is where the decision was taken to shred—wisely or unwisely. We are learning more and more in every dark corner of our society about things that went horribly wrong about the way in which children were dealt with. I do not come from Queensland; I come from Tasmania. Just yesterday we discovered that very serious allegations have led to very senior members of the Catholic hierarchy standing down from pastoral duties. We are

discovering that these things are happening in a whole range of areas. I am glad that light is being shone on these dark corners—

Mr Lindeberg—Can I answer that? I understand your gist.

Mr KERR—But the idea that this was a cover-up because it was designed to cover up child sexual abuse seems inconsistent with what you were saying at the time.

Mr Lindeberg—They knew about the problems at the centre. The issue in all this is accountability. What Mr Beattie tries to put forward to the public is: 'I am accountable for child abuse; I will never cover it up. I established the Forde inquiry.' But what he does not tell the people is that he restricted the Forde inquiry so it could not look at his own ministers who destroyed evidence to cover up child abuse nine years earlier.

CHAIR—Correct.

Mr KERR—But what I am trying to separate out is that I understand from what you were saying, and from all the advice sought from the Crown and the like, is that it was not about child abuse; it was about the fact that your Mr Coyne, whom you were representing—

Mr Lindeberg—With great respect—

Mr KERR—wanted to use the documents so he could sue staff who made allegations against him.

CHAIR—Mr Kerr, I was not going to go down this route but you have brought in the union conflict question and you have been pursuing Mr Coyne as the single and only person involved. However, isn't it true that a particular Labor staffer in Canberra today is working for a particular Labor senator today who is alleged to be one of the staff workers who was on the outing with the 14-year-old girl who was raped? Is that true?

Mr KERR—I wouldn't have a clue, Madam Chair, and I think you are a disgusting human being for putting it in that way. How would I have a clue?

CHAIR—You seem to be quite well informed about Mr Coyne and about other people—

Mr KERR—Because I have read the documentation that you have—

CHAIR—I am too.

Mr KERR—I have read this documentation that the inquiry has published today.

Mr Lindeberg—The nature of cover-ups is that wrongdoing is covered up and it takes years for these things to come out. What is happening now is that we are looking at this afresh. But what we know now is what they always knew then. Ms Warner knew about the abuse of children at that centre before she got into government. They shredded the documents. You do not shred documents about abuse of children in state care to protect the careers of staff who are duty bound to protect those children.

Mr KERR—It just seems to me to be pretty plain from the record that Ms Warner called for the inquiry that was established in the first place. So yes, she was obviously aware that there were allegations of impropriety—

Mr Lindeberg—With great respect again, when she was on the *Sunday* program she said she did not know but the proof is that she did know. All I am saying there is that there is a lack of accountability in this. I mean, to have a barrister sitting here suggesting that, because somebody wants to sue somebody else, 'I'll shred the evidence so that you do not exercise your right to have your day in court', is abhorrent in a democracy because that is one of the things a democracy is about: having your day in court without being interfered with by another party.

Mr KERR—On that point, I think that until recently it was generally thought in the legal profession that until proceedings were brought you could do that. I think it is wrong and I am not sure—

Mr Lindeberg—Would you advise your—

Mr KERR—I am not sure about the High Court—

Mr Lindeberg—My advice from solicitors is that if any solicitor were to advise a client in that way, he would be struck off and that is what the SCAG is now suggesting should occur. It is not a new discovery.

Mr KERR—And that will clarify it.

CHAIR—Duncan, to say it is okay to hide behind a legal artifice, that it is okay to cover up child abuse, because you have got a piece of legal artifice is not acceptable.

Mr KERR—Madam Chair, you are not—

CHAIR—It is not acceptable.

Mr KERR—You are not accurately reflecting—

CHAIR—That is precisely what Mr Beattie said about the former Governor-General: whatever legal advice he had was not enough. He had to be pursued and this has to be pursued too.

Mr KERR—You are not reflecting what the reality was at the time.

CHAIR—Indeed I am; the time is very contemporaneous.

Mr KERR—Look, Madam Chair—

Mr Lindeberg—We did not know about the abuse in the Anglican church publicly until the girl took the matter to court. We now know that this girl who has suffered this assault is taking this matter to court.

Mr KERR—Good.

Mr Lindeberg—They knew about it at the time. What you want them to do is say, 'Let's forget the 13 years.' It is the cover-up that people do not like, particularly when people are going around pontificating that I am concerned about child abuse in one area but I am not concerned about it in an area where I have absolute responsibility.

Mr KERR—I want to put this back to you about pontificating. When you were representing Mr Coyne you must have realised that if he took defamation action it would be against staff who were making allegations against him. In other words, an inquiry had been set up. Staff had come forward saying that Mr Coyne had been acting improperly; he had covered up and allowed those instances of abuse to occur. They then feared that they would be the subject of a suit when it was discovered that they were not protected fully by that inquiry.

CHAIR—Thank you. I think we have covered this ground. We have been over it. Time has elapsed. Mr Lindeberg is coming back this afternoon. It is now after a quarter past 10 when we said we would call the next witness. I am going to ask Mr Lindeberg to finish this part of his evidence and come back this afternoon when Mr Kerr can pursue it again. I now call the next witness.

[10.23 a.m.]

GRUNDY, Mr Grahame Bruce, (Private Capacity)

CHAIR—Welcome, Mr Grundy. Please state the capacity in which you appear before this committee.

Mr Grundy—I am a senior lecturer and journalist in residence at the School of Journalism and Communication at the University of Queensland.

CHAIR—Mr Grundy, you have made a number of submissions to us and you have forwarded to us two articles which you have written, entitled 'No witness statements over gunshot death' and 'The court not custodian of its own record'. I would like somebody to move that they be accepted as evidence to the inquiry and be incorporated into the committee's records as exhibits.

Dr WASHER—I so move.

CHAIR—There being no objection, it is so ordered. Mr Grundy, you have clearly been invited here because of the work you have done on the Heiner affair. Would you like to make an opening statement?

Mr Grundy—I wish to say for the information of some who are here this morning and for some who are not that I am here in the first place because I was asked to be here. I have provided material to the inquiry because I was asked to do so. I did not make a formal submission to the inquiry prior to receiving those requests. The material that I have provided to the inquiry is no more than what is and what has been available to anyone on the globe with access to the Internet through the Justice Project web site. That said, I am happy as far as I am able to answer the committee's questions. My work is always up for scrutiny. I stand by the stories currently on the Web, as I do in connection with the thousands of related words we have written on the John Oxley matter over the years.

The task that I have as an academic is no more and no less than that which applies to all academics whether they are in journalism, botany, microbiology, physics, the law or whatever. The task is the search for truth, and so, to my detractors who criticise me and have criticised me over the years, I wish to say: I couldn't care less. My search is not for circulation nor listeners nor viewers nor mates nor to lead the charge to trumpet the wonders of Queensland or whatever it might be that directs their efforts; my journey is the search for truth. And we are getting there, but there is much more to be done, and so the search goes on.

Those who assist me volunteer to do so; they are not press-ganged into service. The comforting thing about that is that those who do assist me share a sense of outrage at what has happened in the state of Queensland in this case, which include: the abuse of children, including rape and the very lives of children in care being put at risk; suicide and attempted suicide; cover-up across the length and breadth of the bureaucracy; arrogance and indifference on the part of those who should but do not act according to the demands of the positions they hold or have held; crime; convenient double standards to ensure that no-one is brought to account; and the

twisting of the law to the point where the law in this state has been reduced to the level of a bad joke. For the law itself has been brought into disrepute, I believe. The reality, as we have heard this morning, is that we have one law for some and a much more severe law for others. A deeply disturbing thing for me and for those of us in the Justice Project is that nothing seems to be done about these things. No-one cares. The average little person may hang for something that is not even considered to be an offence when committed by those at the big end of town. Everyone looks the other way, including the politicians.

If I may summarise the recent material we have covered—because we have covered in total tens of thousands of words—the recent matters we have raised embrace: public officials being found not to have been in breach of the law for destroying or approving the destruction of material they knew or believed was needed for a legal proceeding; their actions being excused on the basis of an erroneous but convenient interpretation or interpretations of the law by the then Criminal Justice Commission and the then DPP, including over the years no less than five and probably seven senior figures connected with the CJC, five of whom today hold high office in the legal and quasi-legal environment in this state; a citizen on the other hand being charged, committed and indicted to stand trial for doing less than the public officials who did not stand trial; and a girl in custody being taken into the bush to a place off-limits to Aboriginal women by her custodians and left alone with six boys, being raped and, despite knowledge of what had happened to her, nothing was done. And that was not the only incident that happened.

We are concerned with the existence of the records of that matter being denied, even to the police, until a story about what happened to her appeared in the press. In addition, there is no reference to those records or to that incident in the report of the royal commission into the abuse of children in church and state institutions, which included the John Oxley centre, nor by the inquiry which was established to investigate the paper trail involved in the John Oxley shredding affair—the Morris and Howard report. I suggest those records were either withheld from those inquiries or, if they were not, then those who conducted those inquiries might wish to explain why something as serious as that matter did not deserve mention in their reports.

Portions of that file on that incident were improperly blacked out in the FOI process, I suggest to conceal serious contents from the victim, who sought those materials through FOI. The woman concerned has continued to be a victim of the system. Despite her efforts to clear up outstanding matters before the courts, her approach was rejected by parole authorities. Instead they subsequently arranged to take out a warrant for her immediate arrest, despite her not having been in trouble for several years, and to return her to custody immediately. She is given no consideration or leniency for her transgressions; those who transgress against her are excused.

Coincidentally, the warrant just mentioned was sought shortly after the state was notified that the woman had lodged a damages claim against it and the warrant was executed to return her to jail for 8½ months. She has just been released. What happened to the girl at the Lower Portals, one of two incidents, was an act of unconscionable bastardry. The files show her carers knew she had been a victim of sexual abuse prior to her being admitted to custody and yet they took her away into the bush, told her to take her jeans off when she slipped into the water—and I have also slipped into the water at that place because of the nature of the terrain—and left her alone with the boys and, despite being aware of what happened, they did nothing for her. And yet the Criminal Justice Commission says no official misconduct was involved—nothing that might see

anyone disciplined or sacked. That means that staff in such places today could do the same thing and there would be no problem.

Another John Oxley girl says she was raped in her cell, or room, by a staff member and on weekend release at home. She says any number of staff knew about what happened to her. Because of the circumstances, if the matter of the Heiner shredding had been properly dealt with instead of being nicely sidestepped we might have lifted the lid on not only the current foster care issue in Queensland but, more to the point, if Mr Heiner had reported, what happened to that girl may never have occurred because it may have been prevented.

Efforts to get at these and other matters in 'beautiful one day, perfect the next', post-Fitzgerald Queensland are hampered or delayed at every turn. FOI officers exempt material they are not entitled to exempt. Bureaucrats in the courts, without any statutory basis for their actions, deny access to court records, then they simply alter the facts to deny you access. Then they say they do not hold the records you are seeking and reduce to the level of farce the notion that the courts are courts of record, but they still refuse to hand over the records.

A man involved in a fight dies in the street in the middle of the night with a shotgun blast to his chest. There is no inquest. Another man found with him and the gun and also suffering from a shotgun wound is never interviewed about what happened. Some 10 years later he suddenly has a fit of the remorses and gives himself up. The coincidences just keep coming: just after a story of what happened to the girl appears in the newspaper, he turns himself in. The court does not have the record of his committal hearing when I ask for it. It is held by the DPP, I am told, and the court does not have it and cannot give it to me. So the Office of the DPP apparently becomes the keeper of the official court record. The whole thing is an appalling joke.

In his report, Fitzgerald said all kinds of things about what we have described here today. Nothing has changed, sadly. Politicians have condemned the former Governor-General and some have made half-hearted remarks, but most, aware of these matters, have crept into burrows out of sight and said nothing. Civil liberties supporters have said nothing. One pointed out that he could not say anything because one of those involved was a friend. The legal profession has said nothing. Apart from Mr MacAdam and Professor Field, the legal academics have said nothing. In particular the political scientists of no less than all the universities in the state have said nothing. It is as though Fitzgerald never happened. Apart from Andrew Carroll and Stephen Austin, the media have either done little or done nothing at all, except, of course, scoff at me. That is only the recent stuff we have covered, copies of which you have.

In answering your questions I may seek your forbearance should I need to consult my files, a collection of which I have brought with me. I expect my words will be carefully examined and I do not want to be in a position of summarising or paraphrasing sensitive material just to save time. It may be appropriate to incorporate some of this material into the record so that there can be no question as to its accuracy, but I will leave that to you and the committee.

CHAIR—Thank you very much for that testimony. I will begin by asking you specifically about the Heiner affair and how we came to see the cabinet documents. How was it flushed out? I will go to the transcript of a report on the *Sunday* program on Channel 9. Mr Newnham, a former police commissioner, who was being interviewed, said:

Moving Coyne didn't address the issue at all. It only covered it up.

The reporter then said:

By the time Noel Newnham completed his inquiries the government had changed again. Labor was back in power, but just surviving on the vote of an independent. During a vote of confidence, the fledgling one nation party forced the Premier, Peter Beattie, to table the hitherto secret cabinet documents from 1990. For the very first time the nature of the Goss cabinet's involvement in the shredding emerged. It was clear ministers approved the shredding specifically to deny Coyne his right to the evidence. Ministers were told solicitors were threatening legal action so the destruction of the documents was urgent.

Is that how it happened?

Mr Grundy—Yes, that is my recollection of how it happened. One Nation sought this material in parliament, it was provided and it revealed that there was an urgent need to deal with this matter and that that urgency arose because of solicitors seeking the material.

CHAIR—So if the Beattie government had won in its own right we would never have seen the documents?

Mr Grundy—That is an observation that you can make if you wish; others may make a different observation. I really do not have a view on that. My job is to report, and that is what I attempt to do. I will leave it to others to make an observation about whether Mr Beattie would have done so or not. The fact is that in a closely hung parliament One Nation did have that material tabled.

CHAIR—When did you begin to be interested in the story of all of this?

Mr Grundy—As said at the outset in the Justice Project, when we commenced a newspaper in the journalism school at the university in 1992 we attempted to have a story on this matter in the first edition. The reason for that is quite clear. As a journalist, when you discover that a government has closed down an inquiry and then shredded all the material that inquiry had gathered you are obviously interested in why they might have done that and what was going on there. That was exactly where I started. It took quite some time before we began to uncover some of the things that did go on there—in fact, it took quite a long while, but that is where we began. I guess it was not until the mid-nineties that we began to report on and provide material that we had not been able to get our hands on for some years. It was really from the mid-nineties onwards, but we were interested from 1992, when we started the newspaper.

CHAIR—Do you wish to tender the document you were reading from as a submission?

Mr Grundy—If you wish.

CHAIR—Thank you. If there is no objection, that is accepted as a submission. You have given us stories in that document and there are stories that have come out now about the system of fostering children and the abuse that has been going on. Is it an endemic problem? Are we just seeing the tip of the iceberg?

Mr Grundy—It is an endemic problem, and it is not confined to the state-run institutions. I have been covering abuse in care in church institutions since we at the newspaper started seriously looking into the issue of paedophilia back in 1996 and 1997. We uncovered a great deal of material about Neerkol, Nazareth House and other places. So there is an issue that has spread right throughout society and, of course, it goes on. At the end of the day, the state was always the final entity responsible for what happened in the church institutions as well, but it is certainly not confined to church institutions or state institutions. Sadly, there has just been a great deal of it in all kinds of places.

CHAIR—I read the report of what happened at Neerkol and, quite frankly, it nearly made me throw up. It was such an appalling story, and yet you make the point that the churches could not have done it on their own—they could not have done it without the complicity of state officials.

Mr Grundy—I do say that, yes. You must understand that I have talked to a lot of people; I have talked to scores and scores of people. I have surveyed them in written form and I have spoken for hours and hours to the individuals concerned, and I have come to that conclusion because of what I have been told.

CHAIR—With regard to the CJC, am I right in saying that it used to have a standing reference to investigate paedophilia?

Mr Grundy—The Crime Commission had a standing reference to investigate paedophilia.

CHAIR—And the Crime Commission is now being merged with the CJC to become what?

Mr Grundy—It became the Crime and Misconduct Commission.

CHAIR—Is it true that the standing reference to investigate paedophilia has been removed from the new body?

Mr Grundy—That is my understanding.

CHAIR—Why would they do that?

Mr Grundy—I am not sure. Again, those are the kinds of observations that others can make; I simply prefer to report the facts.

CHAIR—In reporting the facts, did you report upon the member of the Beattie government who is now in jail for paedophilia and who sat in the parliament for quite a considerable period of time?

Mr Grundy—Not particularly, no. We might have made the odd reference to it over the years, but I cannot recall anything specific. My approach to reporting politics is to stay away from parliament, and it always has been. It is good that there are people down there reporting politics in the parliament but there is a great need for people to stay away so that they do not get to know anyone, so I stay away.

CHAIR—So you do not know whether or not the man who was jailed kept his superannuation?

Mr Grundy—No, I do not. However, I imagine he would have had a vote at the odd crucial time when the balance of power was tenuous. I am not sure what conclusions you can draw from that, either.

CHAIR—Simply that he stayed there.

Mr Grundy—Yes.

CHAIR—You said in your submission this morning that, had the John Oxley centre's abuse of children been brought out into the open in 1990, many children who have been abused since then may have been spared. Would you like to elaborate on that?

Mr Grundy—I even suggest that the girl in care that I have written about is one of those children. There was more than one incident involving her, one of which is the subject of considerable documentation on their part. I am not making this up; I am not relying solely on the word of people who have talked to me about it. There is a good deal of documentation on that issue, and that is what I have used.

Mr KERR—Can I please clarify something? As well as this, there are further matters that would have happened to this girl?

Mr Grundy—Yes.

Mr KERR—But it is not in your submission.

Mr Grundy—No, it is not in that.

Mr KERR—I accept that; I was just clarifying it.

Mr Grundy—The reason for that is that the particular incident we cover in some detail is also covered in considerable detail in their documentation. In relation to the other matter, I have not been able to come upon any documentation. It may not exist; for all I know, it may exist. When I am dealing with matters as sensitive as these, unless I have a considerable number of sources or the documentary evidence, or both, then I prefer to press on to get those things. I do not go off on the basis of the odd source or the odd remark.

CHAIR—You spent part of your evidence talking about a 14-year-old girl, who is now obviously 13 years older and taking action for what was done to her in the John Oxley centre. You said she had initiated proceedings and after that she was arrested. Can you go over that?

Mr Grundy—I will go back earlier than that. When the woman who created the Heiner inquiry provided a submission to the Forde inquiry, she mentioned that one of the things which bothered her at the time of setting up the inquiry was the information she had that staff at the centre were using children for their vicarious sexual pleasure—or words to that effect. If you

would like me to get the document, I can. I do not want to use words that somebody will pick on and say I got wrong.

Mr KERR—To assist us and to avoid delaying your evidence, perhaps you could come back to us with that later, with a note to identify it.

Mr Grundy—That is a paraphrasing, or summary, of what she said. That intrigued me for many years, until I was finally told by a person whose identity I shall not reveal unless I am stretched on the rack—and even then I shall not reveal it—and subsequently by other people that there had been an incident in which a girl had been taken into the bush and had come back. His term—and their term—was 'pack rape'.

CHAIR—Would you be prepared to give the name of that person, whose name you clearly do not want to give, in an in camera hearing?

Mr Grundy—I suspect I would give one of them, because I have spoken to him recently. I suspect he would be happy about that, but I would want to check.

CHAIR—I will come back to you on that.

Mr Grundy—In the end, despite the fact that they could not remember the girl's name, apart from her Christian name, I found her. We went back and found the places where these incidents occurred. Strangely, the first place we found was one that, when the documents finally appeared, no-one had ever seen before. It was not mentioned by Forde or by Morris and Howard. When the documents appeared, they referred to a totally different place. She had shut that out, but when we went back there she remembered exactly what had happened. On the basis of the information I had gathered from others and her recollection, she initiated action through a firm of solicitors. So there was one claim lodged under the old legislation in Queensland. Then, when more material came to light, she lodged the second claim.

CHAIR—What was the old legislation?

Mr Grundy—The new legislation might be a better way of looking at it. The new legislation has come into force, as I understand it, because of the great deal of concern in the community about the cost of compensation claims and the whole insurance issue.

CHAIR—Are you saying that the new tort reform, brought in to limit the cost of insurance, impacts on this?

Mr Grundy—Yes, it seems to. Under the new legislation, when the second claim was filled in it involved a considerable questionnaire. It was certainly, according to my information from her lawyers, filed in accordance with the new legislation. As I understand it, that requires that, within six months of a claim being filed, the defendant be advised that this has taken place; otherwise, the matter can just sit in the court records. It transpired that, within a matter of days of the state being advised that the girl had filed a second claim, a warrant for her immediate arrest for a parole breach five years ago was taken out by the Department of Corrective Services. Some weeks later, in circumstances one cannot discuss—because the matter is still before the courts—

the girl came before the court and was immediately returned to jail, based on the existence of that warrant.

CHAIR—So she issues two writs and the first one lapses.

Mr Grundy—No, it has not lapsed.

CHAIR—So the first one is still on foot?

Mr Grundy—As I understand it, yes.

CHAIR—But she brought a second one on new—

Mr Grundy—Based on more information that I had gathered and that we have published—not in as extensive detail as we have in relation to the matter at the Portals, but we are working on it.

CHAIR—The new legislation requires that the defendant, who, in this case, is the Queensland government, I guess—

Mr Grundy—As I understand it, yes. I am not a lawyer.

Mr KERR—That is not a disadvantage.

Mr Grundy—No, I do not consider it to be, either, I have to say.

CHAIR—So the state authorities become generally aware. I wonder precisely whom they would have told?

Mr Grundy—My view is that, when two apparently unrelated incidents intersect, you can call that a coincidence. When three or 300—or, in this case, 3,000—intersect, you do not call that a coincidence any longer. You call it a pattern. For the journalist, that is what we operate in. We operate in patterns and we try and put together the jigsaw or the picture. At the end of the day, when the picture is complete—or even, indeed, incomplete—it is up to others to make out what the picture represents. It is not for us. We go on doing the best we can to make the best possible picture. That is my position. But there is a point where coincidence is no longer, it seems to me, a reasonable explanation. What we are talking about is something else. I guess different people will come to different views about what that something else is.

CHAIR—So she issues the second writ, the government at whatever level is informed and a warrant—

Mr Grundy—Crown law, I understand.

CHAIR—Okay. They find there is a warrant still in existence for her arrest for a breach of parole five years previously?

Mr Grundy—I do not know if that is exactly accurate. What happened was that, after they were informed—a matter of less than three weeks later—the warrant for her arrest was secured on Christmas Eve last year.

Mr KERR—By whom?

Mr Grundy—The warrant was taken out by corrective services. There is a provision in the act that, if you are in breach of parole, you can be returned immediately to prison and you will serve the remainder of your parole period, regardless of how much of that you might have served without causing any impediment to your parole. I think the issue is that she had a couple of weeks to go but did something in New South Wales which brought her to the attention of the authorities there. That is a parole breach.

Mr KERR—But the thing that alerted your suspicion, if I can use a non-legal term, that there was any motive here—

Mr Grundy—I am just reporting the facts, if I can.

Mr KERR—Yes, but you were saying that—

Mr Grundy—Yes, when you put all of these things together.

Mr KERR—I think it is fair to say you are putting to us that you have some suspicion, to use a lay term.

Mr Grundy—Yes, I have some suspicion.

Mr KERR—I am not trying to put words into your mouth.

Mr Grundy—No, you will not.

Mr KERR—I think the thing that you particularly said was that you were suspicious because the breach was something that happened five years ago. So the warrant was issued—

Mr Grundy—Yes, coming out at that time—

Mr KERR—a very long period of time after the event would have come to the notice of the authorities. Is that right?

Mr Grundy—Yes.

CHAIR—Five years, you said?

Mr Grundy—From memory it was five years. It may have been 4½ or something like that. I just cannot recall without going in there, but it was something like five years.

CHAIR—So she is then brought before the court and she is sent straight back?

Mr Grundy—She came before the court on another matter. I do not think we can discuss that matter because it is before the court. Indeed, it was before the court even last week, but it was adjourned until next year. The cynical might even have views about that matter.

CHAIR—But we cannot talk about it because it is before the court.

Mr KERR—All I suppose we can say is that what you have said suggests that a well-informed person of reasonable disposition would form a suspicion in these circumstances. Whether or not that suspicion is valid would ultimately depend on a whole range of inquiries. Sometimes things that appear to be highly improbable actually occur.

Mr Grundy—I accept all of that. My position is simply to tell the people of Queensland what I know—and that is what I have done. If they want to draw an adverse or a favourable conclusion from those things, there may be an adverse or favourable conclusion.

Mr KERR—It conceivable there may be an explanation which has no linkage, but you say it is one that you are suspicious of; that is all.

Mr Grundy—I see this, I see the dates, I see the names and I think to myself: I should tell people.

Mr KERR—Certainly I think that no-one would wish a system to operate on the basis that a blind eye is turned to a breach of parole conditions but is activated in a malicious way to damage who is pursuing legal remedies on the basis of a claim that they were sexually abused when a kid. I would agree with you; nobody would think that the system should operate in that way.

Mr Grundy—Can I make one other observation. I would have thought that the corrective processes are not just to punish people and they are not just to protect society; they are hopefully to rehabilitate people. When you know the history of this girl, which goes right back to sexual abuse at an early age—and from my experience that often leads to a downward spiral—and you suddenly find that this girl for five years has not transgressed against the standards of society, you might say that perhaps she is on the right track and it might be better if she just goes on being on the right track. So why would you want to put her back in jail?

Mr KERR—I understand precisely what you are saying. All I can say is that I damn well hope there is an innocent and proper explanation for this because, if there is not, it is serious.

CHAIR—It is serious anyway.

Mr Grundy—There is an innocent explanation: the fact is that she has breached parole and, therefore, she can go back to jail.

CHAIR—But if this had all been brought out in 1990, all this might not have happened.

Mr Grundy—I am not sure about that, but what I am saying is that, if she breached parole, why didn't they act then? Why did they let her go for five years—or whatever the period was—during which time she behaved herself, and then take action against her? I would have thought that would have the capacity—and, quite frankly, it does have the capacity—to turn her off

again. She gets bitter; she believes that the system is out to get her. She does not trust anyone. She trusts no-one in the system. To the best of my knowledge, I am probably the only person she trusts. She tells me she trusts me.

CHAIR—Can I continue then. Why was she sent to jail for 8½ months?

Mr Grundy—To complete the period of parole. She was given parole. She obviously left custody—

Mr KERR—To complete the period of imprisonment.

Mr Grundy—Yes, to complete the period. She was in prison, she was given parole and she obviously had 8½ months left to serve. Sometime in that 8½ months she did something which brought her to the notice of the authorities. I think that in itself was a parole breach, as I understand the law, but it also meant that she was placed in custody for a certain amount of time and could not fulfil her parole obligations by reporting to the parole officer. So I think she was in a double whammy. But she breached parole, and when you breach parole you can go immediately to jail, without passing go—

Mr KERR—That is an administrative decision, isn't it, not a court decision?

Mr Grundy—I do not know.

Mr KERR—I do not know. I am a Tasmanian; I have no idea how it works.

CHAIR—Should there be a magistrate?

Mr Grundy—I am not a lawyer, and I am from Queensland. But I have the warrant. It is a corrective services warrant. It was signed by a magistrate. I know the date on which it was signed. It was 23 December last year, 19 days after the writ was filed for the second claim.

Mr KERR—Whilst there may be very little that Madam Chair and I are likely to agree on: if somebody takes proceedings to vindicate a claim of sexual abuse whilst a kid in a children's detention centre, I would think that entirely proper. As I said, I would only hope that there is a proper and entirely unconnected explanation, but you said that you have suspicions. Obviously, those suspicions ought to be followed up.

CHAIR—Which jail was she sent to?

Mr Grundy—For the parole breach?

CHAIR—Yes.

Mr Grundy—Brisbane Women's Prison.

CHAIR—Is that maximum security?

Mr Grundy—I am really not sure. I think it has a range of security classifications in it, from being able to work outside in the garden, or whatever, to being under fairly close protection, if it is in your interest to be closely protected.

CHAIR—Would she be under total surveillance? For instance, if you went to visit her—and I do not know whether you did—

Mr Grundy—Yes, I did.

CHAIR—would that result in her having body searches?

Mr Grundy—I do not think so. We had non-contact visits for some time, until the requirements of the rules were met. In other words, I was checked out by the authorities to the point where they were satisfied that I could then have contact visits. So we sat in the chairs along with all the others. This is a custodial institution, so we were obviously under the eye of the authorities—as we should have been.

CHAIR—Would she be videoed when she had showers and that sort of thing?

Mr Grundy—I have no idea.

CHAIR—But she is now out of jail.

Mr Grundy—She is. She is on remand for this matter that I spoke of earlier, until it is addressed in the new year.

CHAIR—With the investigations that you have done not only with government institutions but also the Neerkol institution, which you referred to before, you detail things that happen to children that one really cannot believe.

Mr Grundy—Sorry.

CHAIR—Are many of those children seeking compensation?

Mr Grundy—No, most of them are not, because the statute of limitations applies to civil actions. In the case of the girl, I am not sure that the statute of limitations has been argued, but her case was quite a revealing experience, in that she had put those things out of her mind. Quite frankly, I am not sure whether it was a good thing that I arrived. Sometimes I think it was, and sometimes I think it was not, because all of that has come back—not the least of which is because she has the documents that I refer to. They wrote it all down. As I said in my opening piece and elsewhere in the Justice Project material, what I find staggering about that is that the Criminal Justice Commission excused those people—the manager and the staff. They knew what had happened to the girl the day it happened, before she got back to the centre. She should have been dealt with properly, and she was not.

I want to make this point in light of some of the exchanges that occurred earlier. I have talked to a number of people on the staff out there. My feeling is that it is not just Mr Coyne who might have wanted to sue the staff. There were staff who would have liked to have had the documents

in case they would have preferred to exercise some legal rights. There is a two-way thing going on here—it is not just that Mr Coyne might have wanted to sue. I think that has to be kept in mind, Mr Kerr.

Mr KERR—The problem with the Heiner inquiry was that it was not established with the kind of protection for testimony that such inquiries normally have. So Mr Coyne or other staff were looking to use what was there to pursue their own individual legal action. Mr Coyne was threatening defamation proceedings. That is the assertion I am making; is it your understanding that that was what Mr Coyne was—

Mr Grundy—Perhaps I am a very straight-up-and down, black-and-white guy. My view is that qualified privilege applied in that environment, because that was a properly established inquiry under the act. With respect to the people who gave honest evidence to Mr Heiner, Mr Heiner would have received it in that capacity and they would have given it in a capacity that would have protected them under qualified privilege.

Mr KERR—I understand that that is the view you take, and I am not disputing that. But obviously Mr Coyne and his advisers thought otherwise because they were seeking access to the material for the purpose of their defamation proceedings. That was the proceeding that they were anticipating, wasn't it?

Mr Grundy—There are two sides to that as well, because the Goss government and others, including currently serving politicians, have said they destroyed the documents because people were talking about suing each other. So it is not just that Mr Coyne might have wanted to sue; the decision taken regarding the documents was made because they felt that legal action of a defamation nature was going to occur. Whether they arrived at that purely because of Mr Coyne or because of other matters, I do not know. My view is that qualified privilege protected people.

Mr KERR—I understand that, but we have had a huge 'round the mulberry bush' about what the law is on all this sort of thing, and it is plain that there are differences about what the law was. Mr Coyne's advisers at the time were going to take defamation proceedings—they wanted discovery of those documents. That is what would have happened, and that is the whole point about Mr Lindeberg's case—that shredding these documents prevented Mr Coyne from having access to the documents for his legal purposes. If they were of no use to him, his solicitors would not have been seeking them.

Mr Grundy—That is probably true, but—

Mr KERR—So let us assume—

CHAIR—Let Mr Grundy answer that.

Mr Grundy—I would also make the point that, in those documents, from what I have been told, because of the staff that I talked to, there were serious matters of child abuse. It is unconscionable for anybody to shred such material.

Mr KERR—I understand that, but the materials also still existed in a form that you sighted and which enabled you to undertake this work.

Mr Grundy—All these years later.

CHAIR—But they were hidden for all those years.

Mr KERR—But the source materials were not destroyed, were they?

Mr Grundy—I don't know the extent to which source materials were destroyed.

Mr KERR—You said massive amounts of material were available, from which you drew.

Mr Grundy—But I am also aware—at least it has been claimed to me—that the word used was that Mr Heiner 'subpoenaed'. I do not know that that is exactly what he did, but that is the understanding that staff have had—that Mr Heiner obtained a great deal of material. It was not just the transcripts that went down the shredder; it was material of a documentary nature. I do not know, but I have been told that he subpoenaed a great deal of documentary material that went down the shredder as well. Whatever was in that material we do not know, because I have not come across it.

Mr KERR—Could I take you to your Justice Project report, which I read feeling—as you would expect—a terrible surge of pain for what that young girl must have gone through.

Mr Grundy—The second incident is worse.

Mr KERR—But regarding the one that the matters, presumably, go to—it is difficult to prudently summarise a document of great length—

Mr Grundy—Yes—that is why I did not.

Mr KERR—it seems that there was poor decision making in terms of where to take the group; that there was poor supervision; that, when the group returned, there was failure to follow protocols which the police said should apply to instances where there are suspicions of sexual abuse of a minor; and that the manager was involved from day one and the police were not called until day four, if that is correct. Perhaps I can be crude and put it this way: if that is a true account of what Mr Coyne did—the sorts of systems he put in place and his management—wouldn't it be a sort of understandable response from government to say that it would be perverse to have somebody pursuing defamation action against staff making these allegations, where he could perhaps find himself being enriched by taking proceedings when his management of this centre is at the very core of what was going wrong?

Mr Grundy—My view of that is, of course: let it all hang out.

Mr KERR—I do not dispute that, but I am asking: is that not a possible thought that might spring into the mind of somebody in that situation?

Mr Grundy—It is a possible thought that might spring into the minds of some, and there are other alternatives.

Mr KERR—To be honest, I find it difficult to be a bit high-minded about the idea. If this were motivated by preventing Mr Coyne, who was the manager, from taking defamation proceedings against people who had given testimony against him about the sexual abuse of kids, that is a particularly evil motive. It might be poorly executed, it might be contrary to statute—I do not know—but preventing somebody from enriching themselves by suing whistleblowers—

CHAIR—But he did get rich—he was paid off.

Mr KERR—who are making allegations against their superior is an interesting question.

Mr Grundy—Maybe.

Mr KERR—It is just a different way of seeing it.

Mr Grundy—The question that I ask is: what else have we discovered via that process? It is not just about whether Mr Coyne made the wrong decisions about the girl being raped incident but about what other things happened out there that other people might have done that we ought to have known about. Indeed, people could have been suing themselves for all kinds of things, but we will never know. From what I know, I do not see Mr Coyne as the only problem in that place at all.

Mr KERR—I am not suggesting that he is.

Mr Grundy—The Anne Dutney document took a long while before it hit the surface.

Mr KERR—I am not suggesting he is; I am just trying to get into the space that existed—not what we know now but what people at the time were confronted with, which is a different question. Often what we know now suggests a construct or a framework of thinking that certainly did not exist at the time when these things were occurring.

Mr Grundy—I have no doubt whatsoever, Mr Kerr, that a whole lot of people knew a whole lot of things about what was going on out there and it was in the interests of a whole lot of people for that stuff to go down the shredder.

CHAIR—Mr Grundy, I put to you perhaps what is the other point of view. I have read vast reams of this material. It seems to me that the issue of defamation and Mr Coyne is almost a red herring. It seems to me that the real people that the cabinet would have been fearful of bringing action would be the abused children, and the people who would be most fearful would be the government employees who had done the abusing.

Mr Grundy—Some of them would have been fearful, there is no doubt.

CHAIR—If this material had become public, then the government of the day would have been forced to bring criminal actions against those people to put them away, because they are paedophiles.

Mr Grundy—Yes, that is true.

CHAIR—It seems to me that Mr Coyne is irrelevant. He got his enrichment—his $27,000—which, I understand, was subsequently found to be an illegal payment. But his silence was bought. But these are the people who have gone on to do other things with unblemished records, and perhaps we know where some of them are.

Mr Grundy—I agree.

CHAIR—Let me ask this question. Who would know what is in the documents? The archivist would know what is in the documents, because she was made to read them. Mr Goss, Mr Mackenroth, Mr Dean Wells were all people who must know what is in the documents.

Mr Grundy—I am not sure that you can make that claim.

CHAIR—The Attorney-General should have known what was in the documents.

Mr Grundy—I do not know—

CHAIR—Would Mr Goss's chief of staff have known what is in the documents? There is a whole list of people who might know what is in the documents.

Mr Grundy—Certainly, there are staff members who would know what is in the documents, because they would have taken part in the interviewing process. Thirty-five were interviewed, so they would have an idea of what was in the transcripts.

CHAIR—Therefore, do we know whether anyone has ever asked any questions of these people—for example, the police?

Mr Grundy—I have asked questions of a number of people. I have in some cases been given answers, and in other cases I have not been given answers. Mr Heiner prefers not to talk to the press about it, and that is up to Mr Heiner. But in terms of the staff—

CHAIR—Have the police ever conducted an investigation and asked these people what was in those documents?

Mr Grundy—I cannot answer that. Not that I know of. That it is not in my ken.

CHAIR—To your knowledge, nobody has asked those questions. Let us go then to the Forde inquiry. The Forde inquiry was brought because there was so much concern about child abuse.

Mr Grundy—Yes.

CHAIR—Yet, when the Heiner affair—the question of sexual abuse of children—was raised, Mr Forde said that it was outside his terms of reference.

Mr Grundy—I have a serious problem with that. When public hearings were conducted into matters associated with John Oxley, it was the handcuffing incident that was the thrust of the public hearings. All of the people involved in the escapade were on the stand and were questioned. But what they were not questioned about was what was already on the public record

in the Morris-Howard report, and that was an improper relationship between the member of staff and that girl. How it could be that the counsel assisting and all of the staff at the Forde inquiry did not know or did not seek to pursue what happened to that girl in that place bemuses me to this day. This was a royal commission. My understanding of royal commissions is that we get to the bottom of something come hell or high water. The girl was on the stand. The man was on the stand—

Mr KERR—The girl who was the subject of these proceedings?

Mr Grundy—No, the girl who was handcuffed and was the victim of an improper relationship.

CHAIR—The girl who was handcuffed—

Mr KERR—I understand that, but is the girl who was handcuffed the same girl who—

Mr Grundy—No, a different girl. They were there roughly at the same time. You raised the matter of the Forde inquiry. There is a document referred to in Morris-Howard indicating that a member of staff was recommended for disciplinary action because letters were being exchanged with an inmate. I have copies of some of the letters.

CHAIR—Can we have copies of those?

Mr Grundy—I do not know; I would have to ask the girl. Is that all right? Do you accept that?

CHAIR—That is all right.

Mr Grundy—I understand your position and your authority, but I also have to defend my position for saying the things I have said.

CHAIR—I understand that.

Mr Grundy—I know there are letters, because I have read them. I know from the Morris-Howard report that this exchange of letters had occurred and it was seen to be improper to the point that a man was recommended for disciplinary action, but no disciplinary action was taken against him.

CHAIR—Is that the girl who had the abortion?

Mr Grundy—No.

CHAIR—It is another one?

Mr Grundy—Yes. No disciplinary action was taken against him. Indeed, he was given permanency and an increase in salary. All the people involved in that exercise were on the stand. This document in Morris-Howard predates Forde by some considerable time.

Mr KERR—The Morris-Howard report is the Borbidge inquiry?

Mr Grundy—Yes.

CHAIR—So the document was there but there was no questioning of those witnesses about it?

Mr Grundy—There were no questions asked about that. Maybe that was because they did not have any journalists on the panel with the commissioners. I think that, if a journalist had been there, a journalist would have asked these questions when everyone was on the stand. The questions should have been asked.

CHAIR—Of course they should have been.

Mr Grundy—They should have been asked, and they have never been asked, quite frankly.

CHAIR—They still have not been asked?

Mr Grundy—No.

CHAIR—So the girl who had been the subject of the improper relationship with the youth worker is still damaged, and he has had promotions and continues to work with an unblemished character?

Mr Grundy—No, many of the people who were there have moved on.

CHAIR—Yes, but to somewhere else.

Mr Grundy—Yes.

CHAIR—And with no record against their name.

Mr Grundy—She has moved on. Fortunately, when I last spoke to her and last saw her she seemed to have her life back together again. But when I first saw her she was—like so many of the others I have seen—a really unfortunate mess.

CHAIR—Has any government employee who was a sexual abuser of children at the John Oxley Youth Detention Centre been prosecuted?

Mr Grundy—I do not know how much occurred out there, but I am not aware of any. There are certainly all kinds of allegations made from the Sir Leslie Wilson centre through to John Oxley by various women that I have talked to. In a media report shortly after the story of the girl in the pack rape, one woman said that, because of the circumstances of the girl in the pack rape, she thought it important that she mention she was raped in her cell by a worker and taken on weekend release to his place, and many staff there knew what was happening. She said this in the story; I am not telling you anything new, and I have no evidence for this other than what she said.

What was extraordinary about that was that, when the story appeared, I was contacted, by letter, by the Criminal Justice Commission and asked if I would encourage the girl to come forward—as if, of course, I had not already. Indeed, I had asked her to come forward. The Criminal Justice Commission said in its letter that it had been in touch with the department but that the department could not identify her. Let me tell you that girl's story: she was in Sir Leslie Wilson before she went to John Oxley. She went to John Oxley and was released. She had, I think, five children, who were subsequently put into foster care. Two of them were subsequently raped in foster care, and she complained about it.

What I asked at the time was: how many people in care would fit that description? It would surely be no more than one. The woman, when I subsequently spoke to her at roughly that time, said she had indeed been contacted—and it is written in the Justice Project material—by a senior officer of the department and he said 'You can forget about suing us, because we will never pay.' That is hearsay—I accept that—but for the department to say that it did not know who she was simply extends the bounds of credulity to a point that is way beyond what I would accept. How many possible other people could there be, apart from that one woman? No-one has ever faced the music for that.

CHAIR—To go back to my original proposition that the real beneficiaries of the shredding of the documents were the abusers within the system, the people who knew about it and would have been exposed, the people who would have seen their careers destroyed because they would be seen to be child abusers, paedophiles, and the ministers who had been in charge of those institutions. There is also the fact that the Treasury may have been up for a hell of a lot of money to pay out in compensation. All those people were beneficiaries of those documents being shredded.

Mr Grundy—Yes. There is no doubt in my mind that all of those possibilities exist. Other people would have benefited as well, but certainly you can come to those conclusions. When you see the document that I refer to in the Justice Project 'What they did to a girl in care' you find as you go through the material that as it goes up the line it is *Yes, Minister* all the way, up to the point where the minister is of the view that a girl has been interfered with on a picnic. My understanding of what happened to the girl and what you might call 'to interfere' with the girl are two totally different things. You might say that putting a grubby hand on a girl's bosom would be interfering with her, but sexual assault and rape is not what you would call interference. But that is how it was sold: it was watered down as it went up the line. One day, I suspect, if these documents are ever made public, you will agree with me that there were people who had a vested interest in watering it down, and it was not just the manager.

Mr KERR—But he was one.

Mr Grundy—He was one.

CHAIR—Excuse me I have not finished. I want to go back to the converse of who are the beneficiaries and who are the people who lose out. The people who lose out are the people who are abused, the people who are discounted as human beings. The person who does not lose out is Mr Coyne, who was given $27,000. So, to me, the whole question of the so-called defamation action is, as I said at the beginning, a red herring, and the real question is just what would have been exposed and who would have suffered—

Mr Grundy—And it should have been exposed.

CHAIR—and that has to be exposed.

Mr Grundy—I have been told—it is reported there, it was reported at the time, and the man was interviewed on the radio; you have asked whether he would speak to you, and I will ask him—he said unequivocally that he was questioned about a pack rape, to use his words, incident by Mr Heiner, at Mr Heiner's instigation.

CHAIR—So we know there is evidence there.

Mr Grundy—If we accept what he says. I felt it was obviously significant enough to report, but he said it. I did not put it to him; he said it. He was interviewed by Mr Heiner about this matter, so that would be in the transcripts. Now if we have stuff in the transcripts of that nature and it goes down the shredder, this seems to me to be a bother. I know, from talking to other people, that he was asked and talked about things with Mr Heiner that have been verified in other ways to me, so I have every reason for accepting what he says to be true.

CHAIR—Perhaps we should find some of those other people who have seen those documents.

Mr Grundy—By all means. Feel free.

Mr KERR—The chair has put forward a hypothesis that the defamation issue is marginal or unimportant, but in the early days when this was first being advanced in public debate it was really the only issue that was the subject of any consideration. It was to prevent the use of those documents in defamation proceedings that the Crown Solicitor advised that they be destroyed. The reason it was brought before the Senate—Mr Coyne's submission and his allegations and those of Mr Lindeberg—went to the fact that the destruction of those documents all but extinguished the possibility of defamation proceedings being brought by him against those who gave evidence against him. So it may be that there were other beneficiaries, but it is a matter of recent invention to suggest that that was the motivation. All the contemporary records go to the parties having in mind different issues.

Mr Grundy—But people who were out there would have known that it was a good thing for those documents never to see the light of day.

Mr KERR—As I understand it, in 1996 the Borbidge government commissioned the Morris and Howard inquiry into the shredding of the documents.

Mr Grundy—It was a partial inquiry, remember.

Mr KERR—I do not know.

Mr Grundy—Can I fill you in?

Mr KERR—Yes, of course.

Mr Grundy—Under their terms of reference, Tony Morris QC and Edward Howard were required to investigate the documents—the paper trail. As a lawyer, you would know that that is a partial investigation in terms of investigating any criminal activity. They were not permitted to take statements or to interview anyone.

Mr KERR—Why would the Borbidge government not have facilitated it?

Mr Grundy—I wish I knew, but that is the fact. They investigated the paper trail, and that was about a third of what you might expect from an investigation. That is why we always say, when it is put to us that this matter has been investigated to the nth degree, that the only investigation that ever took place was a partial investigation. Morris and Howard could not take statements and could not interview people, but at the end of that process they recommended a full, public, open inquiry on the basis that there was prima facie evidence of numerous breaches of the criminal law. So to suggest that Morris and Howard investigated this matter and found nothing wrong—

Mr KERR—I am not suggesting that.

Mr Grundy—I accept that you are not, but hundreds in this state have. The myth has grown that this matter has been investigated to the nth degree, because that has been the spin: 'We had Morris and Howard.'

CHAIR—You said that yourself earlier, Duncan.

Mr KERR—No, what I said was that the DPP had subsequently—

CHAIR—No, you said it. We will find it in the transcript.

Mr Grundy—Can I go on, Mr Kerr?

CHAIR—Please do.

Mr KERR—To clarify, before you do, what I did say was—

CHAIR—Let him finish his answer, Duncan. We will check that in the *Hansard* later.

Mr Grundy—Whose turn is it?

CHAIR—Yours.

Mr Grundy—At the end of that exercise of Morris and Howard with those recommendations, the matter was sent to the DPP. The DPP, as you would know, is a prosecuting agency; it is not an investigating agency. One of the things we do not know is what the DPP said on the basis of that report. We have a press release from the Premier which says, 'There is no possibility of any action being taken under certain sections.' There is no mention of what the DPP determined in relation to section 129 of the Criminal Code, even though we understand that that was specifically asked of it in the document that went from Borbidge. We do not know what the DPP said, because we have never seen anything more than a press release from the Premier. So the

final outcome of all of that is still—with great respect to everyone—in limbo. Indeed, it is only in recent times—a matter of a few days—that I have called on the government to release the DPP's advice to the Premier because we would like to know what he said specifically about section 129.

CHAIR—We might ask for it too. We will see if we are any luckier than you.

Mr KERR—I suppose you can say that certain things suggest to you high degrees of improbability. Can I say that a couple of things here seem a bit odd from an outsider's position. The first thing is the idea that the incoming Goss government would in some way want to avoid sheeting home to the outgoing Bjelke-Petersen government, I think it was—

Mr Grundy—No, it was the Cooper government.

Mr KERR—or the Cooper government the responsibility for mismanagement of facilities. That seems to me to be fairly improbable. The second thing is the idea that, when the Borbidge government was in office, it would want to persist with a cover-up. If there was some intersection between the two governments in the past, why would Borbidge want to play a part in that?

I am not suggesting that everything has been inquired out or anything of that kind. What I am saying is that it seems to me that this has had a fair amount of agitation through a series of governments of different complexions and a series of persons holding different offices, as Crown solicitors or with the DPP, all of which are non-political offices. They may have made unwise decisions or decisions that I disagree with. In fact, I think the Senate used the term 'unwise'. It may have been even stronger—I cannot remember the language. But what troubles me is that somehow there can be a lurking criminal conspiracy in here when people have no political axe to grind.

Various different governments of different colours have looked at these things, sometimes well and sometimes badly, presumably. But I cannot see any circumstance where you would suggest that, in some kind of way, you could equate the interests of the Goss government with the interests of the outgoing Cooper government or that you would think Borbidge would have an interest to cover up what the Goss government had done or that the Beattie government would have any interest in continuing a cover-up that the Borbidge government had participated in. When you look at all the people who have advised, you see that there is certainly conflicting advice from outsiders, but almost everything has been done by people who have no political involvement—the DPP, Crown solicitors and what have you. Maybe they have given dopey decisions or advice. But you are not a lawyer. The folk who were doing this in the main were politicians and they make political judgments, but they do that on the basis of advice from their arms-length legal advisors.

Mr Grundy—My view is that the circumstances that would have been known by people in the system at the time—or that we have come to discover that they would have known at the time—are such that it would have been in the interests of people for them not to see the light of day. That is my view.

Mr KERR—If I can just take it one step further, there was an appointment of the former Governor of Queensland—

CHAIR—The Forde inquiry.

Mr KERR—Excuse me for sometimes not knowing all of the details. You raised the question of why counsel assisting did not pursue these matters. It does seem puzzling to me. But no-one, I think, is suggesting—certainly I have no basis to suggest it and I doubt even the chair would suggest it—that Forde and the royal commission somehow were in thrall to the executive government and deliberately excluded these matters. Is that possible?

Mr Grundy—Entirely possible—I accept your point—but what is the explanation? It just bothers and intrigues me. Maybe they did not read Morris and Howard. Maybe they did not know.

Mr KERR—Sometimes people make mistakes and do stupid things. I am not meaning that to be a complete defence of human beings' frailties, but—

Mr Grundy—If you are going to get to the bottom of something, you have got to get to the bottom of it. That is my view.

Mr KERR—But it was a pretty comprehensive report, as I understand it. I read about it. There were headlines in the paper saying that the Forde inquiry had all sorts of recommendations. I have not read the inquiry. I do not know.

Mr Grundy—I have a different view of it, because I have spent many thousands of hours of my life talking to these people. I have talked to them one to one. I have seen the tears.

Mr KERR—Did you give evidence to the Forde inquiry?

Mr Grundy—No.

Mr KERR—Why not?

Mr Grundy—I was out of town, to start with.

Mr KERR—I am sorry, but it is legitimate to ask why, if you knew these things, you did not pass them on to the royal commission.

Mr Grundy—I gave them my documents and they could have asked me, but they did not. I produced a whole lot of magazines called *Bruce Grundy's Inside Queensland*. They were all about child abuse. Indeed, I think they were probably as responsible as anything for the Forde inquiry being set up. They had those documents and they talked, obviously, to the people I talked to. So, in a sense, why talk to me?

Mr KERR—Going back to the Heiner matter, setting aside all the defamation issues and the like, people have said, 'Who would know what's in that?' The obvious person who would know what is in the Heiner report is Heiner.

Mr Grundy—I have asked him.

Mr KERR—I appreciate you have asked him, but—

CHAIR—I think we are going over old ground now.

Mr KERR—I do not see why.

CHAIR—You are trying to find a reason why they were not asked, and Mr Grundy has just given you one.

Mr KERR—I was just asking whether Mr Heiner was asked to provide testimony before the—

CHAIR—And Mr Grundy said he had asked Mr Heiner. Presumably Mr Heiner was not called as a witness before the Forde inquiry. Is that right, Mr Grundy?

Mr Grundy—I cannot be sure.

CHAIR—He did not appear?

Mr Grundy—I am not aware of anything in the record that indicates that he did or that he was asked.

Mr KERR—All I am saying is: is it true that Mr Heiner is still alive, of sound mind and constitution, and available? If there are any issues that are appropriate for further investigation by any person—

Mr Grundy—I think it would be wonderful. My understanding is that the answer to those questions is yes, but I have really no idea.

Mr KERR—I do not know either. I am asking the question. It might be rare for someone actually to ask a question they do not know the answer to in this process, but—

Mr Grundy—I do not know if he is—I am being quite honest and frank that I do not know—but I suspect that he is. I think it would be wonderful if he were to be asked and were to provide answers to these questions.

CHAIR—Just to cap off that area: the royal commission of Commissioner Forde could have called Mr Heiner, Mr Goss, Mr Wells, Mr Mackenroth and the archivist, if it had chosen to do so. It had the power and the royal commissioner to do so.

Mr Grundy—I imagine so.

CHAIR—But it did not.

Mr Grundy—As long as it was within the terms of reference—and I am not in a position to argue with Mrs Forde or anyone else, with great respect.

CHAIR—I am not asking you to. I am just asking you: were they called?

Mr Grundy—Not that I know of.

Dr WASHER—Mr Grundy, your knowledge of the whole affair behind the scenes with the people you have spoken to seems to be fairly good. From what I gather from the Heiner inquiry, when the documents were shredded Mr Coyne really got it as the scapegoat. He may have been guilty, but he was never actually officially charged. I think that is correct. He never went to court and got charged as such.

Mr Grundy—Not over anything that I know of.

Dr WASHER—So, basically, with the shredding of the documents, for whatever reason, he was the person who took almost the total blame, when it would seem that without any doubt there were others who were involved—either with their knowledge and silence or their participation in some of these acts that we find repugnant. It seems that, with subsequent inquiries, the people who did the shredding would have had to have known that, unless there was a high level of gullibility. Frankly, you would have to be stupid not to have some comprehension of this and to accept that one person in a complex of that size would be responsible for all bad happenings, without having a closer look.

Mr Grundy—There is no doubt that there are a range of people involved in things that happened at the John Oxley Youth Detention Centre that should not have been going on. The letter that Madam Chair referred to this morning is an indication of that as well as the other things that we have revealed. So there is a whole range of people who knew what was going on. One can say that they would have been beneficiaries of that information not becoming public. In addition to those up the line, those people might have been seen in a poor light if those things had been occurring out there under their watch.

Dr WASHER—So, at the least, the greatest offence they could have would be stupidity or extreme gullibility. Since then, subsequent inquiries have, apparently, not really looked at this in any manner that is adequate in terms of—

Mr Grundy—Never.

Dr WASHER—Mr Kerr seems surprised, like me, that Heiner and other people are not asked to attend these inquiries.

Mr Grundy—I cannot be sure.

Dr WASHER—So there was a high level of stupidity, naivety or perversity—and I cannot think of any other reason. As a journalist, can you factor any other alternatives into it?

Mr Grundy—I only wish they were. I only wish they had been, because we might have saved ourselves an awful lot of time. I might have saved myself an awful lot of shoe leather—not to

mention telephone calls, motor car tyres and petrol—because we might have been able to get to the bottom of this a good deal sooner. Maybe some of the stuff that I have revealed could be put down to coincidence and not pattern, and I would be happy about that, but at the moment all I see is pattern. Indeed, why were they not asked? All you can come up with is that is just another part of the pattern.

Dr WASHER—I have one last question. From your work and experience in this field—as a non-legal person looking at a judiciary in this state—do you feel that the transparency we would expect from our judiciary, our governments and our organisations has occurred here?

Mr Grundy—Not at all. As I said in my set piece at the outset, we have learned nothing from the Fitzgerald inquiry, because all of the things that he talked about that were wrong can be demonstrated to exist in this case—unless someone can come up with evidence to the contrary. As I said before, what we have here is obfuscation, deceit and deliberate lies. Senior people in the courts lied to me because I wanted to get at the committal of a citizen who was charged under section 129 or section 140. I cannot get that document. I know what was in that document; I was in the court.

CHAIR—Could you elaborate on that? Are you saying you cannot get the transcript of what proceeded in the court?

Mr Grundy—No, I have not been able to, despite repeated exchanges of correspondence—it is detailed in the stories. First of all, I applied under section 154, and I was told they did not have sufficient interest. In addition, I was told that the entirety of proceedings was covered by a suppression order—it was not. I sent a letter detailing all the case law that I could put my hands on about open justice. Then the story was changed. Not only was a full suppression order in force but it was a closed court.

CHAIR—What?

Mr Grundy—Ladies and gentlemen, I was there—not for all of it, but some of my esteemed colleagues from the Justice Project were, and other people were there. I have seen portions of the transcript. There was a closed court for a short time and there was a matter that was the subject of a suppression order, one minor matter—the man's name—but they are telling me that it was a closed court and the entirety of the proceedings were suppressed. The transcript reveals that, at the end of that process, the magistrate said, 'The order is lifted.' You cannot have a suppression order in force if it has been lifted, Mr Kerr.

Mr KERR—I agree.

Mr Grundy—But I was told this. Then I was told—and this is what was so disturbing—that the magistrate agreed that there was a suppression order in force for the whole of the proceedings and that, to the best of his recollection, it was a closed court under section 70. Section 70 says courts should be open to the public unless in the interests of public morality they be closed. Section 71 says something else. I think they got it wrong myself, but there you go. I am not a lawyer.

Mr KERR—Treat me as a complete Sassenach; I come from the south.

Mr Grundy—But, hang on, you took our Criminal Code.

Mr KERR—Yes, that is true.

Mr Grundy—You would know sections 129 and 119.

Mr KERR—No, I do not. We have different numbers.

Mr Grundy—And sections 92, 132 and 140. To get back to the point, I am flabbergasted, but I go through the process.

CHAIR—Are you telling me that the magistrate, having lifted the suppression order, came back and told you it was back in place?

Mr Grundy—No, a court official said that that was what he said. For me to go to the next step, to go to the Ombudsman about the official, we land on the doorstep of somebody who has presumably had input into the CJC's version of section 129.

CHAIR—That is right.

Mr Grundy—How can I honestly expect to be treated if I take up the matter—that is, did the magistrate indeed say what it is claimed he said? If I go to the chief magistrate now, I find someone else who has presumably had input into the CJC's determination of what constitutes section 129 of the Criminal Code. I am not prepared to do that, because, if that is the case and those people had input into that definition or that opinion, how am I ever likely to get to the bottom of what took place in the committal hearing of the citizen? That is what I say.

CHAIR—It is appalling. It is like a story out of Russia before the wall came down.

Mr Grundy—Yes, it is like Kafka. It is Kafkaesque. I say to you: what has changed? Nothing has changed.

CHAIR—Nothing. The irony is that the Goss government was elected on the back of the Fitzgerald report.

Mr Grundy—Yes.

Mr SCIACCA—Madam Chair, I want to place on record that Mr Lindeberg is somebody whom I know very well. That is why I did not ask him any questions. I am aware of his interest—I might say quite sincerely held. I just wanted to put that on the record. I have said that at private meetings.

CHAIR—You have.

Mr SCIACCA—Madam Chair, I appreciate your penchant for looking at political advantage, but the thing that concerns me the most is Mr Kerr's question: what motivation is there for governments of whatever persuasion? I imagine these things have been going on for years—during the Cooper years, the Bjelke-Petersen years, then Goss, Borbidge and Beattie. I am trying

to get a handle on what you are saying, Mr Grundy. Are you suggesting that somewhere along the line a lot of these lies or possible conspiracies have been perpetrated at the department level, at bureaucratic levels? I cannot really see the motivation for governments, of whatever political persuasion, to continue to cover up this sort of thing. I would like you to explain to me what it is that you are actually saying. Do you understand? I am finding it very difficult.

Mr Grundy—I do not know that I can explain it, Mr Sciacca, because it is a mystery to me. But when you get down to the nitty-gritty—that the really outrageous and serious stuff that was going on was child abuse—then maybe that is the common factor.

Mr SCIACCA—Quite, yes.

Mr Grundy—I do not know. I ask myself and have asked myself. But all I do is go on, and all we produce are more and more questions. There are never any answers. There are only more and more questions, and they are disturbing.

Mr SCIACCA—It is disgusting to think that child abuse is going on and nothing has been done about it. I can understand that there may be some people who are perpetrating these incidents who would want to keep it quiet, but I cannot understand that there is any benefit to political parties, of whatever persuasion, to be wanting to keep it like that. Do you understand what I am saying?

Mr Grundy—I do indeed, and I agree up to a point. There have been cases in the past where political parties and governments have wanted to keep things under wraps. You would agree with that.

Mr SCIACCA—Yes, I do.

Mr Grundy—So, on the one hand, we have the case where you can say, 'Why would they do it—it doesn't make any sense?' and, on the other hand, you can say, 'They did it in this case.'

Mr SCIACCA—But there have been three, four or five governments and, of course, you have office of public prosecutions statutory bodies.

Mr Grundy—Maybe—and only maybe—the common factor is the issue of the child, but I do not know.

CHAIR—And who benefits.

Mr Grundy—Yes, and who benefits.

Dr WASHER—Mr Grundy, just to continue the significance of this muck-up where these documents got shredded, the problem also appears that there was a cascade of events that followed that you could relate back, certainly in hindsight, that could have had some preventative possibilities. For example, the shotgun murder that occurred some years later with a relationship back to that time was never—to me as a non-lawyer—looked at properly. It seems perverse.

Mr Grundy—I did ask the police commissioner at the time what he felt about it, because it happened on his watch and he had called for an investigation of it immediately. How can one explain that the man was never investigated? It has been confirmed that there was no substantive—I think they were the words—witness statements or records presented by the police to the coroner undertaken with that witness, who subsequently confessed to the killing. The killing was not investigated, because nothing happened for 10 years until he gave himself up. The killing was not investigated. He was the witness found there with the shotgun and the victim but he was not investigated and was not questioned for the coroner—unless there was someone else with the same name at John Oxley on one of these escapades, but he was not investigated or questioned about that either. I think it is quite remarkable that somebody could be associated with two of the most serious crimes in our Criminal Code—one is murder and the other is rape—and in neither case be investigated or questioned about it. How can I explain this? It is just so bizarre. I cannot explain.

Dr WASHER—There are three separate fallouts from this catastrophe—that is one; the second one is the coincidence that this lass served 8½ months of jail some four-plus years after breaking parole; and a third one is another woman—whom you have given a fairly good description of to be tracked and identified to have a fair and equitable trial and hearing and find the offender—who seems to have got lost too easily.

Mr Grundy—Sadly, there is a very important connection between the offender in her case and what was going on in the centre when the girl got brought back from that escapade to the Lower Portals, but they blanked it all out. It has all been covered up in the FOI process—quite wrongly I believe because, while they can black out people's names, these documents hold slabs of pages that have been blacked out. There is a connection between that person and that event, and what he knew about what happened in that place at that time has been concealed from the girl and certainly from me and I do not know from who else. What he knew was going on in the centre at that time is absolutely critical, but we do not know. All we know is what he said prior to the blackout and post the blackout—things like 'I could see that this was very serious information and I felt it should be passed on to the authorities immediately' and then there is a blackout. That particular individual has some questions to answer.

Dr WASHER—I propose to you that the fallout from this mischief of over a decade ago continues today and cannot be ignored.

Mr Grundy—Yes, I think that is quite true.

CHAIR—Mr Grundy, lots of people are asking the question: what was the benefit to the government of covering it up—that is what is coming out of what people are asking—why would Goss do this? Some people have put up answers to that, which have been put to me. As I said, Goss won office on the back of the Fitzgerald report and Goss's strong backing comes from the AWU, which is very powerful in this state and very powerful in the Labor Party. Some people say there is a concern, if all this had come out—and I do not even know whether this is true—about whether the staff, the officers, who were perpetrating this abuse on children were members of the AWU. Were they? I do not know.

Mr Grundy—I do not know either. I hear stories, rumours and so on, but that is as good as I can do, and I do not think it is quite good enough. My suspicion is that, yes, some of those people belong to that union. But I have not seen their membership records, so I have no idea.

CHAIR—Some people thought that, if AWU members were investigated, members of the Queensland Professional Officers Association might be investigated too. The timetable is so interesting. National Party Minister Nelson was made aware of the physical and sexual assault through the media. She set up the Heiner inquiry in November 1989. Goss won government on 2 December 1989—a very short time later—and immediately proceeded to shut down the Heiner inquiry. Why? Ms Matchett, the head of the Department of Family Services, then sought advice from the Crown Solicitor, Mr O'Shea, as to the legality of the Heiner inquiry. Interesting—presumably, having been involved in setting up the inquiry, they were suddenly concerned about why they had done so. A volley of advice was exchanged between the Crown Solicitor and the department—that is, Matchett—in February 1990. The initial advice on 23 January 1990 was not to shred the documents. The Crown Solicitor's later advice was qualified, stating that the documents could not be destroyed if they were being sought for legal action. The Crown Solicitor also said before the shredding—and this is the qualification—that natural justice demands at the very least that any person who might be affected by this inquiry has the right to be fully informed of what is alleged against him and to be heard in his defence before the person conducting the inquiry. That is the qualified advice. He said that the documents could not be destroyed if they were sought for legal action. There were 13 communications to the government that there was to be legal action.

Mr Grundy—According to Morris and Howard.

CHAIR—There are also a whole heap of other potential litigants: the children. Blind Freddy must have known they were going to be potential litigants. Peter Coyne, through his solicitors, made the advices—and we get the figure 13 from that. The Crown Solicitor then said that the documents could not be given cabinet status. But in March 1990 the cabinet decided to destroy the documents, aware that they were wanted for legal proceedings. When the cabinet advised the state archivist that the documents were to be destroyed, she was not made aware by the cabinet secretary that the Coyne solicitors were seeking the documents. The cabinet was advised that there was no legal impediment to the inquiry continuing, but they closed it down. That goes against the argument that it was not properly constituted. Then we have all the other things that we dealt with this morning. From go to whoa: the Goss government is elected on 2 December 1989, the inquiry is closed down, Mr Coyne is paid off and all the documents are destroyed by March 1990, four months later. Why?

Mr Grundy—I am the wrong person to ask, Madam Chair. I have been asking the same questions.

CHAIR—It seems to me that this issue is not ever going to go away.

Mr Grundy—That is part of the problem, because I have not got to the bottom of it, as I said. I will press on, and I think I have got some supporters here who will join me in that.

CHAIR—I want to recap and perhaps find the answer in who benefits, who loses.

Mr Grundy—I am not sure that I can do any more than I have already done.

CHAIR—I am just going to go through who I think are the winners and the losers, and then I want to ask you about the pastor a bit more.

Mr Grundy—Okay.

Mr KERR—Madam Chair, could we ask questions, rather than have long, rambling accounts of it all? I appreciate what you think, but—

CHAIR—Duncan, I think you are doing a lovely job.

Mr KERR—I am not doing a job at all. I would just honestly appreciate it if we had some questions—

CHAIR—You are doing a lovely job and I am sure your people will be grateful. But my point of view is that I think it is important to see who won and who lost, and the people who won are the people who were not prosecuted because it was covered up and the evidence was destroyed. It is the government who won.

Mr KERR—Madam Chair, we could have a dispute amongst ourselves, but we have opportunities—

CHAIR—Are you telling me they are not winners?

Mr KERR—We have a witness in front of us. If you want to ask questions I would appreciate it, because I actually think that all of us have questions. If you want to use this as your opportunity to get on a soapbox, fine, but I do not think that is the purpose of an inquiry.

CHAIR—I think we all know where we are coming from, Duncan. I think everyone knows where you are coming from; I think other people know where I am coming from.

Mr KERR—I am not coming from anywhere.

CHAIR—I think we know perfectly well where you are coming from.

Mr KERR—You are trying to now put a political spin on something—

CHAIR—Yes, because there is politics in it.

Mr KERR—Why would the Borbidge government want to cover this up?

CHAIR—We have just heard from Mr Grundy that it did not. In fact, could you just recap what that report said? The Borbidge government sent it to the DPP—

Mr KERR—and the DPP recommended against proceedings.

CHAIR—and what did the DPP do?

Mr Grundy—Well, we do not know. We know what Mr Borbidge said in his press release, which took seven months to arrive, and that the outcome of that was that there was no full and public open inquiry, as had been recommended by Morris and Howard, and there were no prosecutions.

Mr KERR—So why would Mr Borbidge not follow the recommendation for a full and open public inquiry?

CHAIR—I do not know, but we have got to find out.

Mr KERR—Why would he be interested in covering it up? Presumably, he was influenced by the—independent—DPP's report.

CHAIR—Then why didn't he release it? They sure do in New South Wales.

Mr KERR—All I am saying, Madam Chair, is that we can do this up and down the table and say 'It is Borbidge' or 'It is Goss' or God knows what else. Can we ask questions of the witness so we can actually use this inquiry for its proper purposes?

CHAIR—Yes, I am asking questions. Mr Borbidge did not destroy any documents—

Mr KERR—Mr Borbidge did not follow a recommendation from—

CHAIR—in breach of section 129 of the Crimes Act.

Mr KERR—If we are talking about a cover-up, the two people that Mr Borbidge commissioned—Mr Morris QC and Mr Howard—recommended a full public inquiry, but this was rejected by Mr Borbidge—

CHAIR—And I want to know why.

Mr KERR—after advice from the DPP. Isn't that correct?

Mr Grundy—It is. All we know is from the press release, that Mr Miller asked the question—which I think is the way to put it—of Mr Borbidge: 'After all this time is there any public interest to be served by pursuing this matter?' That to me is an interesting observation, but it has got nothing to do with the prosecution of the law, because I can tell you that, at the very time that observation was made—is there any point in prosecuting this matter after all these years?—a railway attendant was prosecuted in the courts for something that he had done in the previous 20 years. He was charged with stealing—or receiving—a worthless amount of material. That was in the public interest.

CHAIR—What?

Mr Grundy—That is what happened. It went to the District Court. He could have gained the little bottles of shampoo and hair conditioner and so on through ways quite innocently, but he

was charged in the court. That was a public interest matter. In relation to matters affecting senior bureaucrats and politicians that went back six or seven years Mr Miller asked the question: 'Is it in the public interest to pursue this?' My view of that is, again, it is a problem. Here is a guy who is found to be in possession of things that he might have got legally—and they are not worth anything anyway, according to judge—and he gets charged in the public interest, but these people do not. It is not in the public interest to pursue this anymore. I do not know why.

CHAIR—That is a very good point. We need to find out what the DPP's report said.

Mr Grundy—I would certainly like to publish a story on it.

CHAIR—We will do all we can to get hold of it and see why.

Mr KERR—This is an interesting exercise. Madam Chair, I ask you the question—because you have been making submissions here—why is the decision not to further pursue a matter involving a report by Mr Borbidge, of the kind that has been described by Mr Grundy, not a cover-up, when you are asserting that there is some impropriety in relation to the Carr government?

CHAIR—Unlike you, Duncan, I want to know the answer. I intend to try to find out.

Mr KERR—But you are prepared to impute malpractice to one suit and on another pass without comment.

CHAIR—I did not hear Mr Borbidge go out and say: 'I'm making child abuse the primary thing that I'm about.' I did not hear him attack the Governor-General and seek his dismissal. But I have heard Mr Beattie say it, and I have heard Mr Beattie say that this is a major issue for his government. I do know that people who shredded the documents are still government ministers today. I am prepared to find out precisely what was said to Mr Borbidge.

Mr KERR—But you do know that Mr Borbidge set up an inquiry and then did not follow its recommendations through.

CHAIR—And I know that there was a further inquiry—the Forde inquiry—which refused to look at it. So, Duncan, I am prepared and I intend to find out why.

Mr KERR—All I am saying is that there are serious issues which ought to concern all of us. Plainly, a very serious abuse of children has occurred in this state and other states, which we need to have illuminated.

CHAIR—You are doing a lovely job, but we are going to find out why.

Mr KERR—I resent the way in which you seek to twist this for political advantage.

CHAIR—That is right, Duncan.

Mr KERR—These are serious allegations which deserve a rather more impartial approach than you are giving them.

CHAIR—Absolutely, Duncan. It is all about defamation, quite obviously. I think it is about child abuse, and I am going to try to find out what was in that DPP's report. As there are no more questions, thank you very much, Mr Grundy. If we found more information that we might want to ask you about, would you be happy to come back and talk to us? Also, would you consider giving us evidence on those two issues in camera?

Mr Grundy—Yes. Can you just clarify those two issues?

CHAIR—The letter and the name of the person who gave you information.

Mr Grundy—I may take that up with the secretariat.

Mr KERR—Madam Chair, I would like us to write to Mr Borbidge and ask him to give evidence about why he did not follow up the recommendations of the inquiry.

CHAIR—We will be writing to a whole heap of people as to why, believe me.

Interjector—On both sides of the parliament.

CHAIR—Absolutely. It is kids' lives we are talking about here.

Proceedings suspended from 12.13 p.m. to 12.31 p.m.

MacADAM, Mr Alastair Ian, Senior Lecturer in Law, Law School, Queensland University of Technology

CHAIR—The hearing of the House of Representatives Legal and Constitutional Affairs Committee inquiry into crime in the community is resumed. The committee now welcomes Mr Alastair MacAdam. Do you have any comments to make about the capacity in which you appear today?

Mr MacAdam—I do not purport to appear here to state a QUT position. I am appearing on my own behalf but in the course of my QUT duties. I have some particular expertise—and I hope I am not too immodest—in the area of statutory interpretation. That is how I became involved in this matter some years ago. I would like to point out that I know that Mr Lindeberg, and, recently, Mr Grundy have been very extensively involved in this. I think you would say that I have simply been involved on the fringe of it by giving some advice and some comment on it. I have followed the whole drama with interest, but I have not been the person that has the principal carriage of the matter.

I assume that I do not need to go into the facts of this. The committee is well and truly aware of what occurred in relation to the shredding of the Heiner documents. I became involved in this some years ago when, because I had some expertise in statutory interpretation, I was approached to give some comment and advice in relation to whether or not any offences had potentially been committed in relation to the destruction of the documents. I also had drawn to my attention the advice that had been given by the CJC as to why no offence had been committed. It seemed to me that that and subsequent advice given by the DPP initially to Mr Beanland, the then opposition Attorney-General, was incorrect. When Denver Beanland was the opposition Attorney-General, he wrote to the DPP about this issue. The DPP gave him a rather superficial and, in my view, totally incorrect response. When Denver Beanland became part of the government, as the Attorney-General he asked for a more formal response. That more formal response has not been formally released, but there are stories around what it contains.

I take you back to the first advice that was given by the CJC. The officer there was Michael Barnes, the principal complaints officer. He actually signed the document, but the CJC had briefed a private barrister, Noel Nunan, who is now a Queensland magistrate. Michael Barnes is now the Queensland Coroner. It was briefed out to Noel Nunan. It is a bit unclear, but in the letter it said that if you had any inquiries you should contact Noel Nunan, even though it was signed by Michael Barnes. On the central issue of whether or not the destruction of the documents created any criminal offence, a line was trotted out that no offence had been committed because there were no legal proceedings that had been commenced at the time the documents were destroyed. The argument that was advanced, and repeated a bit more fulsomely by the DPP, related to what I regard as my area of expertise. I do not purport to be a criminal lawyer; I know a bit about criminal law, but you would have to ask others about that. I provided extracts of the relevant documents for the committee. Section 129 says:

Any person who, knowing that any book, document, or other thing of any kind, is or may be required in evidence in a judicial proceeding, wilfully destroys it or renders it illegible or undecipherable or incapable of identification, with intent thereby to prevent it from being used in evidence, is guilty of a misdemeanour, and is liable to imprisonment for 3 years.

The argument is, as I understand it, that that was contained in the Criminal Code of 1899—the so-called Griffith's criminal code—and there has been no material change of wording since it was originally enacted. A year later, the criminal practice rules were promulgated. I have extracted the relevant provisions from the second page of the criminal practice rules, which describe optional forms of indictment for the various offences. You will see in clause 2 the statements of an offence in an indictment may be in such of the forms in the schedule as is applicable to the case. There I have suggested optional form No. 83: destroying evidence. The argument advanced is that that optional form goes to knowing that a certain book—or a ledger, as the case may be—was or might be required in evidence in an action then pending in the Supreme Court. The argument was that, because that uses the words 'action then pending', if you have not commenced the proceedings there can, therefore, be no offence. It seems to me that that argument is spurious, to say the least, because it purports to use a piece of delegated legislation to read down the clear words of section 129.

I have dealt with that issue generally in one of my books. Without going into the detail of it, there was a case in the High Court as far back as 1903—The Great Fingall Consolidated Ltd v. Sheehan (1905) 3 CLR 176—which says that you cannot do that. I assume this committee would well understand the relationships between acts of parliament and the powers of the executive after the event—often the parliament and the executive are in conflict. To have a situation where you could use, after the event, delegated legislation to read down the clear words of the act is just not in any way a tenable argument. But it goes even further than that: the criminal practice rules make it clear that this is an optional form of indictment.

The other matter is that, if this form 83 could be used to read down the clear words, it has got a problem, because it mentions an action then pending in the Supreme Court of Queensland. If the action was pending in the District Court, the industrial court, the land court or the Magistrate's Court and if that could be used to read it down, we would have an absolutely ludicrous result. So it seems to me that the view that was expressed—that this should be used to read down the clear words—was, indeed, ludicrous. I had actually said that, if it were written in a first-year law assignment as reasons for the conclusion, you would end up with a low fail.

We moved on from there. When Denver Beanland became the Attorney-General, he wrote to the DPP, asking for more formal advice. That formal advice has never been released, but there are various rumours around about its contents. I believe a new argument has been added to that argument that I just said has no basis at all. The new argument allegedly relates to section 119 of the Queensland Criminal Code. I have extracted that for you. Section 119, as it stood at the time, read:

119. In this Chapter—

"judicial proceeding" includes any proceeding had or taken in or before any court, tribunal, or person, in which evidence may be taken on oath.

The argument goes, as I understand it, that because 'judicial proceeding' is defined as 'had or taken'—that is, in the past tense—the implication is that the proceedings must be in existence. Yet again—although this is not, I guess, quite as ludicrous as the first argument—there are a number of problems. The first problem is that this definition is an inclusive definition: it says '"judicial proceeding" includes'. There are two basic ways in which the definitions are read, and

I suppose I am telling parliamentarians what they already know: sometimes a definition is said to 'mean' something; sometimes it is said to 'include' something. In circumstances where 'means' is used, that is an exhaustive definition—it means what is in the definition and nothing else; 'includes', the general position, means what is in the definition plus the ordinary meaning of the word. It seems to me that the reason why 'includes' has been added to this definition is just to make clear that it is not restricted to court proceedings; it is restricted to tribunals, to any persons and maybe to commissions of inquiry where evidence can be taken on oath.

I remember that when I first came across this years ago I could not believe it was true, but in some circumstances 'includes' can mean 'means'. There is a famous—well, maybe not famous in the general community but famous among people involved in statutory interpretation—High Court case, YZ Finance Co. Pty Ltd v. Cummings, where in a rare situation, which is clearly not relevant here, sometimes 'includes' can mean 'means' and is then an exhaustive definition. But you can see the arguments that are being advanced.

In the law, nothing is certain. On the first point about using the criminal practice rules to read down the clear words of section 129, I would have thought it was just about as certain as you could get that that is wrong. There also does not seem to be anything in that other point. The other thing that comes to my attention is that that concentrates on section 129 of the act—what about section 132, conspiring to defeat justice, and section 140, attempting to pervert justice? There is the High Court case of The Queen v. Rogerson, which is the case about the infamous—

CHAIR—Roger Rogerson—I remember that.

Mr MacAdam—Yes, he was the New South Wales detective who was the subject of the ABC show *Blue Murder*, I believe. The reference I have is in the *Australian Law Reports*—The Queen v. Rogerson (1992) 107 ALR 225. It is made perfectly clear in that case that there can be conspiracies or attempts to pervert the course of justice even though no legal proceedings have in fact been instituted. So it seems to me that the reasons that are advanced on why nothing wrong has been done are spurious.

That leads to another area that I hope I might be able to help the committee with. Is the committee aware of Mr Lindeberg's one-man petition? It is an 80-page petition. I have read that petition. I do not think that Mr Lindeberg knew what he was writing at the time. But it seems to me that that petition and a little bit of further thought draw us to the conclusion that, in this particular matter, where it is alleged that very senior people have committed moderately serious criminal offences, all the bodies that are established to protect us against the excesses of executive government have failed. Rather than carry out their duty in an independent manner, it seems to me that they have collapsed around the executive government and said that the executive government can do no wrong.

In his petition Mr Lindeberg shows how the bodies that have been established either pre or post the Fitzgerald inquiry—that is, Criminal Justice Commission, crown law, the Crown Solicitor, the Director of Public Prosecutions, the Attorney-General, the Queensland Police Service, the Ombudsman, the information commissioner, the Auditor-General, the State Archivist and the Department of Family Services—have let Queenslanders down. When we go beyond Mr Lindeberg's petition, you can ask other questions about who has let us down. It seems to me that in part the Queensland parliament has let us down, as well as the Speaker of

that parliament, the parliamentary committees and, most particularly, the Parliamentary Criminal Justice Commission and its various chairmen, including the current Premier, Peter Beattie. Former Premier Goss, who was a member of the cabinet and a lawyer, let us down. It also seems that former Premier Borbidge may have let us down in that he started to pursue the matter and then it died.

I have to say that, just as an observation as a general citizen, Premier Beattie seems to have a reputation for being an honest and decent man, but he is found to be wanting here on two grounds. First, for reasons that I just do not quite follow, he seems to want to belittle Mr Lindeberg's petition because it is a one-man petition. I read that petition. It is well argued and there is a lot of serious material in it. The other thing that Premier Beattie constantly says is that the Heiner matter has been investigated to the nth degree and nothing has been found. That is patently untrue. He seems to keep saying it as though it were a religious mantra and, if he says it often enough, people will believe him. I take it that the committee has been referred to the Morris-Howard report.

CHAIR—Yes.

Mr MacAdam—The Morris-Howard report, just by looking at documents, has found that there is a likelihood of some criminal offences having been committed and that others warranted further investigation.

Mr McCLELLAND—Whose job is it, though, to prosecute? Is it Premier Beattie's or the DPP's role? If the politicians started directing the DPP, wouldn't we all have grave concerns about that?

Mr MacAdam—Yes, indeed. There used to be allegations of precisely that occurring in Queensland many years ago. The DPP was set up as an independent body. But the problem seems to be—

CHAIR—To whom are they accountable?

Mr MacAdam—I suppose they are accountable to the government in one sense. They are accountable to the people—

CHAIR—How?

Mr MacAdam—I suppose just by principles of open justice and people seeing what they have done and judging them.

CHAIR—Is that accountability? It is if you are elected.

Mr MacAdam—Yes, that is right. Indeed, it is a matter for that body, but there is the suggestion here—because there is such strong evidence—that all these bodies, who should have done something, had all these spurious reasons for not doing it. Maybe a special prosecutor or someone should have been appointed to look more thoroughly into it. But to return to the DPP, some people say, 'Well, why did the DPP, on the second occasion, not do anything?' My

understanding is that, at that point in time, Beattie was still refusing to allow access to the cabinet documents.

Mr McCLELLAND—Haven't they been tabled now?

Mr MacAdam—Yes.

Mr McCLELLAND—They have all been tabled by the Beattie government?

Mr MacAdam—Yes.

Mr McCLELLAND—When were they tabled?

CHAIR—One Nation forced that.

Mr McCLELLAND—Nonetheless they have been tabled. When was that?

Mr MacAdam—I believe that was after the more comprehensive DPP advice, which initially was requested by the Attorney-General.

Mr McCLELLAND—Roughly what period was that? Someone in the background says, 'About July 1998.' Can you confirm that it was July 1998 or thereabouts?

Mr MacAdam—Yes. If we had the access to that DPP formal advice, we would be able to see for ourselves whether or not what is contained in that advice is actually maintainable. One of the problems that Morris and Howard recognised was that unless they got access to the cabinet documents they were only making assumptions. Since then there have been TV programs where cabinet ministers have actually said that to their knowledge these matters involved serious child abuse.

On this issue, all these people are coming in and saying, 'No, the executive government can do no wrong.' I could never understand why—I have discussed this with my colleagues at QUT—if there was a problem with Heiner, a piece of legislation was not passed retrospectively to validate Mr Heiner's appointment. There would have been no problem. That method is used by governments of all political persuasions—it is very easy to do with one house of parliament when you have the numbers. Initially when we looked back I used to think, 'Well, what is this all about? Is it some intra-union dispute between different factions within the union?' We were all guessing in those days, but now, as a result of the work of Mr Grundy and his team, it appears that what has been covered up is very serious child abuse.

The summation of what I am saying is that spurious reasons have been given by people who ought to have known better. I am conscious that here we are talking basically about the Labor government. I would not like it to be thought that I have come here to give some sort of party political view. Madam Chair, if it were your party, the National Party or indeed any other party, I hope I would be saying exactly the same thing. Maybe that is what this committee needs to be addressing. You are concerned about crime in the community, and we need to address those issues.

I would like to give you a couple of examples of how there seems to be one set of rules for people in important positions and another set of rules for others. I am reminded of a couple of things that have occurred in Queensland, one of which happened a long time ago. A pensioner who did not have much money and was hungry stole a $1.78 bag of rice from Kmart. He was prosecuted in the District Court. More recently, there has been a bit of publicity on national television—and I do not know the precise details of this—about an elderly man at Hervey Bay who caught a few undersized fish to feed to a pelican. He was prosecuted. If you or I overstay our time in a parking spot with a parking meter, we get prosecuted. If you fail to lodge your Egg Marketing Board return on time you get prosecuted.

CHAIR—Or failure to lodge a tax return.

Mr MacAdam—Failure to lodge a tax return.

CHAIR—If you are ordinary you get prosecuted; if you are the Prime Minister you do not.

Mr MacAdam—I am aware of that situation.

CHAIR—I hasten to say that it was Mr Keating, not Mr Howard.

Mr MacAdam—Your committee is looking at crime in the community. It seems to me that the police force or the authorities cannot ultimately prevent crime; it is a community thing as a whole. One of the things you need is confidence in the community. I think it would be correct to say that in Queensland some years ago the community had lost confidence in its police force, but in recent times the police force seems to be regaining that confidence. If we have a situation where these things are allowed to happen, and people who should know better are collapsing around them, what does the community think about it? Maybe you could say this is an issue that only a handful of people are interested in, but it does seem to me to involve serious matters. Those are the general points I wanted to say. Is there anything I could help the committee with further?

CHAIR—Yes, there are. I would like to ask you a bit more about section 129. Firstly, are you aware of a submission made to the Senate inquiry—which I do not seem to be able to get my hands on—by Mr Callinan QC, now Justice Callinan of the High Court? He made a submission to that Senate inquiry in 1995.

Mr MacAdam—I am generally aware of it. This thing has been going on for years. In preparation for my evidence today, I read through quite a significant amount of material. I have not in recent times read that material, but I am generally aware of it. Indeed, I am aware of the views of leading lawyers such as Ian Callinan, the late Robert Greenwood and Tony Morris. I had expressed some of these views before any of this other stuff turned up. I was glad that these much more senior lawyers than me were reported as saying similar sorts of things. I suspect that people thought this was all too difficult. It is alleged that the cabinet—with two, three or four lawyers among them—were not aware that what they were doing was wrong. One of the other things that has emerged is the line that has been trotted out that, if you act on legal advice, particularly crown law legal advice—

CHAIR—You are relieved of responsibility?

Mr MacAdam—Or at least that you should not be prosecuted.

Mr McCLELLAND—Although—in anticipation perhaps of an argument that could have been advanced by whoever was DPP at the time—to succeed in a prosecution would you not have to establish the intent on the part of the minister or ministers, who conceivably may have been prosecuted, to cover up or prevent that information from being available to a court?

CHAIR—Yes, you do, but—

Mr McCLELLAND—As soon as you get into that territory, do you not get into very complex arguments from the DPP regarding cabinet privilege, crown immunity and so forth?

CHAIR—No, he found there was no crown immunity.

Mr McCLELLAND—From the—

CHAIR—From the crown law office.

Mr McCLELLAND—I have not read that.

CHAIR—It is there in your papers.

Mr McCLELLAND—In respect of the documents, that may be so; but in respect of the actual decision-making process I would be surprised, quite frankly, on my understanding of the law, if discussions that occurred at cabinet level were admissible in evidence. As to now prosecuting, I believe that at the very least these are issues of complexity. Having stated that, a constructive way of dealing with this is to say, 'One avenue in considering whether a prosecution should or should not have occurred is to look at what factors were relevant in its consideration'—and yes, I can understand that people would want that to occur. But isn't another equally valid avenue for us to say, 'Should there now be some form of legislation perhaps at a federal level, for instance, under the treaty concerning the rights of the child, to ensure that records relating to allegations of mistreatment of children, let alone sexual abuse, be retained for a period of time to specifically have those sorts of provisions?'

Mr MacAdam—Just as an ordinary citizen, I would say that those sorts of things seem to be valid points. That is not my area of expertise, although I have been involved in a community organisation where cover-up attempts were made and we have been attempting to introduce rules along the lines that you have indicated. Getting back to your other point, the way I read and understand what has been going on is that Morris and Howard and—I understand from rumour—the more formal DPP advice talk exactly about that: access to the cabinet documents. But since then I have seen people who were in cabinet making comments on national television that might be relevant to the whole thing.

Mr KERR—But Mr McClelland's point is that, for example, anything we say in this forum can be reported in the press but no proceedings can ever be brought in relation to it. So it is conceivable that there has been public discussion of those cabinet deliberations. But, if any prosecution is brought, any person against whom the prosecution is brought—and it need not be the government—can raise the issue of privilege and that then will have to be determined.

Hitherto I think it has been held unanimously and inevitably that the actual deliberations of cabinet are not or cannot be the subject of evidence in such circumstances. That may change.

CHAIR—That is not entirely true. In the Midford Paramount case it was precisely a cabinet decision. It was finally shown that the whole of the prosecution brought against those people that destroyed their lives and businesses was based on a cabinet decision which we forced to be tabled in the Senate. That resulted in those people receiving $20 million in compensation many years later; so the existence of cabinet documents is very important. I simply repeat that, on Channel 9's *Sunday Program*, in a segment called 'Queensland's Secret Shame', the statement made by the reporter to former Police Commissioner Mr Noel Newnham was:

During a vote of confidence, the fledgling one nation party forced the Premier, Peter Beattie, to table the hitherto secret cabinet documents from 1990. For the very first time the nature of the Goss cabinet's involvement in the shredding emerged.

I think what is incensing people—and it certainly incenses me—is the fact that a pastor, a man of religion, has now been prosecuted for doing precisely what the Goss cabinet did.

Mr McCLELLAND—Yes. Duncan's point was about their admissibility into evidence. For instance, I know that the Clerk of the Senate gave detailed advice in respect of the 'children overboard' matter and so forth. Quite frankly, overwhelmingly the advice was that those communications would not be admissible as evidence in a court of law as opposed to being tendered in the parliament. Having been tendered in the parliament, as we know, in defamation proceedings anything the subject of parliamentary privilege would not be admissible in evidence. People are entitled to have concerns; there is no doubt about that. But, in terms of pointing the finger at inaction or lack of action and so forth, these are things that no doubt would have played on prosecutors' minds.

Mr MacAdam—Yes; but I don't know that those things were given as reasons.

CHAIR—They were not.

Mr MacAdam—In relation to this area of the admissibility of documents and constitutionality, although I am not a constitutional lawyer I know a little bit about some of it. Parliamentarians might know more about it than I do, so I ask the question: is the cabinet able to waive cabinet privilege?

Mr KERR—No. One cabinet would otherwise waive it to its own advantage and to others' disadvantage.

Mr MacAdam—Yes, but aren't there some conventions in relation to the Premier at the time and how a current Leader of the Opposition can access documents from—

Mr KERR—You can access your own documents.

CHAIR—The Lionel Murphy documents would be a classic case—if we are all old enough to see them when they are released.

Mr KERR—Going back to some of the issues that Mr McClelland raised, I think you have been pretty hard in relation to the advice that has been tendered, calling it 'spurious reasons by people who ought to have known better'. May I take you through a few issues?

Mr MacAdam—Yes.

Mr KERR—In statutory interpretation, isn't it a fundamental principle, when one turns to a criminal statute, that you apply a rule of strict interpretation?

Mr MacAdam—Yes, but that rule is sometimes trotted out as the first port of call.

Mr KERR—But is that not the case?

Mr MacAdam—Yes.

Mr KERR—If we go to section 129, 'destroying evidence', it says:

Any person who, knowing that any book, document, or other thing of any kind, is or may be required in evidence in a judicial proceeding …

On its face, that is capable of two possible meanings. One is in relation to a judicial proceeding which is on foot, and one is a judicial proceeding which is on foot or which may, at some indeterminate future time, be on foot. Is that correct?

Mr MacAdam—Yes.

Mr KERR—If there are two possible constructions of a statute in the criminal law, aren't you then required to adopt that which is most favourable to the accused?

Mr MacAdam—That used to be way it was simplistically given—when I was at law school, I think—but we have the High Court case Beckwith v. The Queen. That rule about criminal statutes and beneficial statutes has now been put in its proper perspective. It is a rule of last resort. When you have two arguments, you have to see which argument is to be adopted. You look at all the rules of interpretation and only then, if you still have that doubt that it is pretty evenly divided which way you go, you decide in favour of the citizen. It is a rule of last resort.

Mr KERR—All right. If you are saying that this applies as a rule of last resort, you have dismissed as lacking credit any reliance on the criminal practice rules 1900.

Mr MacAdam—The point I was making is that the reliance upon the criminal practice rules 1900 is untenable. You just cannot do it.

Mr KERR—You may hold me to be incorrect here, but my understanding—because I do come from a jurisdiction which applied the Griffith code and also picked up the rules—was that the Griffith code was drafted by Sir Samuel Griffith but that he also drafted all the model indictments. Is that not correct?

Mr MacAdam—Yes. I have got a note here about the precise history of that from one of my criminal law colleagues, Bob Sibley, who, as well as being senior lecturer in law at QUT, was in the Special Prosecutor's Office and is now the Public Interest Monitor in Queensland. The note says:

The Criminal Code Act of 1899 was assented to in November 1899. It contained as a schedule 'The Criminal Code'. It was to become law on 1st January 1901. By virtue of s707 the judges of the supreme Court were empowered to make rules prescribing indictments.

Chief Justice Sir Samuel Griffiths and Justices Cooper and Real made the rules as of Wed October 5th 1900: (including the form for s129) …

Mr KERR—Just as a matter of legal history, the man who drafted section 129—the great Samuel Griffith, who actually made the law that still stands largely in place in Queensland and in my own state of Tasmania—also drafted the form of the indictment to be preferred. So one would think that, whilst you make the general point that you do not use the subsequent regulations to construe a statute, in this instance, you actually have the Chief Justice and the other judges of the Queensland court who had written the Criminal Code setting out in form 83 the form of the indictment which you must follow unless there is no form prescribed.

Mr MacAdam—No.

Mr KERR—If you read section 2, it says:

In the case of any offence in respect of which no form is given in the Schedule, the statement shall be, as nearly as may be, in accordance with the analogous Form in the Schedule...

Isn't that right?

Mr MacAdam—Yes.

Mr KERR—And what does the form say? It says, 'Knowing that a certain something be required in evidence in an action then pending'—I accept that it would apply to any court or proceeding and it would pick up whatever is a judicial proceeding; you can substitute the words for a tribunal or what have you—'in some tribunal between one E.F. and one G.H., or between the state or as the case may be, wilfully destroyed', and it continues. Surely in those instances, the DPP's conclusion that it was intended to apply to a judicial proceeding actually on foot is not only arguable but seems to be the view that was taken by Sir Samuel Griffith, who drafted the code itself. I find it difficult to understand why you would say it is a spurious reason by persons who ought to have known better.

CHAIR—I liked the first answer when you said you would fail a first year law student—

Mr MacAdam—I would. That is not addressing the issues. The point you have made is that, yes, Sir Samuel Griffith was a great man. He was one of the founding fathers, a Premier of Queensland, a Chief Justice of Queensland, the first Chief Justice of the High Court, way above anything I would ever have the ability to or aspire to.

Mr KERR—So you just failed him in first year law.

Mr MacAdam—No, I have not failed him in first year law, because he has made these an optional form of indictment—

Mr KERR—But they are not optional.

Mr MacAdam—Yes, the statement—

Mr KERR—Look at the clause; they are not optional.

Mr MacAdam—It states:

The statement of the offence in an indictment may be in such of the Forms—

It says 'may be'.

Mr KERR—No, read it to me.

CHAIR—Maybe you can have a look at Queen v. Rogerson, because I prefer Justices Brennan, Toohey and Mason to Mr Kerr.

Mr KERR—It says:

In the case of any offence in respect of which no form is given in the Schedule, the statement shall be—

Mr MacAdam—He is a great man, terrifically learned about all this. Okay, it has largely stood the test of time in many jurisdictions for over a hundred years, but it is a fundamental misunderstanding of the relationship between the executive and the parliament. The parliament determines what the law is, not the after-the-event determinations of the executive.

Mr KERR—Look, I will go back to section 129. You have conceded to me—

CHAIR—I do not think you have conceded anything, have you?

Mr MacAdam—No. There may be a possible interpretation.

Mr KERR—There are two possible interpretations.

Mr MacAdam—Yes.

Mr KERR—And you accept that there is a principle of statutory interpretation—albeit one which is used when other things do not suggest clearly which way is to be the case—in criminal statutes. You also have an indication of the draftsman's own construction of how it was intended, and there is nothing in that statute that suggests to me in anyway that it was intended to be other than that. What do you point to as a clear manifestation of a different intent in section 129? Is

there anything in the legislative history or the statements that Sir Samuel made—any contemporary writing, any parliamentary statements?

Mr MacAdam—No. But if you look at section 129, you can look at the purpose or object of it—the prevention of the destruction of the documents. If you destroy the documents beforehand, that would make nonsense of it. Let us suppose for a moment that your—

Mr KERR—But let us take this out. You would say that that applies to any judicial proceeding which might possibly be in contemplation. Is that what you say?

Mr MacAdam—Yes.

CHAIR—Perhaps while you are answering you could conclude your answer.

Mr KERR—Doesn't that make for a very vague crime—if I destroy something that may be used at some stage in the future?

Mr MacAdam—But that is not the problem.

CHAIR—This is about child abuse for God's sake, Duncan.

Mr MacAdam—This matter is being further addressed in McCabe and British American Tobacco, and even in the Court of Appeal decision—

Mr KERR—The High Court.

Mr MacAdam—No, the Court of Appeal in Victoria. I understand the High Court did not grant special leave. Is that correct?

Mr KERR—I do not know.

Mr MacAdam—I believe that is the case—but special leave was sought. In the Court of Appeal decision in which British American Tobacco 'won' in the interlocutory proceedings, there was no doubt in the Court of Appeal in confirming the High Court in Rogerson. Getting back to answering your question: I understand—or at least rumour has it—that the DPP in the second opinion recanted from his first erroneous decision and agreed with Tony Morris that that provision could not be used to read it down. I then ask the other question: let's suppose that everything that you have said is correct—why is it not 132 or 140?

Mr KERR—Stop there for a minute. I am not going to go onto hypotheticals before I satisfy myself in relation to the actual. Let us take the case of somebody actually being placed on an indictment. I understand somebody has in Queensland—a pastor or somebody—and that is what you were suggesting. Someone keeps mentioning a pastor.

CHAIR—He is just a nobody actually.

Mr KERR—I do not know who he is.

CHAIR—No, you wouldn't—he would not mix in your circles.

Mr MacAdam—The only knowledge I have of it is from what I have read in the *Courier-Mail*.

Mr KERR—I have no knowledge of it at all.

CHAIR—We heard evidence—and it is very important that we hear this.

Mr KERR—Madam Chair, can you please—

CHAIR—No. We heard evidence—

Mr KERR—Please, Madam Chair—you are being rude. Let me ask questions.

CHAIR—I will let you, but it is important that we make this point. We heard in evidence just before that little break that we had that Mr Grundy had in fact attempted to get the transcript of this trial. He had sat through parts of the trial. He was told that there was a suppression order on it and he was told it was a closed court. None of that was true. He cannot get hold of the transcript of the trial that he sat in and whereupon this man was committed for trial under these precise sections for doing precisely what these people have done. That is very important to have on the record.

Mr KERR—Madam Chair, you are making these assertions, but I do not know that. I have heard somebody say that they were not able to ascertain documents. I do not know what he has been indicted on. I do not know whether it is under section 129. I do not know. I am saying that I understand that it may be the case that somebody has been indicted under section 129.

CHAIR—It is. You heard it was.

Mr KERR—I have not heard that; I have heard that the documents are unavailable. I do not know whether—

CHAIR—The transcript is unavailable.

Mr KERR—I do not know. Ask the witness. Mr Alastair MacAdam, do you know whether someone has been indicted under section 129?

Mr MacAdam—My only knowledge of that is from *Courier-Mail* newspaper reports. I believe a person has been indicted under section 129. I was trying to make some inquiries only this morning to see whether the indictment had been terminated. From the inquiries I have made, it has not.

Mr KERR—If that matter is heard and determined, presumably defence counsel will make the very points that the DPP has relied on hitherto.

Mr MacAdam—Yes.

Mr KERR—Ultimately, the court will then determine whether or not that indictment is good or bad. We will then have an answer to this question. But the claim is that lawyers of good standing and high repute have differed as to the interpretation of section 129, is it not?

Mr MacAdam—Yes, but the point I was making was that the reasons that people associated with the various forms of government had advanced were that they were superficial and patently wrong reasons. You simply cannot use 'after the event' regulations to read down the act. There may conceivably be some other reasons or some other arguments, but that is not what has been advanced—that is, these superficial and spurious reasons of using the 'after the event' regulations or reading down the clear words of the act.

Mr KERR—Mr MacAdam, you disown any experience as a practitioner in criminal law. I do not, and I have actually been a prosecutor. I have prosecuted people. I know that it is the case that, where you prefer a prosecution, you do use the forms that are provided for for the indictments and, if you depart from those, you are usually struck out—you are held not to have preferred in a proper indictment. I do know that the courts apply a principle of strict interpretation and, when two constructions of a term are open, that which is most favourable to the person under trial is preferred. I do know these things. I do know that those principles have been adopted historically and continue to be adopted, and I do not understand why you would say that somebody who makes an argument based on that is putting spurious reasons by people who ought to know better.

CHAIR—Mr MacAdam, just to help Mr Kerr, I will read out this document from the Brisbane Magistrates Court. It says:

In the District Court of Brisbane

THE QUEEN against DOUGLAS ROY ENSBEY

The twenty-first day of June, 2003

Count 1

Section 129

Criminal Code

Form 82

that on divers dates between the thirty-first day of May, 1995 and the first day of July, 1996 at Sandgate and elsewhere in the State of Queensland, **DOUGLAS ROY ENSBEY** knowing that pages from an exercise book might be required in evidence in a judicial proceeding namely, the hearing of a complaint by—

and the names are whited out—

wilfully rendered the pages illegible, with intent to prevent it from being used in evidence

ALTERNATIVELY

Count 2

section 140

Criminal Code

Form 94

that on diverse dates between the thirty-first day of May, 1995 and the first day of July, 1996 at Sandgate and elsewhere in the State of Queensland, **DOUGLAS ROY ENSBEY** attempted to destroy or render illegible notes containing allegations which were written by—

again the names are blanked out—

in connection with a complaint of a sexual nature against—

again the names are blotted out—

to pervert the course of justice

Mr KERR—The first count plainly refers to—and is framed so it fits—the form of indictment referring to the complaint by X.

CHAIR—It then says that Douglas Roy Ensbey, aged 52, pleaded not guilty in the Brisbane Magistrates Court after Magistrate Bevan Manthey found there was sufficient evidence to commit him for trial in the District Court under both sections.

Mr KERR—And presumably accepted that this point is arguable and it will be argued if it does emerge in relation to the second one. But the first count of the indictment picks up and uses—

CHAIR—The point is that an ordinary person gets prosecuted but senior people do not.

Mr KERR—the extended definition of judicial proceeding that is provided for in section 119. The first count of that indictment actually refers to it.

CHAIR—There was no on foot proceeding.

Mr KERR—There was. It refers to a complaint by 'X'.

CHAIR—There was no on foot proceeding.

Mr KERR—It uses the extended definition of judicial proceeding, which is any proceeding which is had or taken before any—

CHAIR—At the time.

Mr KERR—court, tribunal or person in which evidence may be taken on oath. A complaint is a proceeding on which evidence may be taken on oath.

CHAIR—At the time of the destruction of the documents there was no proceeding on foot.

Mr KERR—You are asserting that, but that is not what the indictment charges.

CHAIR—Yes, it does.

Mr KERR—No, it does not. It refers to a document—

CHAIR—1995.

Mr KERR—Madam Chair, let us allow us ourselves to be at least courteous. I do not know what the facts are and I suspect you do not know what the facts are in relation to that matter.

CHAIR—I am sorry; I do.

Mr KERR—Good on you, but you have inferred them by some process of osmosis not available to us. When this matter ultimately survives—if it does—the review that the DPP takes after matters have gone through the Magistrates Court and a formal indictment is preferred in the Supreme Court on that, then these issues will be agitated and a final determination will be made.

CHAIR—No, Duncan, it does not matter. The point is that an ordinary person was charged and cabinet ministers were not for the same thing. It does not matter what happens to the committal after this. It is the way in which people are treated. The opening statement that Mr MacAdam made was about the need to keep respect for the law and the fact that the law is the same for everyone. What we have seen here today is that it is not. We can have a nice time debating the various sections in the way that we are doing, but at the end of the day it does not change the fact that the pastor was charged and the cabinet ministers were not.

Mr KERR—Mr MacAdam came forward to say that a particular view of the law was unsupportable.

Mr MacAdam—That is right.

Mr KERR—He has used strong language, and I, frankly, as a practising barrister with long experience in the criminal jurisdiction, simply disagree with him. I think that that position is supportable. Madam Chair wishes to make a further point that this is not being applied consistently. That is fine. That is an entirely possible point to make. But, at the end of the day, whether or not this pastor or anyone else can be convicted of a matter in which there is not a current judicial proceeding will ultimately be determined on a finding. There is no case, as far as I am aware, which actually determines this, is there?

Mr MacAdam—I think indirectly Rogerson does—

CHAIR—Correct.

Mr MacAdam—if you talk about these types of offences. Obviously people here are from different political groupings, and I do not want to get involved in that. But, Mr Kerr, you make a point about criminal statutes. I have found the passage from Beckwith v. The Queen (1976) 135 Commonwealth Law Reports 569. I do not have a page reference, but Sir Harry Gibbs said—and this has been endorsed by the High Court and no doubt is law:

> The rule formerly accepted, that statutes creating offences are to be strictly construed, has lost much of its importance in modern times. In determining the meaning of a penal statute the ordinary rules of construction must be applied, but if the language of the statute remains ambiguous or doubtful the ambiguity or doubt may be resolved in favour of the subject by refusing to extend the category of criminal offences ... The rule is perhaps one of last resort.

That is the modern method.

Mr KERR—You have accepted that there are two possible constructions. Why wouldn't you then apply it in favour of the subject?

Mr MacAdam—That is what the High Court says you do not do. The High Court says that, just because you can think of two things that are theoretically possible, you do not automatically—

Mr KERR—I have listened to what you have said, but you have conceded that it is capable of two constructions. If it were capable of only one construction, you would give it that construction. But here it is capable of two alternative constructions.

CHAIR—One for the cabinet and one for the pastor.

Mr KERR—If you look at the way in which Sir Samuel Griffith himself obviously regarded the application of this, the construction that has been preferred by the DPP is one also consistent with Sir Samuel's own view.

Mr MacAdam—Yes; but Sir Samuel was not applying himself to everything that could arise because the argument—

Mr KERR—The idea that Sir Samuel Griffith did not apply himself to every possible construction of his code when he was the most extraordinary genius jurist of his time and the outstanding legal scholar—

CHAIR—But we have had a few cases since then.

Mr MacAdam—Why didn't he say in his optional form of indictment 'pending in the Supreme Court of Queensland or other court as the case may be'? He leaves a whole lot of other gaps.

Mr KERR—Because of course you say it is as nearly as may be in accordance with the analogous form. It has been applied in that way in criminal jurisdiction after criminal jurisdiction. I have done it dozens of times, as no doubt anyone in practice has done.

Mr MacAdam—But it does not govern the meaning of the act. That is the point I make. I stick by my view that, if someone used that method to reach a determination as to what section 129 means, that is clearly a wrong method and would result in failure of a first-year law subject; it is the wrong method.

Mr KERR—Yes, of course; you are reversing it around. But if section 129 has a provision which, according to Sir Samuel Griffith, is capable of two constructions referring to extraneous but similarly drafted things, plainly that would be referred to by counsel and be reflected in the decision of the judges. They would give enormous respect to Sir Samuel Griffith's work, any writing that he made contemporaneous with it or any speeches he made in the parliament.

Mr MacAdam—Beforehand, that is certainly true.

CHAIR—In the meantime, Mr Kerr, have a look at the judgment in The Queen v. Rogerson.

Mr MacAdam—Finally, I would say that no-one has ever sought to make any of these other points. People just make spurious points. In effect, what they are saying is that the cabinet can do no wrong.

Mr KERR—Can I just come back to—

CHAIR—Dr Washer has the call now.

Mr KERR—Madam Chair, you run these things at your whim.

CHAIR—I run them in the way I think we can get the information out in an orderly manner. Dr Washer has the call.

Dr WASHER—Mr MacAdam, retrospectively this is now seen as a stuff-up—I do not think anyone is going to deny that so let us accept it as the first point. I suppose the point of this inquiry should be to try and reduce the likelihood of this event happening again. There have been cascading criminal activities and the people responsible have not been brought to task before a court in the way they should have been. Ironically it has turned out that a cover-up has occurred. Whether that has occurred advertently or inadvertently, that is the fact. I do not think anyone would deny the fact that we would like to stop that from occurring. The issue though is that it was brought about because the executive government at the time felt that Magistrate Noel Heiner and the witnesses were not free from statutory immunity with a legal challenge by Mr Coyne. So it was known that there would be a court case.

Mr MacAdam—There might have been a court case, yes.

Dr WASHER—It was highly suspected.

Mr MacAdam—Yes.

Dr WASHER—Apart from the intellectually handicapped, most other people would have assumed that. Is that right?

Mr MacAdam—Yes.

Dr WASHER—Obviously some people have had great difficulty in getting that point. As a result of that, section 129—and obviously Mr Kerr and you understand that section far better than I do—becomes very important. But No. 83, the addendum or add-on component about destroying evidence, would have happened after March 1990. The date of it happening is 1990. Did this get added in after 1990?

Mr MacAdam—No; that was 1900.

Dr WASHER—So attempts were made to clarify it in 1900, which confused it even more—it seems that they confuse it even more in my mind. What should executive government learn from this, regardless of the politics of it all? You have suggested it would have been easier to protect Heiner and the witnesses by legislation than to have interpretation of section 129.

Mr MacAdam—That is right.

Dr WASHER—I think debate today has confirmed that; I think that is a very wise decision.

Mr MacAdam—And you cannot understand why it was not done. I am talking beyond my area of expertise, but you can only speculate the most bizarre reasons why that action was not taken. I am not greatly in favour of retrospective legislation. In America there is a constitutional prohibition on passing what they call ex post facto laws—that is, criminal laws—but we do not have that in Australia. Half the time the reason we need to pass retrospective laws is because some bureaucrat has messed things up. Mostly it is not the politicians; mostly it is a bureaucrat. I think to myself: does it enhance the community's respect for the law that, when something has been stuffed up we say, 'Oh, we'll just go and fix it by passing a piece of retrospective legislation'? But all political parties—the Liberal Party, the Labor Party, The Nationals, the Democrats and One Nation—put their hands up for retrospective legislation. You ask yourself why it wasn't done—

Mr KERR—There are dozens of points through this, aren't there, where you really think to yourself: God, if people had their way over again, they would do things very differently—dozens of times?

Mr MacAdam—Yes.

CHAIR—I go back to the point about whether or not they are cabinet documents. At page 296 of the book *Archives and the Public Good: Accountability and Records in Modern Society*, which is an American publication, there is a paragraph that states:

On 23 February 1990 The Queensland Cabinet Office asked the State Archivist, Leigh McGregor, to give urgent approval for the destruction of the Heiner records, as required by the Libraries and Archives Act 1988. The letter advised the archivist that, during the course of the investigation, questions were raised concerning the possibility of legal action against Mr Heiner and informants. I am advised that the material could not be fairly described as cabinet documents and any claim by the Crown for Crown privilege would therefore have little chance of success in order to maintain confidentiality. The archivist was told that the government's motivation in seeking destruction was to prevent access to 'maintain confidentiality' and so thwart any defamation action that might be taken. This was also spelled out and a note

made by Leigh McGregor of a telephone conversation that she had the same day with Ken Littleboy, Acting Principal Cabinet Officer.

The question raised by that paragraph, particularly to me, is that the cabinet had to seek the consent of the archivist before the documents could be destroyed. This treatise deals particularly with the responsibilities of archivists and whether or not the archivist has responsibility to read every document and make a judgment as to its historical need. In the light of what you say about sections 129, 140 and 132, is the archivist also at risk?

Mr MacAdam—The trouble with the archivist and with a lot of people in offices is how they are appointed; do they have true independence? Are you asking me whether she committed a criminal offence?

CHAIR—Yes.

Mr MacAdam—Again, I know a little bit about criminal law and I know a bit about the code. In Queensland there is this concept of who commits criminal offences: there is the one who actually does it, the procurer, the counsellor and a fourth one—and I did know that one when I was at law school. They are determined as principal offenders in Queensland, and then you have the people who are accessories before and after the fact. Some of my colleagues could enlighten you about that; I just know that sort of superficially. You would have to look at the Archives Act and at whether or not she is exercising the powers.

CHAIR—She has to exercise the power, but it says in the book that she was not informed that Coyne and his lawyers were seeking access at this time. It says, 'After examining the material'—and it is a lot of material that she examined—'she gave her approval on the same day' and 'A decision to carry out the destruction was taken in the cabinet on 5 March 1990 in the full knowledge that Coyne's lawyers were seeking access to the material.'

Mr MacAdam—You have the problem there of whether people are truly independent. A lot of people would think that, if the government was indicating something, maybe you ought to go along with it. I think it is correct to say that we all have bosses of some form or another, but I guess you should be more independent in one sense. But, if you are then independent of the cabinet, where do you end up?

CHAIR—I presume that the archivist is a statutory office.

Mr MacAdam—Yes. I have not followed it closely, but some new legislation deals with the issue. If I looked at that I might be able to offer an opinion, but it is not really something I am on top of. But I guess it brings us to this question of how independent people are. Some other questions arise. For example, there was the Ms Leneen Forde inquiry into family services. We had a situation there where she declined to look into any of this; she said that it was beyond her terms of reference. If Tony Fitzgerald had taken such a narrow view of his terms of reference then the reforms that we have had in Queensland in recent years might never have happened.

CHAIR—I accept the evidence that you gave earlier—and, indeed, I think Mr McClelland alluded to it too—that there does need to be a law that prevents this sort of destruction of information again. I think that is something we can—

Mr MacAdam—That is perfectly clear. I think also the British American Tobacco case makes it perfectly clear.

CHAIR—McCabe.

Mr MacAdam—McCabe. I believe that some of the law societies in the south have already moved on that.

Mr KERR—As I understand what is happening now, all Attorneys around Australia are going to find, or have found, a way of ensuring that it is regarded as a breach of professional conduct resulting in disbarment for a solicitor to destroy files in matters where they have a real apprehension that there is going to be future legal action.

Mr MacAdam—That is the answer.

Mr KERR—That I think is a good and positive outcome.

CHAIR—That is something we will look at. But at the end of the day what we are really talking about here is the destruction of evidence of abuse of children by people who are in authority over them in government-run institutions, and that is a pretty dreadful indictment to have to live with.

Mr MacAdam—I never suspected that in the early days, and it is really only the work of Mr Grundy that has made that apparent.

CHAIR—Thank you very much for being with us.

Proceedings suspended from 1.40 p.m. to 2.48 p.m.

LINDEBERG, Mr Kevin, (Private capacity)

CHAIR—Before I ask Mr Lindeberg, who was sworn this morning, to give a further presentation, I ask that the document tendered by Mr Alastair MacAdam be received into evidence as an exhibit.

Mr KERR—I will move that. I would like to note for the transcript that the document shows that particularised in the complaint on count 1 under section 129 of the Criminal Code is an allegation that the evidence might be required in evidence in a judicial proceeding—namely, the hearing of a complaint by, presumably, a person against somebody else. It particularises a specific proceeding, so the point that was asserted that none was particularised is obviously wrong.

CHAIR—But that is not the difficulty. The documents were shredded in 1995 when there was no legal proceeding on foot.

Mr KERR—But that is what it particularises. That is what is alleged.

CHAIR—It was not 1995.

Mr KERR—That is what is alleged.

Mr Lindeberg—The court case was in 2001, or something like that.

Mr KERR—But it is alleged that on certain days—

CHAIR—But it was not 1995.

Mr KERR—All I am saying is that is what the count particularises.

CHAIR—There is a lot blanked out.

Mr KERR—Only the names of the parties. Let us move on. People can read the document for themselves.

CHAIR—Just so we are clear, there were no legal proceedings on foot at the time of the shredding of the documents, and that is what this whole case is about.

Mr Lindeberg—I listened to the evidence with some degree of interest. I think it is important that I quickly go over a number of points so that the committee is clear on them.

CHAIR—I make the point at this stage that we will aim to conclude between 3.30 and 3.40.

Mr Lindeberg—First of all, there is talk about defamation action. There was an action—and Mr Coyne was party to it, along with the Queensland Teachers Union—seeking a judicial review

to access the Heiner documents pursuant to regulation 65. So the notion about the business of having to shred the documents to prevent people suing each other does not hold water. What we were on about was getting access to the documents. Once Mr Coyne saw the documents, if he wanted to go through defamation proceedings, then let him. The union had no party to those defamation proceedings.

The Heiner documents were central to that judicial review of whether or not regulation 65 of the Public Service Management and Employment Act applied. As it turned out, the crown law advised the government that it in fact did apply. The question may be asked: why did you not issue the writ? The reason we did not issue the writ is that we served them with notice. We said, 'We want the documents pursuant to regulation 65.' As a trade union official, I knew that regulation 65 applied, because of our previous experience. The Crown said, 'We're still thinking about it. Our interim position is that regulation 65 does not apply, but we'll let you know; we'll give you the Crown Solicitor's advice.' We took the Crown at their word, which is relevant to this matter in terms of respecting authority. When the Crown say something, you expect them to be doing the right thing. In the meantime, they shredded the documents. That was the issue: we wanted a judicial review to see whether regulation 65 applied, and that cannot be forgotten in this business.

The other thing that has been raised by my old friend Mr Sciacca—whom I have not met for a long time—is the question of what it is all about. Why would they do this type of thing? The unpleasant thing has to be said. In a unicameral system of government, when a government comes into power you basically have an elected dictatorship. In Queensland in December 1989 there was a turning of the tide from 32 years of conservative government, good or bad, to the Labor Party. It was a government that was likely to be in power for the next 20-odd years. We saw a network of mates at work. There was plainly a plan, before they came to government, for who was going to be axed and who was not going to be axed. Many director-generals were taken out of departments and put in gulags, and one of the persons who was taken out of his job was Mr Coyne.

Mr Coyne was a middle-ranking public servant. Why would you move him? You find documents where the minister, Ms Warner, said, 'We knew about the problems before we got into government.' The question is: what were the problems? Were the problems about abuse of kids at the centre? If they were, and if the government were fair dinkum about the rule of law and looking after kids, Mr Coyne and anybody else who was engaged in abusing kids should have been put before police. That is what should have happened. There is no doubt that certain unions, including the AWU and the state service union, wanted Mr Coyne out of the place, and they were both well connected to the ALP at that point in time.

What I have had to suffer over this 13-year period is putting up with Labor mates—and Labor lawyers, in particular—who have just happened to come into my matter to review it. For instance, the first time it went to the PCJC Mr Beattie was the chair of that, and I said that it had not been investigated properly. He sent it back to the CJC to be looked at. Mr Barnes had carriage of it at the time. He just happens to be—and this has to be said—a Labor lawyer. He just so happened to commission Mr Noel Nunan, who just happened to be an ALP activist, an ALP member and a Labor lawyer. By any degree of ethics, he should not have been within a mile of that case because of his conflict of interest. He did not declare that to me and he was quite happy to take the case. Later on when I challenged that, the CJC said it was like McCarthyism—

because I was daring to question his political allegiance. That is not the issue; the issue is that a decision maker should come to the matter impartially. He did not declare his interest. He started to peddle this nonsense about section 129 of the Criminal Code, which was then pushed on further.

Mr Nunan is now a magistrate in the court. It is a bit unlucky that the Baptist minister did not appear before him—he would have been thrown out. Mr Barnes is now the state coroner. He told the Senate in 1995 that what you do with your documents up to the moment of a writ being served is totally different to what you do afterwards. Does that mean that now, as the state coroner, anybody who has possession and control of documents which may concern the death of a person in care—he looks into children in care—or a person who may have died on the job in government or so on can shred those documents relevant to the death of that person up to the moment of a colonial inquiry commencing? We need to know that. That is the stuff that he peddled to the Senate in 1995.

Mr McCLELLAND—Just on that point, is there cause for legislation to clarify that documents containing allegations of mistreatment, let alone abuse, of children should be retained for a period of time?

Mr Lindeberg—With great respect, I think that is almost a stupid question because you are talking about children being abused in state care.

CHAIR—That was a sensible question, if you do not mind me saying so. Mr McClelland is saying that you have put a very serious question—and one which I think we all realise is very serious. If it is not clear and we are still subject to those wrong interpretations, as you are putting, then maybe we do need some clarification in the legislation.

Mr Lindeberg—I hear what you are saying. Quite frankly, I do not believe—and, of course, I am not a lawyer—that the law in respect of the protection of documents is so unclear as to suggest that you can just shred documents when you know that they detail child abuse and so on.

Mr McCLELLAND—And this is my question to you: do you think it should be clarified in legislation that documents concerning the abuse of children—whether they are held by a church, whether they held by a state school or whether they are held by a child's minder—should be retained for a period of time?

Mr Lindeberg—Yes, I do. But in answering that I do not want it to be thought that there is some acceptance out there that you can—

Mr McCLELLAND—No, I am not asking you to make any acceptance detracting from the primary argument.

Mr Lindeberg—I also want to clarify a point which Madam Chair made in relation to the payment of $27,190. That was paid in February 1991. That was a year after Mr Coyne was seconded. I could not believe it when I was told that as a union official—and I had been sacked at that point. I get emotional about this, and I skip over it. I lost my job over this. Minister Anne Warner, who is appearing here tomorrow, lodged a complaint against me after I found out about the evidence being shredded and I challenged them. I was removed from the case and then I was

sacked. There are other elements there, but I am just telling you that. I was sacked and then another person took over this. We have a document—and I believe it is one of the exhibits—dated 16 January 1991 indicating that the union met with the Director-General of the Department of Family Services and threatened to take the whole saga of the John Oxley Youth Detention Centre to the CJC unless public moneys were paid to Mr Coyne. Let me be clear on that.

CHAIR—Who made the threat?

Mr Lindeberg—The union made the threat to the department that, unless they paid public moneys to Mr Coyne, to which they knew he had no lawful entitlement, they would take the whole saga of the John Oxley Youth Detention Centre to the CJC—not to the Industrial Relations Commission but to the CJC. That is the body that looks into criminality and official misconduct. As far as I am concerned, that is blackmail. Instead of the chief executive saying, 'If you have knowledge of suspected official misconduct, let's go down to the CJC together,' they went into the back room and knocked up the payment of $27,190. Then on top of that, they both entered into a deed of settlement that they would never talk about the events at that centre for the rest of their lives. I believe you have that deed of settlement in evidence. According to Mr Greenwood QC, that is an improper use of taxpayers' money and an improper use of legal expertise in crown law if it had the effect of covering up a known crime of children being abused inside a state-run institution.

Let me also put this on the public record. In relation to intent and all that type of thing about the shredding of the Heiner documents, when you look at Carter's rule, which gives the indication of how the Criminal Code should be applied, these are the elements that have to be present to trigger section 129 of the Criminal Code: knowing that any book, document or other thing is or may be needed in evidence—they knew that; they were on notice to that effect—and wilfully destroying it or rendering it illegible, indecipherable, incapable of identification. They did destroy it, with intent to prevent it being used in evidence. They did that for the specific purpose of preventing it being used in legal action. You have the elements that present there, and we know that now because we have the cabinet document which indicated that they knew solicitors were seeking these documents for a court proceeding but they had not yet served the writ.

Mr McCLELLAND—Was this Mr Coyne's solicitors?

Mr Lindeberg—Yes, Mr Coyne's. I also want to add this, to be made clear publicly on this record, because I have seen things go on inside this Queensland parliament whenever Heiner has come up. I must make specific mention of Mr Schwarten. There are hit people inside the Queensland parliament. Every time Heiner comes up you see them jumping to their feet. One of them is Mr Lucas and another is Mr Schwarten. Mr Schwarten is a former organiser for the teachers union. I went to the department on behalf of the teachers union, not just my union, to seek these documents for a court proceeding, and I got the sack because I happened to find out about it. Yet that gentleman is quite prepared to make fun of me and to make fun of this petition.

You mentioned before the business about the archivist. This is very important. An archivist's discretion as to whether or not he or she keeps documents does not turn on whether documents are of historical value. There are other values that an archivist must take into account before deciding on their destruction—mainly data, information and legal values—so an archivist is

entitled to know. If these documents were being required by a person for court, an archivist would be entitled to know that so they could carry out their function. Had the archivist been told that at the time on 23 February, there is no doubt, as far as I am concerned and other archivists are concerned, that she would not have given the approval to shred those documents. But the archivist did find out about this on 16 May 1999, when Mr Coyne wrote to her about the Heiner documents and wanted to know if they had been shredded, because he told her they were being required for court. Instead of the archivist owning up to the fact that she had authorised their destruction on the basis that no-one wanted them, she contacted the department and they told her to keep her mouth shut. I want to deal quickly with a couple of other points.

Mr McCLELLAND—Do you think these documents exist anywhere else as a copy? There was some suggestion in the papers, for instance, that they were returned to a union. I do not know which union it was.

Mr Lindeberg—To the Queensland state service union—

Mr McCLELLAND—Have any efforts been made to obtain them from there?

Mr Lindeberg—Are we are talking about the copies of the original complaints?

Mr McCLELLAND—Yes.

Mr Lindeberg—No.

Mr McCLELLAND—What is concerning me is that, while the question of the destruction of documents is an issue of significance, the primary allegations as to the mistreatment of these children seem not to be the subject of investigation.

CHAIR—Correct.

Mr Lindeberg—I could develop that as well, but the allegations, to my knowledge, talked about children being abused, handcuffed et cetera.

CHAIR—Before you came, Mr McClelland, I dealt with that question this morning. I asked the question of whether or not any youth worker within that detention centre had ever been charged or convicted of anything. The answer was no.

Mr McCLELLAND—Okay.

CHAIR—These people, because that evidence was destroyed, got off scot-free, and the kids are the ones that pay. One of those girls, the one that says she was raped, is taking action.

Mr McCLELLAND—Okay.

Mr Lindeberg—Can I develop that part about people being chased down and interviewed et cetera a little bit further? I am jumping forward to the time following on from the pack rape, when that matter hit the newspaper. I had gone to the CJC and, as far as I was concerned, the matter was covered up by the CJC and what I deemed to be its network of mates looking after

the system. I then went to the police based on section 129 of the Criminal Code, which says it is a criminal offence to destroy evidence under the criminal code—nothing to do with official misconduct. They referred the matter and I was interviewed by the police three times about this. They understood that my complaint was against certain officers of the CJC and the executive government of Queensland. They did nothing. They then referred the matter back to the CJC—back to the very officers against whom I was making the allegations.

In 1995, when Mr Callinan appeared for me before a Senate inquiry, he gave evidence in relation to the admissions that it was open to conclude section 129 was applicable and, if not, then section 132 going to conspiracy was, and he cited Rogerson et cetera. He made the comment that the CJC's interpretation of judicial proceedings was too serious to ignore—that was his view—and that the shredding was an unthinkable act. I went back to the Police Commissioner and I said, 'I've got evidence from senior counsel, what do you intend to do about it?' They wrote back to me and said, 'The matter's been finished with.'

There was another matter associated with this which flowed out of the Senate Select Committee on Superannuation, which looked into certain allegations about the rorting of my union superannuation fund. When the police came to me in April 1994, I gave them Heiner. So there were two strings to my complaint: Heiner and rorting of the superannuation fund. This letter that they referred to and which said the Heiner matter had been finalised, when I got a copy of that it was about their investigation into the rorting of the QPOA superannuation fund. They closed down their investigation into the shredding of documents against the Goss cabinet by referring to an investigation into the possible rorting of a superannuation fund. I just gave up. That was the level of competency that was going on. Of course, there are other things that went on from there.

In late 2001, through Mr Grundy's efforts, we found out about the pack rape of the girl. What that allowed me to do was to invoke the jurisdiction of the Queensland Crime Commission, because it took the shredding to another level of major crime. Its jurisdiction was to look into major crime, criminal paedophilia and organised crime. I took a major submission to the crime commission on or about 19 December 2001. I met with the Queensland Crime Commissioner, Tim Carmody. We had a discussion. He said to me that he was no longer prepared to be a bystander in this matter and that he was going to try and get a reference up to investigate this matter.

I went there on the basis of believing that rape is a major crime, which it is. I got a letter from the Deputy Crime Commissioner indicating that, in fact, the elements of the pack rape fell into the category of criminal paedophilia for which they had a standing reference. I wrote back to them and said, 'If you've got a standing reference, you don't need a reference from a particular committee—get on and do the job.' They had that standing reference from the time that this matter was published in the *Courier Mail* and they did nothing. They allowed the CJC to go in and investigate it. I have a document, which I believe I gave you—it is a document dated 11 November 1996 written by Mr Michael Barnes—which indicates that the CJC would not come back to the Heiner affair again because its independence had been impugned by the Queensland parliament. I got that document lawfully at the Connolly-Ryan inquiry; it was part of the file that I managed to see. Despite them having that understanding that went up to the CJC, they have returned to this trough again and again and they have found no suspected or official misconduct.

Mr McCLELLAND—This is in respect to the documents as opposed to whether the children were the subject of sexual abuse?

Mr Lindeberg—All of that, and they found nothing.

Mr McCLELLAND—But it seems they have not inquired beyond the documents. They have not looked at the allegations—

CHAIR—No.

Mr Lindeberg—I am suggesting that, as part of this notion of crime in the community, it is critically important that citizens be able to have confidence that law enforcement authorities will come to a matter honestly and impartially, and that they will recognise conflicts of interest et cetera. They have now recognised their own conflict of interest in Heiner, because their integrity has been impugned by the Queensland parliament. Yet it matters not at all, because the people do not know about it. They will keep coming back to this like some honest broker, as if they have clean hands, when they have as much of a vested interest in keeping a lid on this as the Queensland government. That is why my legal advice is that the only way forward on this matter now is by the appointment of a special prosecutor.

In the matter of the Baptist minister—when we are talking about the differences in law and so on—I believe we need a public inquiry so that all the agencies that Mr MacAdam has spoken about can account for their actions. How could they ever find no misconduct in this? I am not suggesting that the cabinet is guilty. All I am suggesting is that it be put before a court of law so that the citizens can make up their mind; that is all I am saying. I am not saying that this gentleman, this Baptist minister, is guilty. But the fact is that when you get sufficient prima facie evidence—as there plainly is here, because the element in Carters is plainly fulfilled—if we are all equal before the law, it should be put before the courts.

There are two things I want to conclude with before I open myself up to questions, if there are any. There is no doubt that the Senate was misled in this matter. Critical documents were withheld from the Senate. The Senate was not given the files that Mr Grundy had about the pack rape of this girl in 1995. Instead, it was given a document about the handcuffing, which had been tampered with. That was the Senate Select Committee on Unresolved Whistleblower Cases, chaired by the then Labor senator Shayne Murphy—

Mr McCLELLAND—I thought the documents were destroyed in about 1990?

Mr Lindeberg—Yes, but it is not just about that; it is about what they were shredding and so on. There are supporting documents which go to what Mr Heiner was looking at. You missed part of the evidence.

Mr McCLELLAND—If there was rape in 1995, that was after the documents were shredded.

Mr Lindeberg—Forgive me, I do not know if I have expressed myself clearly. What I am saying is that, in 1995, the Queensland government provided the infamous document 13, which goes to the handcuffing of children in the yard. In my view, the Queensland government gave that to the Senate to cast aspersions on Mr Coyne—and that matter came before the Heiner

inquiry. We now know that the pack rape came before Mr Heiner as well, because a witness has attested to—

Mr McCLELLAND—By the way, is Mr Heiner still alive?

Mr Lindeberg—Yes, he is. My view is that the Senate was entitled to have that document just as much as it was entitled to have document 13, but it should have had document 13 in its entirety. I further suggest that the Senate has been misled in relation to section 129 of the Criminal Code by the suggestion that you can destroy documents up to the moment of a writ being served. I think it should not be allowed to stay on the Senate record that shredding documents, known to be required for court, is an exercise in poor judgment, when one of our Australian citizens is going down before the courts. If this committee believes that the evidence it has heard today sufficiently gives rise to concern, I would wish that it make an interim report of some sort expressing those concerns.

CHAIR—With respect, that is a decision for us to make.

Mr Lindeberg—I am just putting that as an application to you.

CHAIR—Thank you, but that is not necessary.

Mr Lindeberg—There has been much talk about the DPP's advice to the Borbidge government, and why Mr Borbidge did not do something about it. In my view, what the Borbidge government did in relation to seeking advice from the DPP was misconceived; they should have had their inquiry. But it was a government that, it was alleged, did inquiry after inquiry after inquiry, and around that time they had the infamous Connolly-Ryan inquiry going on.

CHAIR—What was the Connolly-Ryan inquiry?

Mr Lindeberg—The Connolly-Ryan inquiry was to look into the effectiveness of the CJC. It was a committee that went for some considerable time and was shut down by a Supreme Court Justice on the basis of bias by one of the commissioners. Justice Thomas is the gentleman who gave advice that section 129 was never open to any other interpretation—that under section 129 you could not destroy documents up to the moment of a writ being served.

CHAIR—Okay.

Mr Lindeberg—That advice, I am aware, repeats the business that you can destroy documents up to the moment of a writ being served. It also places great emphasis on what cabinet knew. We know what cabinet knew. Cabinet knew the documents were required for court. It did not make any view about an inquiry other than it said that there is a great deal of time and effort being expended on it and maybe it is time to put it all to bed. Here we are six years later and the issue is as alive as it has ever been or more so. That is about all I wanted to say.

CHAIR—Has anyone any additional questions?

Mr KERR—I want to go through some of the early stages because the substance of what you put to us this afternoon was that, as well as Mr Coyne's request for the documents, there were other persons who were seeking them. But your written submissions to us, the submissions to the Senate and, to the best of my knowledge, every piece of paper that has thus far emerged have all focused on requests that Mr Coyne's solicitors have made. Is that right?

Mr Lindeberg—I do not know whether that is a fair reading, but certainly it focuses on Mr Coyne's seeking of these documents.

Mr KERR—In paragraph 3.5 of your submission you say:

Both The Queensland Cabinet and Crown Solicitor ***knew*** that once Mr Coyne's anticipated writ was filed/served, the records in their possession and control would be discoverable ...

You take us through various matters. You take us to what you call 'inculpatory public admissions' and to Mr Barnes knowing at paragraphs 5.3 and 5.4. At paragraph 5.4 you indicate that Mr Coyne really wanted the documents of the defamation proceedings by him against those who gave evidence against him. Your submission takes us to Senator Abetz summarising the matters at paragraph 5.7 saying:

I am trying to get a handle on this. What seems to have occurred is that, with the potential threat of a defamation suit, cabinet decided to shred the documents because they were of no historical value, knowing full well that it may be the material evidence on which a potential litigant would rely to pursue or prosecute his case.

That is the defamation case. You take us to a reference to the cabinet decision at 6.1 which says:

Speedy resolution of the matter will benefit all concerned and avert possible industrial action—

Presumably by those who thought they were going to be sued and not feeling so happy about that.

Mr Lindeberg—Not necessarily.

Mr KERR—The reference continued:

Representations have been received from a solicitor representing certain staff members ... These representations have sought production of the material ... no formal legal action seeking production of the material has been instigated.

So all of this was about the anticipation that there may be some legal action regarding defamation. In the light of what we all know now, this seems to be a most unfortunate and tragic set of events where people's minds ought to have been focused on other issues but they appear at the time to have been focused on that. Can you point to any contemporaneous point or representations which suggest there were any other considerations in mind?

Mr Lindeberg—I just lost the last bit of that. **Mr KERR**—I mean things that you said at the time, things that Mr Coyne said at the time, things that his solicitors said, things that any advisers or—

Mr Lindeberg—Things that the Teachers Union said at the time?

Mr KERR—Yes, anything.

Mr Lindeberg—I have letters from the Teachers Union saying that they will now contemplate a legal action. I went to visit—

Mr McCLELLAND—No, industrial action.

Mr Lindeberg—Industrial action.

Mr KERR—Yes.

Mr Lindeberg—But that is a whole point I am making.

Mr McCLELLAND—This is the point. There is a significant difference between anticipation of defamation proceedings on the one hand and industrial action, industrial court proceedings and a criminal prosecution on the other. We would all share the view that these documents should not have been destroyed.

CHAIR—But that is not the point.

Mr McCLELLAND—But in terms of the application of this section, you are imputing against ministers of the Crown an intention to circumvent or obstruct a criminal prosecution, and there is no evidence—

Mr Lindeberg—A criminal prosecution?

Mr McCLELLAND—Yes, there is no evidence that anyone has suggested.

CHAIR—Nobody is saying that.

Mr Lindeberg—With great respect, I never said that.

CHAIR—The only thing that had to be, I think, was any form of legal case; it does not matter.

Mr KERR—Well, proceedings against child abuse would be credible.

CHAIR—To me, the defamation is irrelevant; it is a red herring. It must have been as obvious as the nose on your face that the potential litigants were the kids who were abused and that would cost the government a fortune. It would also sully the reputations of the youth workers who abused the children. They are the winners. They have got off scot-free. The kids are destroyed and the workers get off scot-free.

Mr KERR—I am just asking the witness to say whether there is anything in the contemporaneous records that averted to those kinds of considerations, because everything on the record—including the written submissions that we have recently received, everything put to

the Senate and everything that I understand emerged from the various reports and the ultimate release of the cabinet submission—goes to the anticipation that Mr Coyne in particular, and possibly other staff members, was looking at this for the purpose of—

CHAIR—But it does not matter.

Mr KERR—defamation proceedings.

CHAIR—That is enough to satisfy section 129.

Mr Lindeberg—That is right.

CHAIR—That is all that matters. It does not matter what the action is. The fact is that they had 13 points of communication telling him that there were going to be legal proceedings.

Mr KERR—I am just asking because there is a difference. If that is the contemporaneous record, all the rest of the material—and I think it is much more serious were it properly to be established that people were seeking to cover up evidence of child sexual abuse—

CHAIR—And using the defamation as an—

Mr KERR—That seems to me to be a much more serious matter and one which goes to—

CHAIR—excuse.

Mr KERR—Madam Chair, I am just asking whether there is anything in the contemporaneous record that would suggest an alternative motive to that which everybody has put hitherto.

Mr Lindeberg—Can I answer—

CHAIR—To protect the workers who abused the children.

Mr Lindeberg—We are talking about a cover-up. They were never open with me at any stage. Only because I have hung in there for so long, and because of the wonderful efforts of Mr Grundy, have we now got documents which they always held. As to whether Mr Coyne was speaking the truth all the time, I do not want to go into that particular—

Mr McCLELLAND—You are not suggesting that he was an angel or ran this place efficiently?

Mr Lindeberg—No, I am not saying that. I am saying that when Mr Grundy and I learnt about the pack rape, that was a shock to us. It came out gradually. We learned about the handcuffing of kids et cetera, and that came out in documents 13 and that brought about the Forde inquiry.

Mr McCLELLAND—Let us look at Mr Coyne's motives. He is saying, 'I'm going to commence defamation proceedings because I don't want these people making allegations that I mishandled my responsibilities as administrator of this home.'

Mr Lindeberg—That is one of the things. But the other action, to which the union was prepared to be party, was to get access to these documents pursuant to regulation 65. That was always the problem. The documents created by Mr Heiner were public documents. The original advice on 23 January when the Crown Solicitor said, 'You can shred these documents provided no legal action has commenced,' was predicated on the fact that he believed that the Heiner documents belonged to Mr Heiner.

CHAIR—That is right.

Mr Lindeberg—The second advice on 16 February said that that was misconceived and that the documents were always in the ownership of the Crown. That triggered regulation 65, which meant that Mr Coyne would have had a right to access them. So they played the game: 'We're still getting advice.'

Mr McCLELLAND—You say they were playing the game—

Mr Lindeberg—The game of delay.

Mr McCLELLAND—The advice was either wrong or right as to whether section 129 was activated in anticipation of legal proceedings. I do not know enough about the area to determine that issue. It is clearly ambiguous, and that is why I have advocated clarifying it in legislation. Having received that advice, it is going a step further to impugn improper motives in cabinet ministers relying on that advice. We would all say that there should not have been that decision to destroy those documents. That is one conclusion we can freely arrive at. But to then impute improper motives on those who voted in cabinet to destroy documents is going a step further than the material justifies.

Mr Lindeberg—Let me answer that. In this whole process the question of good motives is perhaps judged by the openness and transparency of the person on the other side. In this matter we were being told that they were still waiting for Crown law advice and they had the advice which they were allegedly acting on and they shredded the documents. If they were supposed to be the model litigant, as the Crown, they should have said, 'Look, we've got advice here. We can shred these documents up to the moment of a writ being served,' which would have allowed us to get an injunction. We were sitting out here—

Mr McCLELLAND—Who is 'us'?

Mr Lindeberg—The unions and Mr Coyne.

Mr McCLELLAND—Were you part of Mr Coyne's advocacy team at that stage?

Mr Lindeberg—I was the trade union official for Mr Coyne.

Mr McCLELLAND—Were you recommending that he commence defamation proceedings against those people who made allegations against him?

Mr Lindeberg—No, I was not. My sole interest was not defamation; my sole interest was the upholding of the Public Service Management and Employment Act. Mr Coyne had a right to access those documents under regulation 65. More particularly, he had a right to test that in a court without interference. What happened was that the Crown destroyed the documents.

Mr KERR—That still does not answer Mr McClelland's question, though. It is a mixed question.

CHAIR—I think Mr McClelland asked: were you recommending to Mr Coyne that he sue for defamation?

Mr Lindeberg—No.

CHAIR—He wanted access to the documents.

Mr Lindeberg—My belief is that Mr Coyne wanted the documents to see what people were saying about him.

Mr McCLELLAND—So that he could sue them.

Mr Lindeberg—Not necessarily. He might not have wanted to go to court.

Mr KERR—But he gave evidence that he wanted to use it for that purpose.

Mr Lindeberg—Okay. I am not a lawyer.

Mr KERR—You have been pressing this matter for a long time, saying that it is an abuse—

CHAIR—We are not getting back onto that argument.

Mr KERR—and relying on the fact that Mr Coyne was seeking them for future legal proceedings.

CHAIR—Yes, and that triggers 129.

Mr KERR—Question: which legal proceedings? Answer: defamation proceedings.

Mr Lindeberg—You can get a judicial review on regulation 65.

CHAIR—Which would also trigger 129.

Mr Lindeberg—Precisely.

Mr KERR—But he said he wanted it for defamation proceedings. He gave evidence publicly that he wanted it for defamation proceedings.

Mr Lindeberg—That is okay. If he wants to sue for defamation, let him do it.

CHAIR—Duncan, it is a red herring.

Mr KERR—It is not; that is the point.

CHAIR—The evidence that has been destroyed was about the abuse of children—

Mr KERR—It is not a red herring.

CHAIR—and the defamation action triggers 129.

Mr KERR—It is not a red herring.

CHAIR—If we had dealt with it, those kids might have better lives today. I want to read to you what has been written in America about us in Australia.

Mr KERR—No, you do not.

CHAIR—Yes, I do.

Mr KERR—Madam Chair, I move that you do not.

CHAIR—I am sorry, I do not accept your motion.

Mr KERR—Interesting.

CHAIR—This is what it says.

Mr KERR—Madam Chair, I move dissent from your ruling.

CHAIR—*Archives and the Public Good*—

Mr KERR—Madam Chair, I move dissent from your ruling.

CHAIR—Is Mr Kerr a member of the subcommittee? No. You are not a member of the subcommittee.

Mr KERR—How interesting, Madam Chair.

CHAIR—What I am interested in looking at is *Archives and the Public Good: Accountability and Records in Modern Society*, which says:

Was the Goss government, which decided to terminate the Heiner inquiry and destroy the records, acting under Labor union pressure to protect the interests of union members? Coyne belonged to one union, The Queensland Professional Officers Association, and his complaining staff to another, The Queensland State Service Union. When the government's actions were subsequently called into question, the Attorney-General stated: 'The Goss government's sole motivation was to protect Noel Heiner.'

Mr KERR—Madam Chair, I understand that you are doing this. Anyone can read an article—

CHAIR—It is not an article.

Mr KERR—but on what possible basis can you read aloud a document in a journal? People can read that. If you want to make a submission, make it.

Mr McCLELLAND—I am happy for it to be tabled.

Mr KERR—Table it.

CHAIR—I just want to read this last paragraph because it provides motive.

Mr McCLELLAND—No, it is the author's view of what the motive was.

CHAIR—This is a publication on archivists' practices, entitled *Archives and the Public Good: Accountability and Records in Modern Society*. It continues:

The Heiner affair has become so—

Mr KERR—Let us ask the witness to read it, if he wishes to adopt it.

CHAIR—I am happy for him to read it.

Mr KERR—Madam Chair, you reading passages from a book is the most absurd process in a committee hearing that I have ever been party to. We are here to examine a witness. You have asked me to cease examining this witness to allow for other matters and now you are reading an extract out of a book.

CHAIR—I simply said I wanted to go to this as part of the motive. You have all been asking what was the reason.

Mr KERR—Allow Mr Lindeberg, if he wishes to, to read it—

CHAIR—I am happy for Mr Lindeberg to read it.

Mr KERR—or find another witness who wishes to table it but do not subject us to this.

Mr McCLELLAND—I should clarify, Madam Chair, that my questions were going to Mr Coyne's motives in requiring the documentation: whether it was for a civil purpose—namely, defamation—or some proceeding under the Public Service Act, perhaps in respect of his moving

sideways or demotion or whatever it may have been. Quite frankly, his concerns do not appear to have been to get to the bottom of the allegations regarding the mistreatment of children. It seems to me that he was offended that these allegations had been made against him. In that context, you were assisting Mr Coyne—

Mr Lindeberg—With great respect, I knew nothing about the child abuse. I was outside the system. I was the trade union official. I did not know there was abuse of children going on inside that institution.

Mr McCLELLAND—So that was not your concern at the time. Child abuse was not your concern in requiring those documents?

Mr Lindeberg—My history as a trade union official is about child abuse but not in—

Mr McCLELLAND—But it was not your concern in this case if you did not know about the child abuse, as you say, and you had not been informed—

Mr KERR—Is it possible that the other people that you are making allegations about might not have known about it. You do not know about it; and yet you are the union representative, you are the official representing Mr Coyne—

CHAIR—He did not have the documents.

Mr KERR—against massive allegations which have been made. You know that he wishes to take defamation proceedings. You assist him in pursuing those—

CHAIR—But he has not seen the documents.

Mr KERR—and yet you say, 'I knew nothing.' Why should you not extend the same assumption that others may have known nothing about that—

CHAIR—Because they had the documents!

Mr KERR—such as the ministers and the like?

CHAIR—Because they had the documents.

Mr KERR—Who asserts that—

Mr Lindeberg—With great respect, I am outside the system; I am not inside the system. That is the point. That is the cover-up. We have the documents. They are in there. And we had the former minister, Anne Warner, in the newspaper, which I knew about only just before the Forde inquiry, before the *Sunday* program, and Ms Warner was saying that she knew about the kids being handcuffed to fences. I did not know about that. I am not supposed to know everything. But what I do know is that my member had a right under regulation 65 to see those documents. That was his right.

Mr McCLELLAND—Why?

Mr Lindeberg—Because that was his right.

Mr McCLELLAND—For what purpose?

Mr Lindeberg—That is up to him.

Mr McCLELLAND—Are you telling us that you did not have a discussion with him as to what his purpose was in obtaining the documentation?

Mr Lindeberg—What did it have to do with me?

Mr McCLELLAND—Everything.

Mr KERR—It does.

CHAIR—Hang on!

Mr KERR—Because this is being set up—

CHAIR—Hang on! Wait a minute.

Mr Lindeberg—What nonsense!

CHAIR—The fact of the matter is that the Crown Solicitor—

Mr KERR—So you can be blind to the motive of protecting someone who is guilty of child abuse and then accuse others of exactly the same offence.

Mr Lindeberg—With great respect, I did not know he had anything to do with child abuse at the time.

Mr KERR—But you know now. You referred to those documents.

Mr Lindeberg—That is the point of the matter. If it had not been for me staying the course, that matter would not have been known publicly, but Mr Coyne always knew about it, as did the public servants—

CHAIR—It became known when One Nation forced the documents to be tabled.

Mr McCLELLAND—I want to put it to you, because it is something that may be drawn as an inference: are you suggesting that Mr Coyne did not discuss with you the purpose for which he wanted the documents—and that purpose was essentially for him to issue a stop writ against people making allegations that he was involved in or failed to stem child abuse?

Mr Lindeberg—I did not know that last thing on child abuse. I was mindful of the fact that Mr Coyne wanted to sue for defamation. But that is his right—

Mr McCLELLAND—And what was going to be the subject matter of the defamation? What were going to be the allegations against him?

Mr Lindeberg—There was an allegation about him having broken into a house, which was later refuted, but he mentioned nothing to me about child abuse. If you are implying that I had some knowledge about child abuse and I sat on that, I take that as an insult. I did not know that.

Mr McCLELLAND—You knew that allegations were being made against Mr Coyne that child abuse occurred under his management—

CHAIR—No.

Mr Lindeberg—No, I did not say that. I did not know that.

Mr McCLELLAND—Did you know that was the subject matter of allegations? I am asking you that question.

Mr Lindeberg—No, I did not know.

Mr McCLELLAND—You did not know at that time that allegations concerning Mr Coyne's management of a centre in which child abuse was occurring were being made and that Mr Coyne was seeking to commence defamation proceedings as against that? I might say that you are under oath here.

Mr Lindeberg—I understand that, and I said no. I will go through the whole history of how I found out about the child abuse, if you want, but I did not know that.

CHAIR—Robert, I think you are disadvantaged in that you were not here for this morning's evidence when all this came out quite clearly and the sequence of events came out very clearly, and that was all given under oath. You did not mean to suggest that the witness was lying, did you?

Mr McCLELLAND—It seems to me that, if I could put it to you—

CHAIR—You did not mean to suggest, that did you? Or are you suggesting that?

Mr McCLELLAND—I am seeking clarification. It seems to me inconceivable that you could be so vigorous in your advocacy for a member to get access to documentation when you did not discuss with him the purpose for which he wanted the documentation.

CHAIR—I think it is a shame you were not here this morning when it was all dealt with.

Mr KERR—It is a perfectly legitimate question to ask.

Mr Lindeberg—And I believe I have answered it.

Mr KERR—No, you have not.

CHAIR—Let me ask it of you: were you aware at the time of the shredding of the documents that there were allegations of child abuse?

Mr Lindeberg—No, I was not.

Mr KERR—So what was the seriousness of the cover-up, then? What at the time motivated you to take such strong action in pursuing it?

Mr Lindeberg—I am a trade union official, and I am talking to a Labor member: my member had rights; I was an organiser and I was paid to look after those rights. If he had a right under legislation to access his personal files then he had a right.

Mr KERR—To sue staff.

Mr Lindeberg—That is his problem, not mine.

Mr KERR—Your indifference to the consequences—

Mr Lindeberg—Are you suggesting—

Mr KERR—You turned this into a very significant issue. Presumably, Mr Coyne saw it as a very significant issue.

CHAIR—Are you telling me that child abuse is not significant, Duncan?

Mr KERR—Mr Coyne, presumably, saw this as a very significant issue—

Mr Lindeberg—Yes.

Mr KERR—and he was trying to use it as a stop writ. He was trying to prevent people who had blown the whistle on his conduct—

CHAIR—We got the biggest stop writ of all time with the shredding of the evidence, didn't we? That is what it was for all those kids who cannot now bring an action.

Mr SCIACCA—I have said nothing, but I just want to make this point: Mr Lindeberg has made it very clear that he did not know at the time he made his stand that there were allegations of child abuse. I think we are sort of going around on a merry-go-round here. The reality is that I believe Kev Lindeberg 100 per cent when he says that at the time his motivation was that he was representing his member; I have some knowledge of it. The point is, though, that from this inquiry today it would be fair to draw the inference that allegations are being made—we had the media circus here this morning—to the effect that the shredding of these documents and their subsequent so-called, alleged cover-up were all done to cover up evidence of sexual abuse. With great respect, Madam Chair—you know how much I respect you—I know that politically that is a good thing to do, particularly when you are up against a Labor government, and, fair enough, if I was in Mr Lindeberg's position I would probably feel the same way as he does, but the point that I think both my colleagues here are trying to make is this: they do not agree with the

shredding of the documents. In hindsight, it was stupid to that, and I think all of us on this committee would be unanimous in that view.

Mr McCLELLAND—Hansard now has that on the record.

Mr SCIACCA—But I think it is a big step to take to somehow then say that those who agreed to shred those documents at the time did it because they wanted to cover up evidence of sexual abuse. I want to make the point that even Mr Lindeberg is not saying that. Am I right in what I have just said?

Mr Lindeberg—With great respect, I have been under oath today and I take that seriously. I appeared before the Cooke inquiry under oath, and it was shut down. The problem with the Heiner affair is that the other side have never been put under oath. Mr Grundy and I have had to struggle for 13 years and we have suddenly found out that a girl was pack raped et cetera. People on the other side always knew that—that is the nature of cover-ups.

Mr KERR—But on the other side—

Mr Lindeberg—Let me finish, please. I may be an unusual fellow to have hung in for so long. But I happen to believe that the administration of justice in many ways is more important than child abuse insofar as the fact that if you have a corrupt administration of justice then abused children cannot get justice—that is, where a justice system is prepared to shred documents.

CHAIR—That is exactly right.

Mr Lindeberg—In other words, when you say, 'What are you going on about with this business of Mr Coyne's rights?' I say that it happened to be a very important legal principle. That is why I have hung on.

Dr WASHER—This might not fall into your professional knowledge totally, but at the moment, from what I gather from Mr Grundy's information which he has also given us, there is a complainant who was allegedly pack raped who wants to take this to court. That is what we heard. I guess I am saying that it would seem to be very good for everyone in this community to have that person get to court and have her day in court and testify as to what happened and have that challenged in the courts. What I do not understand—and you may not quite understand yet—is whether the payment of $27,000 to Mr Coyne stops him being subpoenaed to give testimony in court.

Mr Lindeberg—I suspect not, but I am not a legal expert.

Dr WASHER—I understand that.

Mr Lindeberg—Dr Washer, you brought up that payment. About red herrings et cetera, I make the point that the issue that Minister Warner paid money over and above her legal entitlement at the time was the so-called technical irregularity of the thing. It is only when, later on, you see what was going on inside the centre that the words 'you shall not talk about the events leading up to and surrounding your relocation from that centre for the rest of your life'

start to come into focus, because before this committee no-one ever said, 'What were those events?' If those events were about known child abuse, you are looking at taxpayers' money being paid to a public servant by the Crown to buy the silence of that person so they would never talk about criminal offences going on in that centre. That is not on.

Dr WASHER—It would seem fair to all concerned that, intentionally or unintentionally, an injustice has happened. If we could get this person to go to court and we could get people like Heiner, Coyne and others into that court to testify under oath as to what happened, I think it would be in the interests of everyone in this country.

CHAIR—I think that the only way you will get that is with a special prosecutor to look at the issue.

Mr McCLELLAND—There is a royal commission occurring, is there not, with respect to the protection of children in Queensland? What is the nature and status of that?

Mr Lindeberg—That is the Crime and Misconduct Commission. The Crime and Misconduct Commission cannot touch this matter, because it is tainted; it is a protagonist in this matter.

Mr McCLELLAND—I thought there was a royal commission.

Mr Lindeberg—Are you talking about the Forde inquiry?

Mr McCLELLAND—I am not sure. There is some reference in our papers to there being a royal commission with respect to the protection of children in Queensland.

CHAIR—There was the Forde inquiry, but it specifically would not allow this matter to be dealt with.

Mr Lindeberg—With respect, I think you may be talking about the investigations of children in foster care.

Mr McCLELLAND—I think it was set up in 1998.

Mr Lindeberg—Then you are talking about the Forde inquiry. I put detailed submissions to that committee and said that you cannot be fair dinkum about looking at child abuse if you are only looking at incidents of child abuse and the fact that the documents were shredded nine years earlier. May I also say that, in the evidence of that, according to the Forde inquiry, had that matter came out in 1990 Mr Coyne would have been charged. But they argued the statute of limitations had passed in respect of that matter. That is in the report. I have other legal advice saying that that is not altogether correct. Nevertheless, the fact is that the documents were shredded. But Forde still said that Mr Coyne did the wrong thing in relation to chaining kids to grates—

Mr McCLELLAND—Did he make findings about the conduct?

Mr Lindeberg—Yes. It is in the report.

CHAIR—I find among the documents an apology signed by Mr Beattie and Anna Bligh to all those children harmed in Queensland institutions during their childhood. I am staggered that here is an apology signed—

Mr SCIACCA—Chair, Mr Beattie was not even there at the time. Let us not get political with respect to this. This is why I was trying to clarify the situation. Those documents obviously should not have been torn up. We would all be a lot better off if that had not happened. The point I am making to you is that it is easy to drop the names of Mr Beattie and Mrs Bligh and all the rest of it. The reality is that there would have been a cabinet meeting where that decision was taken. You and I have both been in ministerial positions. We know what happens: a minister puts up a submission of some sort, a recommendation is made and the rest of them put up their hands. There is no evidence to suggest that, even if Mr Beattie was at the cabinet table at the time, which he was not—

CHAIR—He was not.

Mr SCIACCA—he would have seen every one of those hundreds of tapes and videos and all the rest of it.

CHAIR—No, but there are people who did.

Mr SCIACCA—With great respect, I think it is unfair that you keep bringing up Mackenroth, Beattie and all these people.

CHAIR—Mackenroth was a member of the cabinet, and Dean Wells was the Attorney-General.

Mr SCIACCA—Yes, but the implication is that they knew about child sexual abuse, and there is no evidence to suggest that that is the case. It is nice for you to put that out, but there is no evidence of it. This committee should not be getting involved in some sort of a political witch-hunt. Everything that Kevin Lindeberg has said I know to be true, and I believe him explicitly. But none of what he has said proves any case to the effect that the whole of the Queensland cabinet, or people like Beattie, knew about child sexual abuse and did not do anything about it.

CHAIR—I am sorry: the cabinet authorised the destruction of evidence which showed child abuse. The reason I mentioned Mr Beattie—and the reason I will go on mentioning Mr Beattie—is that he has taken the moral high ground and said it is a dominant issue. It was the Beattie government that drew up the terms of reference for the Forde inquiry, which excluded this material; it was Mr Beattie who pursued the Governor-General for not having—

Mr SCIACCA—Oh, so there is another motive—

CHAIR—Absolutely. If you take that ground then you have got to be answerable; and it needs to be investigated properly.

Mr Lindeberg—Could I say on top of that, with great respect to Mr Sciacca: we have had a cabinet minister appear publicly and declare that they knew that there was evidence of child abuse in the documents.

CHAIR—It is Comben, is it?

Mr Lindeberg—Pat Comben. I do not know what goes on inside the cabinet room—and I hear Madam Chair talking about the Governor-General. I understand on the basis of principle in terms of what is going on. If you know that documents in your possession and control are about child abuse, concerning children in state care, apart from the fact that you are on notice that the documents are required for court, is that a signal to shred the documents to protect the careers of staff who are supposed to be looking after them? I would have thought that it was a matter which requires further investigation. Instead of that, they shredded the documents, there were never any further investigations, and Mr Grundy has gone on to show that there were further abuses of children afterwards. What happened out of this? The one fellow who paid the price was Mr Coyne. He was got rid of, but for his price—he got paid the $27,000. I lost my job, but that does not seem to matter much.

CHAIR—I think it does matter.

Mr Lindeberg—The notion of saying that there is not a state of knowledge inside the cabinet room needs to be put to the test with these people under oath.

Mr McCLELLAND—What do the cabinet records show about this? Do you know?

Mr Lindeberg—With great respect, they do not talk about this. But we know that Mr Comben has said—

Mr McCLELLAND—Others have given a different account.

Mr Lindeberg—Who?

Mr McCLELLAND—In the interview I think you were referring to.

Mr Lindeberg—Tomorrow you have Ms Warner here. She has said on that she did not know what was in the documents. I have a document here—

Mr McCLELLAND—That name rings a bell in terms of the interview that you are referring to.

Mr Lindeberg—Yes. But then they showed that she did.

CHAIR—We might accept this document as an exhibit—

Mr Lindeberg—She was calling for the inquiry.

Mr McCLELLAND—In any event—

CHAIR—Just a minute. Could I just deal with this—

Mr Lindeberg—With great respect—

CHAIR—Excuse me; just a minute. This is an extract from the *Sunday Sun*, 1 October 1989, page 18, held by the John Oxley Reference Library, Southbank. It is headed 'Teens handcuffed: MP'. Could somebody move that this be received as an exhibit. This is a statement which says:

Tranquillisers and handcuffs were being used at the John Oxley Youth Detention Centre at Wacol, Labor MP Anne Warner said today.

It is accepted as an exhibit.

Mr Lindeberg—Madam Chair, may I just answer Mr McClelland's question about—

CHAIR—Yes, and then I am going to wind this up.

Mr Lindeberg—everybody accepting that the documents should not be shredded. That is not true.

Mr McCLELLAND—Everyone who is here today—

Mr Lindeberg—Bless you. But the people who had jurisdiction over this are saying that it was perfectly lawful. If it is perfectly lawful, it can be done again.

Mr KERR—I know this is difficult, but you are making assertions that people said they knew that there was child sexual abuse occurring.

Mr Lindeberg—Child abuse.

Mr KERR—No, you said 'child sexual abuse'.

Mr Lindeberg—No, I did not—

Mr KERR—You did. This article does not refer to that. I am looking at the document and it does not justify the point you make.

Mr Lindeberg—If I said 'child sexual abuse', in that context I meant to say 'child abuse'. The Forde inquiry was on child abuse, not child sexual abuse.

Mr McCLELLAND—And the Ford inquiry made findings in respect of events that occurred in this establishment.

Mr KERR—That is right.

Mr Lindeberg—Namely that the person who was doing the wrongdoing there could have faced charges.

Mr KERR—That was Mr Coyne.

Mr Lindeberg—That is right.

Mr McCLELLAND—If I could summarise: there is no suggestion that Mr Coyne wanted these documents to reveal child abuse, is there? When Mr Coyne sought access to these documents in 1990, it was not his purpose or your purpose to obtain those documents to obtain information regarding child abuse. Let me rephrase that. It was not Mr Coyne's intention, nor your intention in assisting him, to obtain these documents to reveal child abuse.

Mr Lindeberg—Mr Coyne can answer for himself.

Mr McCLELLAND—What was your understanding of his intention?

CHAIR—We have been along that route.

Mr Lindeberg—As I have told you before—and I am aware that I am under oath—I did not know about that—

Mr McCLELLAND—Yes, but I have asked you: what was Mr Coyne's intention in obtaining these documents?

Mr KERR—What was your understanding of Mr Coyne's intention? Were you being used by him to cover up?

Mr Lindeberg—I have to say that I think that is true.

Mr McCLELLAND—You do not know what Mr Coyne's intention was?

Mr Lindeberg—Mr Coyne and I have now parted company.

Mr McCLELLAND—Is it the case that you did not know what Mr Coyne's intention was in seeking—

Mr Lindeberg—That is right—

CHAIR—Except to see the documents.

Mr Lindeberg—Yes, that is right.

Mr McCLELLAND—How come you go a step further—

Mr Lindeberg—No, I mentioned there was some business about breaking into a house. The business of child abuse never came up in our conversations.

Mr McCLELLAND—You say that you did not know what Mr Coyne's intention was in obtaining these documents—in seeking these documents?

Mr Lindeberg—I do not know whether—

Mr McCLELLAND—I just want you to clarify that. You did or you did not know what his intention was in seeking these documents?

Mr Lindeberg—I said we talked about defamation.

Mr McCLELLAND—Okay, defamation about what subject matter?

Mr Lindeberg—About his reputation.

Mr McCLELLAND—Yes, specifically?

Mr Lindeberg—The reputation in that he said to me that he was breaking into a house unlawfully.

Mr McCLELLAND—And you did not think he wanted these to reveal child sexual abuse or child abuse?

Mr Lindeberg—No, and given that we have the business about the pack rape becoming evidence, I suspect that Mr Coyne wanted to know what was being said there. That is all I can say.

Mr McCLELLAND—You did not know his intention at the time?

Mr Lindeberg—Other than what I have just told you, no.

Mr McCLELLAND—And you did not have any conversation with cabinet ministers at the time. Aren't you drawing a long bow to try to impute improper motive against—

Mr Lindeberg—Just a second, I have just told you I did not force it out of Mr Comben.

CHAIR—You were not here for his evidence this morning.

Mr Lindeberg—He said we knew it was about child abuse.

CHAIR—I think you have to read the transcript, Robert, and come back and have another go. I am going to wrap this up now.

Resolved (on motion by **Dr Washer**):

That this subcommittee authorises publication, including publication on the parliamentary database, of the proof transcript of the evidence given before it at public hearing this day.

CHAIR—For the benefit of those who were not here for the giving of all the evidence, it might be a good idea to read it so that we get it into perspective.

Subcommittee adjourned at 3.53 p.m.