
The Parliament of the Commonwealth of Australia

Crime in the Community: victims, offenders and fear of crime

Volume Two

House of Representatives
Standing Committee on Legal and Constitutional Affairs

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Foreword

Whenever Australians are surveyed, crime is one of the top three issues of concern.

Thus it was in May 2002 that the House of Representatives Standing Committee on Legal and Constitutional Affairs received terms of reference to inquire into crime in the community: victims, offenders and fear of crime.

Almost immediately, the Committee received substantial submissions covering all aspects of the Inquiry. From New South Wales came very serious allegations of corruption in New South Wales policing, including allegations of protection of paedophiles, 'doctoring' of police statistics, corruption of the newly introduced promotions system for duty officers, the failure of the Wood Royal Commission and the systemic failure of bodies set up to investigate such issues. Instead of being applauded for seeking remedies, the whistleblowers received punitive treatment.¹

From the beginning, Labor members of the Committee had a difficulty with the Inquiry and were overwhelmingly concerned as to how it may reflect on various Labor State Governments. Hence the attempt by a then Labor member of the Committee to prevent former and serving police officers giving evidence of corruption to the Committee. Although this action delayed evidence being given, this attempt was thwarted and the officers gave evidence in February and March 2003.

From Queensland came submissions concerning the 'Heiner Affair'. First, from Mr Kevin Lindeberg, a man who in the words of *Australian Story* is the David of

1 All the submissions to the Inquiry into Crime in the Community: victims, offenders and fear of crime can be accessed on the Committee's website at www.aph.gov.au/house/committee/laca/crimeinthecommunity/subs.htm

David and Goliath and is ‘a pretty powerful human being’,² and later from Mr Bruce Grundy, journalist-in-residence at the University of Queensland.

Mr Lindeberg became the crusader who revealed a cover-up of illegal behaviour by the then Premier Wayne Goss and his Cabinet Ministers when they joined together to authorise the destruction of documentation of evidence taken by Noel Heiner in 1989. One of those Cabinet Ministers is Treasurer of Queensland in the Beattie Government at the time of tabling this report. Mr Heiner took evidence about mismanagement and abuse of children at the John Oxley Youth Detention Centre in Brisbane.

Many, including Premier Beattie, say it all happened 14 years ago, so why pursue it?

The 2004 conviction of Pastor Ensbey, who was given a suspended sentence for the same offence - that is, the destruction of evidence - shows that the length of time that has elapsed is not relevant. Indeed, as Premier Beattie continues the cover-up, the DPP has lodged an appeal against the leniency of Pastor Ensbey’s sentence.

According to Premier Beattie, this issue has been examined by ‘at least seven different investigative bodies’,³ but only this Inquiry has required Mr Heiner to attend and give evidence. Further, this Committee has dealt with Cabinet documents the One Nation Party forced the Beattie Government to table in the Queensland Legislative Assembly.

Volume Two of the Committee’s Report therefore focuses on the ‘Heiner Affair’ – the shredding of documents by the newly elected Goss Government in Queensland in 1990. Those documents contained evidence of child abuse at a State-run youth detention centre. To this day, Queensland continues to experience revelations of serious abuse of those most vulnerable in our community.

The Committee’s conclusions in this Volume are based on two guiding principles of our society: everyone is equal before the law, and the welfare of the most vulnerable in our community is paramount.

Section 129 of the Queensland *Criminal Code Act 1899* states:

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

2 ‘Three little words’, *Australian Story*, ABC Television, 17 May 2004.

3 The Hon Peter Beattie MP Press Release, ‘Federal Liberal Inquiry Will Waste Thousands of Dollars’, 27 October 2003.

misdemeanour, and is liable to imprisonment with hard labour for 3 years.

As stated earlier, this year a Pastor was convicted under this section for guillotining pages of a diary containing evidence of abuse of a girl. The diary was required in court proceedings years later when the abuse victim decided to pursue justice. Fortunately for the victim, the guillotined pages were able to be reassembled. The same option of pursuing justice is not open to victims of abuse at the John Oxley Youth Centre – the evidence of abuse was shredded and disposed of by the Queensland Government over 14 years ago, hiding behind an interpretation of section 129 which defeated the purpose of the section, as pointed out by distinguished QCs such as (now High Court Judge) Mr Ian Callinan QC, in testimony to a Senate inquiry, and Mr Robert Greenwood QC in a submission to the Senate in 2001. Unlike the Pastor however the responsible Government Ministers have never been held to account for their actions.

The Heiner inquiry had been set up to investigate alleged mismanagement at the John Oxley Youth Centre. The Minister who established the inquiry told the Committee she did so because she had become aware of allegations of abuse at the Centre. The incoming Goss Government hastily aborted the inquiry – apparently because doubt was cast on whether Mr Heiner and his inquiry were adequately protected from legal action – and subsequently authorised the shredding of the evidence.

The issue of protection from legal action arose precisely because legal action was indeed foreshadowed. Not legal action by the victims of abuse – that might have come later – but legal action by the manager of the Centre. His rights were effectively negated. And so were those of the children who were abused.

The Committee took evidence from Mr Heiner that he sought validation of his appointment and inquiry from Cabinet and that he was advised such validation was given. He further testified that he only handed over the documents after he was told such Cabinet action was taken.

If you are an ordinary citizen, the law is clear: you cannot destroy evidence that may be required for judicial proceedings. If you are a Government Minister in Queensland, the law is different: you can destroy documents even when you have been put on notice that proceedings are intended. You can destroy documents even when they contain evidence of child abuse.

Evidence to the Committee has exposed a culture of concealment and collusion – a culture that has effectively covered up abuse of children and placed the welfare of those entrusted with their care ahead of that of the victims. There is evidence of abuse taking place at the John Oxley Youth Detention Centre in the late 1980s and continuing today at the replacement for the John Oxley Centre – the new Brisbane

Youth Detention Centre: physical abuse including beating of children while handcuffed. Had action been taken in 1990 to clean up instead of cover up, subsequent abuse could have been avoided and the culture changed.

A shocking example of how the culture remains was illustrated by evidence of practices in a care facility for the intellectually and physically disabled on Bribie Island. Such evidence included a description of punishment meted out to a boy whereby his artificial leg was removed to force him to crawl. This incident and more was revealed in evidence given to the Committee.

A number of recommendations in this Volume represent a step towards righting some of the wrongs. Others are aimed at improving the management and oversight of institutions entrusted with those most vulnerable in our society.

Through the course of this Inquiry, members of the Committee have been impressed by the courage of individual Australians who came forward to try and have deception and cover-up exposed.

In addition to Mr Lindeberg, who has remained steadfast to his cause, and whose daughter said of him in *Australian Story*:

I'm really proud of my dad. I'm glad that I mean even though it's caused us a lot of pain and stress, I am really glad that he has kept on with this crusade.⁴

there are others -

There is Mr Bruce Grundy, who heads the Justice Project, staffed by his Journalism students at the University of Queensland, and is editor of *The Queensland Independent*.

There are Mr and Mrs Rowe and their son Peter, a sensitive disabled young man who was sexually abused at the aforesaid facility on Bribie Island. When Peter asked of his mother:

Mum, is this ever going to happen to me again?

She replied:

Well, I hope it's not... I'm going to spend the rest of my life for as long as it takes to make sure that you are safe and other people like you.⁵

There is Mrs Kay McMullen, who, as a registered nurse, gave evidence of her outrage as to how vulnerable people were treated in Queensland.

Premier Beattie pretends to take the moral high ground and led the pack to have former Governor-General Peter Hollingworth deposed, whilst at the same time

4 'Three little words', *Australian Story*, ABC Television, 17 May 2004.

5 Mrs Betty Rowe, *Transcript of Evidence*, 18 June 2004, p. 1804.

perpetuating the cover-up of the Heiner Affair and presiding over the continuing culture of abuse of the vulnerable.

It is time to right these wrongs.

Hon Bronwyn Bishop MP
Chairman



Membership of the Committee

Chair Hon Bronwyn Bishop MP

Deputy Chair Mr John Murphy MP
(until 03/08/04)

Members Hon Julie Bishop MP
(until 07/11/03)

Hon Alexander Somlyay MP
(from 07/11/03)

Hon Alan Cadman MP

Hon Duncan Kerr MP
(until 03/08/04)

Mr Daryl Melham MP
(until 11/08/03)

Mr Robert McClelland MP
(from 11/08/03 to 03/08/04)

Ms Sophie Panopoulos MP

Hon Con Sciacca MP
(until 03/08/04)

Mr Patrick Secker MP

Dr Mal Washer MP

Committee Secretariat

Secretary	Ms Gillian Gould Ms Julia Thoener (acting from 29 March 2004 to 7 May 2004)
Inquiry Secretary	Ms Julia Thoener
Research Officers	Ms Frances Gant (until July 2003) Mr Muzammil Ali (from October 2003) Dr Nicholas Horne (from June 2004)
Administrative Officer	Ms Frances Wilson



Terms of reference

The Committee shall inquire into the extent and impact 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

The inquiry was referred to the Committee on 21 May 2002 by the Minister for Justice and Customs, Senator the Hon Chris Ellison.



List of recommendations

2 The Heiner Affair – the destruction of evidence

Recommendation 1 (Paragraph 2.174)

That the Queensland Government publicly release the 1996 advice on the Morris/Howard Report provided by the Director of Public Prosecutions to the then Borbidge Government.

Recommendation 2 (Paragraph 2.213)

Given that:

- it is beyond doubt that the Cabinet was fully aware that the documents were likely to be required in judicial proceedings and thereby knowingly removed the rights of at least one prospective litigant;
- previous interpretations of the applicability of section 129 as not applying to the shredding have been proven erroneous in the light of the conviction of Pastor Douglas Ensbey; and
- acting on legal advice such as that provided by the then Queensland Crown Solicitor does not negate responsibility for taking the action in question.

the Committee has no choice but to recommend that members of the Queensland Cabinet at the time that the decision was made to shred the documents gathered by the Heiner inquiry be charged for an offence pursuant to section 129 of the Queensland *Criminal Code Act 1899*.

Charges pursuant to sections 132 and 140 of the Queensland *Criminal Code Act 1899* may also arise.

3 The Heiner Affair – motives for the shredding

Recommendation 3 (Paragraph 3.163)

That a special prosecutor be appointed to investigate all aspects of the Heiner Affair, as well as allegations of abuse at John Oxley Youth Centre that may not have been aired as part of the Heiner inquiry and may not have been considered by the Forde or other inquiries.

That this special prosecutor be empowered to call all relevant persons with information as to the content of the Heiner inquiry documents, including but not necessarily limited to:

- Public servants at the time, including staff of the then Department of Family Services, the Criminal Justice Commission, Queensland Police, and the John Oxley Youth Centre
- Relevant union officials

That the special prosecutor be furnished with all available documentation, including all Cabinet documents, advices tendered to Government, records from the John Oxley Youth Centre and records held by the Department of Family Services, the Criminal Justice Commission and the Queensland Police.

Recommendation 4 (Paragraph 3.166)

That the Commonwealth, through the Council of Australian Governments process, obtain a commitment from the States and Territories to legislate to require the retention for 30 years of documentation relating to allegations of abuse of children.

4 Abuse at Bribie Island

Recommendation 5 (Paragraph 4.20)

The Committee recommends that the Commonwealth gain a commitment from the Queensland Government within the framework of the Council of Australian Governments to introduce an accreditation system for disabled care facilities similar to that introduced by the Commonwealth for aged care.

Recommendation 6 (Paragraph 4.22)

The Committee recommends that the Commonwealth gain a commitment from the Queensland Government within the framework of the Council of Australian Governments that the Queensland Auditor-General be given the power to conduct performance audits of Queensland public sector entities comparable to the performance audit power available to the Commonwealth Auditor-General.

Introduction

Background to Volume Two

- 1.1 This Volume of the Inquiry into Crime in the Community: victims, offenders and fear of crime explores specifically the so-called 'Heiner Affair' - the shredding of documents by the newly elected Goss Government in Queensland in 1990. Allegations of child abuse at the John Oxley Youth Detention Centre (JOYC) more generally are explored as well. This Volume also considers evidence of abuse at a respite and rehabilitation care facility at Bribie Island in Queensland.
- 1.2 In addressing the shredding of the documents that allegedly contained statements about mismanagement and child abuse at JOYC, the Committee concluded that it revealed a culture where protecting those responsible is more important than looking out for the welfare of those most vulnerable in our community.
- 1.3 The Committee contends that those responsible for shredding of the Heiner documents personify this culture, which continues to this day as evidenced by three central facts:
 - no-one has been held accountable for the shredding of the Heiner documents;
 - no-one has been held accountable for the abuse at JOYC; and
 - despite the Forde inquiry into child abuse in Queensland institutions, abuse is continuing in state-run programs, as well as in

private but state oversighted institutions charged with the welfare of children.

- 1.4 The Forde inquiry examined child abuse in Queensland institutions dating back to 1911. However, much of the evidence presented to the Committee suggests that such abuse was rife throughout the 1980s and 1990s and left unchecked by the very institutions established to investigate and report criminal conduct and official misconduct.
- 1.5 Of grave concern to the Committee in the Heiner Affair and abuse at JOYC are the inadequacies of the investigations carried out by the then Criminal Justice Commission (CJC) in particular. The Committee notes that other Queensland Government bodies also appeared to have failed in their duty to protect Queenslanders and their children. Indeed, Queensland institutions appear to have collapsed around the executive government, and, in that sense, protected it.
- 1.6 The Committee has also been shocked by some of the revelations of mistreatment at a Bribie Island facility, and notes that the Forde inquiry's terms of reference did not extend to investigating abuse more broadly in Queensland institutions.

Evidence relating to the Heiner Affair

- 1.7 The Committee came to investigate the Heiner Affair or 'Shreddergate' as a result of receiving submissions from Mr Kevin Lindeberg, a former industrial officer of the Queensland Professional Officers' Association.
- 1.8 Mr Lindeberg initially made two submissions to the Committee, prior to giving evidence to the Committee at a public hearing in Brisbane on 27 October 2003.¹
- 1.9 At that hearing, the Committee also heard from Mr Bruce Grundy, a journalist-in-residence at the University of Queensland and Editor in Chief of the newspaper *The Queensland Independent*. Mr Grundy had not made a submission to the Inquiry but had been invited to give evidence as a result of his newspaper's continuing investigation of the Heiner Affair. His opening statement at the hearing was accepted by the Committee as a submission to the Inquiry.²

1 Mr Kevin Lindeberg, *Submissions 142 and 142.1*.

2 Mr Bruce Grundy, *Submission 171*.

Mr Alastair MacAdam, a senior lecturer in law at the Queensland University of Technology, also gave evidence to the Committee.

- 1.10 Following the hearing on 27 October 2003, both Mr Grundy and Mr Lindeberg made further supplementary submissions³ and also provided the Committee with a number of exhibits. At a second public hearing in Brisbane on 16 March 2004, the Committee again heard from Mr Lindeberg and Mr Grundy, as well as from Mr Michael Roch, a former employee at JOYC. The Committee was also presented with a submission from Mr Desmond O'Neill, an executive member of the Queensland State Service Union from 1988 until 1994.⁴
- 1.11 The Committee summonsed Mr Noel Heiner to give evidence to the Committee at a third public hearing in Brisbane on 18 May 2004.
- 1.12 At a fourth public hearing on 18 June 2004, the Committee took evidence from Mrs Beryce Nelson, former Queensland Minister for Family Services, who established the Heiner inquiry into JOYC.
- 1.13 Mr Peter Coyne, the manager of JOYC during the period in question, was prepared to give evidence to the Committee; however, he was unable to do so at a scheduled public hearing due to work commitments interstate.
- 1.14 The Committee's hearings into the Heiner Affair received significant media coverage nationally, and particularly in Queensland. The Premier of Queensland, the Hon Peter Beattie MP, issued a press release following the October 2003 public hearing. However, the Committee did not receive any submissions from the Queensland Government on the matter, nor any submissions from any other parties involved in the issue, such as the Queensland Crime and Misconduct Commission.
- 1.15 The Committee invited former Minister the Hon Anne Warner as well as the Head of the then Department of Family Services and Aboriginal and Islander Affairs⁵ at the time, Ms Ruth Matchett, to give evidence, but without success. In the absence of a submission or evidence from the Queensland Government – allegedly the chief protagonist in the Heiner Affair – countering the evidence presented

3 Mr Kevin Lindeberg, *Submissions 142.2 and 142.3*; Mr Bruce Grundy, *Submissions 171.1 and 171.2*.

4 Mr Desmond O'Neill, *Submission 172*.

5 Hereafter referred to as the Department of Family Services, or the Department.

to the Committee, the Committee has made use of public statements by the Government and other parties, as well as evidence given to previous inquiries into the Heiner Affair, for the purposes of presenting the known facts of the Queensland Government's position.

Evidence relating to Bribie Island

- 1.16 The Committee received a number of exhibits in relation to a Bribie Island care facility and took evidence at a public hearing in Brisbane on 18 June 2004. Due to the nature of the matter, the Committee also received evidence on a confidential basis.

The Heiner Affair – the destruction of evidence

Nothing engenders fear of crime or instils a sense of hopelessness more in any society than to have law-enforcement by double standards ...¹

Introduction

- 2.1 As outlined in Chapter 1, the Committee came to investigate the now infamous Heiner Affair – the shredding of documents by the newly elected Goss Government in Queensland in 1990 – initially as a result of a submission provided by Mr Kevin Lindeberg.
- 2.2 The documents that were shredded allegedly contained allegations of mismanagement and child abuse at JOYC.
- 2.3 The Committee notes that aspects of the Heiner Affair have been investigated on many occasions by various government bodies and specially appointed persons, however, never exhaustively, for a variety of reasons. These reasons include limited terms of reference and limited access to evidence.
- 2.4 This Chapter draws on previous inquiries where relevant; however, the Committee considers its observations to be more complete and conclusive than those of previous inquiries. This is partly due to evidence taken from witnesses not previously called – in particular,

1 Mr Kevin Lindeberg, *Submission 142*, p. 3.

Mr Heiner who conducted the original investigation. However, the Committee's key recommendations also result from inescapable conclusions based on newly available evidence, as well as the conviction earlier this year of a Pastor.²

- 2.5 The Committee notes that examining the shredding of the documents is inextricably linked to allegations about mismanagement and abuse at JOYC; however, in terms of commenting on the actions and inactions of the Queensland Government and various Queensland agencies, the Committee felt it necessary to separate the two issues into Chapters 2 and 3.

The Heiner Affair – overview of events

- 2.6 This section provides the salient facts of the Heiner Affair. A full chronology is available elsewhere.³
- 2.7 In late 1989, staff at JOYC raise concerns in writing about the running of the facility by its manager, Mr Peter Coyne. Written complaints are made to the Department of Family Services. An inquiry into the Centre is set up by the then Minister for Family Services in the Cooper Government, Mrs Beryce Nelson MLA, who became Minister in September 1989.
- 2.8 In October 1989, the Hon Anne Warner MLA, then Opposition spokesperson on Family Services, is reported as having been called by JOYC staff who have told her one youth has been heavily sedated and another handcuffed.⁴
- 2.9 Retired magistrate Mr Noel Heiner is commissioned by Minister Nelson to conduct the inquiry. During the conduct of the inquiry, Mr Coyne seeks access to the evidence and the written complaints made about him and is refused.
- 2.10 Evidence is given to Mr Heiner of abuse involving the handcuffing of a child and sedating of another.⁵

2 This is discussed later in this Chapter.

3 *The Beginnings of Shreddergate: The Chronology of Events*, at www.gwb.com.au/gmb/news/goss/history99.doc

4 *Exhibit 111*, 'Teens handcuffed: MP', *The Courier-Mail*, 1 October 1989, p. 18.

5 Mr Noel Heiner, *Transcript of Evidence*, 18 May 2004, p. 1677. Mr Heiner's evidence is more fully discussed in Chapter 3 of this Volume.

- 2.11 Following the election of the Goss Labor Government on 2 December 1989, the Hon Anne Warner MLA becomes Minister for Family Services and Aboriginal and Islander Affairs. Ms Ruth Matchett becomes Acting Director-General of the Department of Family Services and is later appointed permanently to the position.
- 2.12 With the assistance of Mr Kevin Lindeberg, the then industrial officer of the Queensland Professional Officers' Association (QPOA), Mr Coyne continues to seek access to the complaints made against him and instructs solicitors to seek the documents on his behalf.
- 2.13 Concerns arise as to whether the inquiry had been properly established and whether Mr Heiner and witnesses to his inquiry are properly indemnified.
- 2.14 The Crown Solicitor advises that Mr Heiner and the witnesses do not have statutory immunity from legal action because of the manner in which the inquiry had been established. Further, if the inquiry were to be terminated, the evidence gathered by Mr Heiner should be destroyed provided no legal action was under way that would require the production of the material.
- 2.15 In January 1990, union representatives are advised that the inquiry is terminated and all the material gathered by Mr Heiner is sent to the Cabinet Secretariat. In February, Cabinet officially terminates the inquiry and seeks further advice from the Crown Solicitor in terms of options available to Cabinet in relation to the documents.
- 2.16 Mr Coyne, during this time, continues to seek access to the complaints about him and the inquiry documentation, through his solicitors. He is transferred from his position as manager of JOYC.
- 2.17 On 16 February 1990, the Crown Solicitor advises Cabinet that the Heiner documents were public records and hence, needed to be deposited in the State Archives or the permission of the archivist sought before they could be destroyed. Cabinet decides that destruction of the documents would be the better course of action and requests the permission of the archivist which is granted.
- 2.18 On 5 March 1990, the Cabinet officially determines that the documents should be destroyed, and this takes place on 23 March 1990. During this time, however, Mr Coyne's solicitors continue to be advised that the Department of Family Services is still awaiting legal advice.

- 2.19 During April and May, Mr Coyne continues to seek access to the original complaints against him as well as the Heiner inquiry documents. On 23 May 1990, the photocopies of the original complaints against him are shredded by the Department. Mr Coyne eventually accepts an involuntary redundancy package.
- 2.20 Mr Lindeberg begins to pursue the legality of the shredding of the documents, and argues that those responsible for the shredding have a case to answer in relation to the destruction of evidence under section 129 of the Queensland *Criminal Code Act 1899*, and possibly a number of other sections of the code. A number of leading barristers and academics support Mr Lindeberg's interpretation of the statute. Serious concerns over the shredding are also raised by the Australian Society of Archivists.
- 2.21 The then Crown Solicitor and the then Queensland Director of Public Prosecutions (DPP) maintain throughout the 1990s that section 129 does not apply as legal proceedings were not under way at the time of the shredding of the documents.
- 2.22 A number of inquiries are instituted over time by successive Queensland Governments. An investigation is undertaken by the then CJC. The Australian Senate first makes general references to the Heiner Affair in its 1994 Report, *In the Public Interest*.⁶ An investigation of the Heiner Affair forms a chapter in a further report, *The Public Interest Revisited*, tabled the following year.⁷
- 2.23 The Borbidge National Party Government seeks further advice from the DPP, following receipt of the inquiry report by Messrs Morris QC and Howard in 1996. Following that advice, no further action is taken.
- 2.24 In 1998, One Nation Members of the Queensland Parliament force the tabling in the Queensland Legislative Assembly of relevant Goss Cabinet documents.
- 2.25 Mr Bruce Grundy, journalist-in-residence at the University of Queensland, together with his Journalism students through the Justice Project, begins to collect evidence of significant and apparently systemic abuse taking place at JOYC during the 1980s. He follows the fate of a then 14 year old girl who was allegedly pack-raped during a supervised outing of JOYC inmates in 1988.
-

6 *In the Public Interest*, Report of the Senate Select Committee on Public Interest Whistleblowing, August 1994.

7 *The Public Interest Revisited*, Report of the Senate Select Committee on Unresolved Whistleblower Cases, October 1995.

- 2.26 Mr Grundy commences to publish a number of articles in *The Queensland Independent*, alleging that Cabinet was aware of abuse at the Centre at the time it decided to shred the Heiner documents. Following contact with the girl, he also alleges that the cover-up continues to this day. He also alleges that at least one further rape and other sexual abuse may have taken place at JOYC.
- 2.27 A Goss Cabinet Minister reveals in a 1999 edition of Channel NINE's *Sunday Program* that Cabinet was broadly aware that the documents contained allegations of child abuse.⁸
- 2.28 Following this Committee's public hearing in Brisbane on 27 October 2003, Premier Beattie issues a press release stating that the issue has been exhaustively investigated. The release states that the Goss Cabinet acted in good faith to protect whistleblowers and no formal legal proceedings had been instituted.⁹
- 2.29 However, on 11 March 2004, Pastor Douglas Ensbey is found guilty under section 129 of the Queensland *Criminal Code Act 1899* for destroying the diary of a child abuse victim six years prior to the girl reporting the incident to police, and the possibility of instituting legal proceedings. According to Messrs Lindeberg and Grundy, as well as a number of legal authorities on the subject, the verdict vindicates the interpretation of section 129 advocated by Mr Callinan QC at the Senate inquiry and others at varying points¹⁰ but denied by successive Queensland Governments and the CJC as applicable to the shredding of the Heiner documents.

Essential legal issues in the Heiner Affair

- 2.30 The Committee found the essential legal issues to be investigated in relation to the Heiner Affair to be as follows:
- whether the shredding of the documents constituted an offence under the Queensland *Criminal Code Act 1899* and/or constituted official misconduct by Cabinet members and/or senior bureaucrats;

8 'Queensland's Secret Shame', Channel NINE, *Sunday* program, 21 February 1999.

9 The Hon Peter Beattie MP Press Release, *Federal Liberal Inquiry Will Waste Thousands of Dollars*, 27 October 2003.

10 'Public Officials Can Still be Charged', *The Queensland Independent*, April 2003; see also Mr R F Greenwood QC, *Submission to the Senate*, 9 May 2001.

- whether the role of the State Archivist was appropriate in the decision making process; and
- whether successive Queensland Governments and government institutions have acted to cover up and protect the Goss Ministers' actions.

2.31 The Committee will consider each of these issues in turn.

Conduct of the Queensland Government

2.32 The Queensland Goss Government's stated motive for the shredding of the Heiner documents at the time (and subsequently) is encapsulated by a statement made by the Hon Anne Warner in the Queensland Legislative Assembly when she was Minister for Family Services:

In January 1990, a number of doubts emerged as to the legal basis and authority for Mr Heiner's appointment and the establishment of the investigation and, hence, the way in which it was being conducted ...

Advice received from the Crown Solicitor indicated that, although Mr Heiner had been lawfully appointed as an independent contractor to perform his tasks, it was clear that because of the way the investigation had been established, there was a lack of statutory immunity from, and thus exposure to, the possibility of legal action against Mr Heiner and informants to the investigation. In establishing the investigation, no regard had been given to the possibility that material gathered by Mr Heiner could be of a potentially defamatory nature ...

To compound this situation further, the terms of reference given to Mr Heiner for the conduct of the investigation were general in nature and did not require him to make any recommendations as to action that ought be taken as a result of any conclusions he might reach. In fact, Mr Heiner verbally advised the acting director-general that he had not intended to make any recommendations. Therefore, the result of this investigation would have been more questions, and no answers.

Having considered the Crown Solicitor's advice and the limited value of continuation of the investigation, Ruth Matchett, the acting director-general, terminated the investigation on 7 February 1990 and directed Mr Heiner to gather and seal all documents related to the inquiries. These documents were delivered to the department's head office for safe keeping. Cabinet was advised of this action in a submission dated 12 February 1990. Sealing of the documents gather [sic] by Mr Heiner ensured that there could be no further consideration given to the material he had gathered. Neither Ms Matchett, the acting director-general, nor I was aware of the contents of this material. Terminating the investigation was the fairest way to fix up this mess that this Government inherited in 1989. Terminating the investigation was fair to all staff involved; it was fair to Mr Heiner and it was fair in that it stopped an investigation which had a dubious legal basis and which was not going to result in any recommendations.¹¹

2.33 Minister Warner further said that the following considerations were taken into account in reaching the decision to shred the material:

- a. the inquiry had ceased and no report would be produced, therefore there was no further need for the material.
- b. all parties involved in the inquiry would be assured that any material gathered would not be used in future deliberations or decisions. This applied to Mr Coyne as well as to all other staff members.
- c. Disposal of the material reduced the risk of legal action against any party involved such as Mr Heiner and Youth Workers employed in caring for children at John Oxley Youth Centre.¹²

2.34 The Government maintains that it acted lawfully in destroying the documents because its actions were based on advice by the Crown Solicitor. In accordance with that advice, Cabinet sought approval from the State Archivist to destroy the documents. Approval was granted.

11 The Hon Anne Warner, Queensland Legislative Assembly Hansard, 18 May 1993, pp. 2870-2871.

12 The Hon Anne Warner, Queensland Legislative Assembly Hansard, 18 May 1993, p. 2871.

- 2.35 Further, successive Labor Governments have maintained, as late as 2003, that the Heiner Affair has been investigated to the 'nth degree' and nothing has been found.¹³
- 2.36 The conviction of Pastor Ensbey puts paid to this fiction.

The legality of the shredding of the documents

- 2.37 Mr Lindeberg's main argument is that the decision of the Queensland Cabinet to order the shredding of the Heiner documents was illegal and the relevant public servants and Government officials should be charged with offences under the Queensland *Criminal Code Act 1899*, according to the principle of 'equality before the law'.¹⁴
- 2.38 The legal issues surrounding the shredding of the Heiner inquiry documents are complex. The primary question relates to competing interpretations of the Queensland *Criminal Code Act 1899*, and whether the Queensland Government's legal defence for shredding the documents was a valid one.

Precondition for the shredding: pending legal action

- 2.39 As the Heiner inquiry progressed, doubts had arisen as to the manner in which it had been established, and hence, whether Mr Heiner's powers and indemnities, and the indemnities of the witnesses who had given evidence to the inquiry, were adequate.
- 2.40 At the same time, from December 1989 onwards, Mr Coyne began to seek access to the transcript of evidence gathered by Mr Heiner, as well as copies of the original written complaints against him, held by the Department.¹⁵
- 2.41 Of note is that Ms Ruth Matchett, the Acting Director-General of the Department, advised Mr Coyne in writing that there were no complaints on his personal file and that she was not aware of any other departmental file containing records of the investigation.
- 2.42 According to evidence given to the Senate Select Committee's inquiry into unresolved whistleblower cases, Mr Coyne gave evidence to Mr Heiner on 11 January 1990, and followed this with correspondence

13 See for example Mr Alastair MacAdam, *Transcript of Evidence*, 27 October 2003, p. 1419.

14 Mr Kevin Lindeberg, *Submission 142*, pp. 6-7.

15 *The Beginnings of Shreddergate: The Chronology of Events*, at www.gwb.com.au/gmb/news/goss/history99.doc

to Ms Ruth Matchett (on 15 and 18 January) requesting copies of the relevant documentation and was refused.¹⁶ In evidence to the Committee, Mr Heiner did not think Mr Coyne appeared before him, but said that, had he been called to give evidence earlier his memory would have been more accurate.¹⁷

2.43 The Senate Select Committee's report states that Mr Heiner refused to provide Mr Coyne with the details of the allegations made against him.¹⁸ Mr Heiner gave evidence to this Committee that he had received a 'couple of letters' requesting copies of the transcript; he believed the decision to make these available was up to the Department: 'I could not, of course, because they were not my documents'.¹⁹

2.44 There is no doubt that the Department had been put on notice that Mr Coyne was seeking both the transcript and copies of the original written complaints made about him. He sought the assistance of Mr Kevin Lindeberg, the industrial officer of QPOA, and also instructed his solicitors to write to the Department.²⁰

2.45 Importantly, on 19 January 1990, Mr Heiner discussed his position with Ms Matchett, and followed this with a letter of the same date. The letter records that, during those discussions, 'the question was raised as to the validity of the establishment and appointment and approval for my conducting this enquiry', and:

Following discussion this morning I have serious doubts as to the validity of the enquiry ... In view of the confusion which exists and my doubt as to the validity of my actions so far, I am not prepared to continue any further with my inquiry ... until I have obtained written information and confirmation that my actions to date including my appointment and authority to act are validated.²¹

2.46 Ms Matchett's response was to request all the documentation be forwarded to the Department where apparently it was sealed without

16 *The Public Interest Revisited*, Report of the Senate Select Committee on Unresolved Whistleblower Cases, October 1995, pp. 52-53.

17 Mr Noel Heiner, *Transcript of Evidence*, 18 May 2004, p. 1702.

18 *The Public Interest Revisited*, Report of the Senate Select Committee on Unresolved Whistleblower Cases, October 1995, p. 52.

19 Mr Noel Heiner, *Transcript of Evidence*, 18 May 2004, p. 1690.

20 *The Beginnings of Shreddergate: The Chronology of Events*, at www.gwb.com.au/gwb/news/goss/history99.doc

21 *Exhibit 126*, Letter from Mr Noel Heiner to Ms Ruth Matchett, 19 January 1990.

being read and, in what the Senate Select Committee thought a 'somewhat unusual development', forwarded to the Cabinet Secretariat. Ms Matchett did not formally write to Mr Heiner until 7 February 1990.²²

- 2.47 Mr Heiner indicated to the Committee that he only forwarded the material once an assurance of indemnity had been given.²³ While he did not receive this in writing, the Committee notes that, shortly after the shredding occurred, *The Sun* newspaper also reported the Minister as saying that 'State Cabinet had rushed to give Mr Heiner indemnity from prosecution'.²⁴
- 2.48 According to Mr Lindeberg, he had met with Ms Matchett (together with Ms Janine Walker of the Queensland State Service Union) on that same day (19 January) and was advised the inquiry had been terminated. Mr Lindeberg had indicated at that meeting that Mr Coyne still wanted to see the allegations made against him.²⁵
- 2.49 Mr Coyne's solicitors had already written to the Department on 17 January 1990.²⁶ The Department had been put on notice again via a phone call to Ms Matchett's Executive Assistant on 14 February from Coyne's solicitors, followed by a letter the following day,²⁷ of Mr Coyne's intention to commence court proceedings. The request for the documents was made pursuant to Public Service Management and Employment Regulation 65.
- 2.50 Mr Lindeberg submits that 'the Queensland Government was put on notice as early as 8 February, and unquestionably on 14 and 15 February 1990' that the records might be required for court proceedings.²⁸
- 2.51 The Committee notes that the Department was at least aware of the possibility that legal proceedings might eventuate already in late January.

22 *The Public Interest Revisited*, Report of the Senate Select Committee on Unresolved Whistleblower Cases, October 1995, p. 52.

23 Mr Noel Heiner, *Transcript of Evidence*, 18 May 2004, p. 1682.

24 'Labor Blocks Secret Probe', *The Sun*, 11 April 1990, p. 1.

25 *The Public Interest Revisited*, Report of the Senate Select Committee on Unresolved Whistleblower Cases, October 1995, p. 53.

26 *The Public Interest Revisited*, Report of the Senate Select Committee on Unresolved Whistleblower Cases, October 1995, p. 53.

27 *The Beginnings of Shreddergate: The Chronology of Events*, at www.gwb.com.au/gwb/news/goss/history99.doc

28 Mr Kevin Lindeberg, *Submission 142*, p. 11.

- 2.52 Ms Matchett had already sought advice from the Crown Solicitor regarding Coyne’s solicitors’ letters and the legality of Noel Heiner’s appointment.²⁹
- 2.53 According to advice on 23 January 1990 from the then Crown Solicitor, Mr Ken O’Shea, to the Department of Family Services, Mr Heiner had been lawfully appointed (pursuant to the Public Service Management and Employment Act and Regulations 1988). However, neither he nor his informants had statutory immunity from legal action for defamation because the appointment was not under the Queensland *Commissions of Inquiry Act 1950*. Mr O’Shea recommended that if the inquiry were to be terminated, the documentation gathered by Mr Heiner should be destroyed, provided that no legal action which would require the production of the documentation had been commenced.³⁰
- 2.54 According to Mr Lindeberg, the 23 January 1990 advice by the Crown Solicitor was ‘predicated on an incorrect assumption that the Inquiry’s records were Mr Heiner’s private property’. This was corrected in the Crown Solicitor’s advice of 16 February 1990,³¹ which is discussed shortly.
- 2.55 Furthermore, according to Mr Lindeberg, when that original advice was provided, court proceedings had not been foreshadowed and hence, the question of what could be done with the records once proceedings were foreshadowed, had not been addressed.³²
- 2.56 It does appear, however, that even then, the question of legal proceedings had been formally raised. According to the Crown Solicitor:

Naturally Mr Heiner is concerned about any risk of legal action which may be instituted against him for his part in the inquiry and it would appear appropriate for cabinet to be approached for any indication that should any proceedings be commenced against Mr Heiner because of his involvement in this inquiry, the government will stand behind him in

29 *The Beginnings of Shreddergate: The Chronology of Events*, at www.gwb.com.au/gwb/news/goss/history99.doc

30 Mr Kevin Lindeberg, *Submission 142*, p. 11.

31 Mr Kevin Lindeberg, *Submission 142*, p. 11.

32 Mr Kevin Lindeberg, *Submission 142*, p. 11.

relation to his legal costs and also in the unlikely event of any order for damages against him.³³

2.57 Further, in his letter to Ms Matchett dated 19 January 1990, Mr Noel Heiner had also said:

There has been reference to legal proceedings being taken as a result of my enquiries. I believe if there is any legal action taken, the Department of Family Services and Aboriginal and Islander Affairs should take action to indemnify all my actions to date.³⁴

2.58 It is therefore clear that, at minimum, the Department knew that there was a possibility of legal action being instituted. It is also apparent that, by 13 February 1990 at the latest, the Cabinet Secretariat which was by then in possession of the documents knew of this, because Acting Secretary to the Cabinet, Mr Stuart Tait, had written to the Crown Solicitor seeking advice as to:

what options are open to Cabinet so far as the retention or disposal of these documents is concerned and could they be obtained by way of subpoena or third party discovery should a writ be issued touching or concerning them.³⁵

2.59 At a Cabinet meeting the previous day, Cabinet had already determined to terminate the Heiner inquiry and Ms Matchett had informed JOYC staff accordingly.³⁶

2.60 In his response to Mr Tait, dated 16 February 1990, the Crown Solicitor deemed that the documents 'could not be fairly described as Cabinet documents' because they did not come into existence for the purpose of a submission to Cabinet and hence a claim of Crown privilege would have limited success.³⁷

2.61 In addressing the question of whether the documents were in the 'possession or power' of the Crown, the Crown Solicitor revised the 23 January position with regard to the status of the documents and advised as follows:

33 Crown Solicitor advice, in *The Public Interest Revisited*, Report of the Senate Select Committee on Unresolved Whistleblower Cases, October 1995, pp. 58-9.

34 *Exhibit 126*, Letter from Mr Noel Heiner to Ms Ruth Matchett, 19 January 1990.

35 *Exhibit 70*, Letter from Mr Ken O'Shea to Mr Stuart Tait, 16 February 1990.

36 *The Public Interest Revisited*, Report of the Senate Select Committee on Unresolved Whistleblower Cases, October 1995, Canberra p. 53.

37 *Exhibit 70*, Letter from Mr Ken O'Shea to Mr Stuart Tait, 16 February 1990.

I have previously delivered advice to the Acting Director-General of the Department of Family Services and Aboriginal and Islander Affairs to the effect that the documents in question were not ‘public records’ within the meaning of the Libraries and Archives Act 1988. This advice was given on the premise that Mr. Heiner was engaged to prepare a report and that whilst his report once produced might have been a public record in terms of Section 5(2) of the Libraries and Archives Act 1988, the documents and papers produced by Mr. Heiner prior to the submission of his report were not public records ...

Having reviewed this matter further, and in light of the circumstance that Mr. Heiner has now delivered up to the Crown the documents, I think that the better view is that the documents are within the possession or power of the Crown and accordingly are public records within the meaning of the Libraries and Archives Act 1988 ...

Once it is concluded that the documents are more than likely in the possession or power of the Crown, it seems that in accordance with Section 5(2) of the Libraries and Archives Act 1988, the documents fall within the definition of ‘public records’. In that case, Section 55 of the Libraries and Archives Act 1988 is relevant in that the documents may only be disposed of by depositing them with the Queensland State Archives, or by obtaining the consent of the State Archivist to the disposal of the documents or after receiving notice in writing of an intention to dispose of the documents, the State Archivist has not within a period of two months exercised his power to take possession of the documentation.

2.62 With regard to Mr Tait’s question concerning whether the documents could be obtained by way of subpoena or third party discovery, Mr O’Shea had this to say:

If then, for example, anyone suspects he or she was defamed in any of the material produced by Mr Heiner, were to commence an action against him in respect thereof, the plaintiff would, no doubt, at a fairly early state in the action, seek an order for third party discovery of the material pursuant to Order 35 Rule 28 of the Rules of the Supreme Court.³⁸

38 *Exhibit 70*, Letter from Mr Ken O’Shea to Mr Stuart Tait, 16 February 1990.

2.63 According to Mr Lindeberg, this demonstrates that:

there is no doubt that members of the Executive Government and the Office of Crown Law were fully aware that the records, in their possession and control whose fate they were deciding, were relevant to a foreshadowed judicial proceeding; and both parties knew would be discoverable pursuant to the rules of court of the Supreme Court of Queensland once the (expected) writ was filed and/or served, and that any argument claiming 'Crown privilege' put forward by the State of Queensland would fail under the circumstances.³⁹

2.64 The evidence presented to the Committee confirms that both the Department and the Cabinet had been put on notice that Mr Coyne intended to initiate legal proceedings.

2.65 The Senate Select Committee found that:

Given that the Crown Solicitor had deemed the Heiner documents to be public records, the precondition for their shredding to be legal were that they were not required for pending legal action and that the State Archivist had given her approval.⁴⁰

2.66 While the Senate had misgivings concerning the manner in which the approval of the State Archivist had been sought, it concluded that the Government had 'consistently sought advice from its chief law officer ... and generally followed that advice ... it is not appropriate to comment on that advice.'⁴¹

2.67 Having more evidence before it, however, this Committee deems it appropriate to comment on the advice received, particularly given that acting on legal advice does not absolve one from potential liability with regard to actions based on that advice.

The meaning of section 129 of the Queensland *Criminal Code Act 1899*

2.68 According to Mr Lindeberg, because solicitors had served notice of foreshadowed court proceedings in which the Heiner documents would have been required, the destruction of the records obstructed

39 Mr Kevin Lindeberg, *Submission 142*, p 27.

40 *The Public Interest Revisited*, Report of the Senate Select Committee on Unresolved Whistleblower Cases, October 1995, Canberra, p. 56.

41 *The Public Interest Revisited*, Report of the Senate Select Committee on Unresolved Whistleblower Cases, October 1995, Canberra, p. 60.

justice and those responsible should be charged at minimum under section 129 of the Queensland *Criminal Code Act 1899* and/or section 132 (conspiring to defeat justice) and section 140 (attempting to pervert justice).⁴²

2.69 Section 129 of the Queensland *Criminal Code Act 1899* states:

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 with hard labour for 3 years.

2.70 Given there is no dispute that Mr Coyne had signalled his intention to pursue legal action, the central question centres on the interpretation of ‘pending legal action’.

2.71 As previously mentioned and further elaborated on in Chapter 3, Mr Heiner took evidence of at least two examples of abuse. This also means that a number of other people – and, most importantly, the victims of abuse – may have wished to commence action at some time in the future. Those potential litigants would have required the evidence collected by Mr Heiner.

2.72 According to the Queensland Government, an action has to be under way in a judicial proceeding in order to be said to be ‘pending’. For this interpretation of section 129, reliance is placed on Form No. 83 of the Criminal Practice Rules 1900 (Qld) and section 119 of the Queensland *Criminal Code Act 1899* which defines ‘judicial proceeding’.

2.73 Form No. 83 of the Criminal Practice Rules 1900 (Qld) relates to an indictment for an offence against section 129. The section (as it stood at the time) reads as follows:

Knowing that a certain book [or deed (or as they case may be)] namely, a ledger (or as the case may be) was [or might be] required in evidence in an action then pending in the Supreme Court of Queensland between one EF and one GH (or as the case may be), wilfully destroyed the same or wilfully rendered the same illegible (or undecipherable or

42 Mr Kevin Lindeberg, *Submission 142*, p. 12. Mr Lindeberg also believes section 92(1) Abuse of Office to be relevant.

incapable of identification), with intent thereby to prevent it from being used as evidence in the said action (or as the case may be).⁴³

- 2.74 The definition of ‘judicial proceeding’ in section 119 of the Queensland *Criminal Code Act 1899* is as follows:

‘judicial proceeding’ includes any proceeding had or taken in or before any court, tribunal, or person, in which evidence may be taken on oath.⁴⁴

- 2.75 Mr Noel Nunan, on contract to the CJC, reviewed Mr Lindeberg’s allegations in August 1992.⁴⁵ Mr Lindeberg was advised of his findings on 20 January 1993 by Mr Michael Barnes, the CJC’s Chief Complaints Officer. With regard to section 129 of the Queensland *Criminal Code Act 1899*, the CJC found that:

the decision to destroy the records was made by Cabinet after approval was obtained from the State Archivist. As no judicial proceeding was underway at the time of the destruction of the documents, I am of the view that no member of Cabinet has committed the criminal offence referred to.⁴⁶

- 2.76 When it appeared before the Senate Select Committee in 1995, the CJC re-stated the view that because no course of justice was actually under way, justice had not been interfered with.⁴⁷ Indeed, in its submission to the Senate, the CJC said, with regard to section 129 that:

No judicial proceedings had or have ever been commenced in which the Heiner documents would have been relevant. Coyne, the QPOA and the QTU had at various times prior to the destruction of the documents indicated that they were considering legal action to gain access to the documents, which they claimed they were entitled to see pursuant to the PSM&E Regulations ...

The Commission received advice on this matter from Mr Noel Nunan, at that time in practice at the private bar, and it was his view that “judicial proceeding” as used in the

43 *Exhibit 107*.

44 *Exhibit 107*.

45 Mr Kevin Lindeberg, *Submission 142*, p. 19.

46 *Exhibit 70*, Letter from Mr Michael Barnes to Mr Kevin Lindeberg, 20 January 1993.

47 *The Public Interest Revisited*, Report of the Senate Select Committee on Unresolved Whistleblower Cases, October 1995, Canberra, p. 56.

section refers to proceedings on foot at the time of the destruction. This view is consistent with the definition of judicial proceeding contained within section 119 of the Queensland Criminal Code ...

As no judicial proceedings were on foot when these documents were destroyed no breach of that section could occur. The section also requires that the person who destroys evidence knows that the evidence may be required, and destroys it to prevent it from being used in evidence. In the Commission's view, the section is clearly not applicable in the present case.⁴⁸

- 2.77 When the Senate investigated the issue in 1995, it did not have access to the Cabinet minute that recommended the destruction of the documents. That minute, signed by the then Minister Anne Warner, was tabled in the Queensland Parliament on 30 July 1998 by Premier Peter Beattie. Indeed, the Cabinet minute from Minister Warner clearly spells out this interpretation – while representations had been received, no formal legal action had been instigated. The clear implication is that it would be the better course of action to destroy the documents prior to a formal action commencing.
- 2.78 According to the minute, dated 27 February 1990:
- Representations have been received from a solicitor representing certain staff members at the John Oxley Youth Detention Centre. These representations have sought production of the material referred to in this Submission. However, to date, no formal legal action seeking production of the material has been instigated.⁴⁹
- 2.79 The Committee notes that the submission appears to confirm Cabinet was aware of the issue already prior to 27 February – reference is made to an earlier submission (Submission No. 00100) which had recommended destruction of the material. The Cabinet had deferred the decision to 'enable other options to be explored'.⁵⁰

48 CJC submission to 1995 Senate inquiry, Volume 2, pp. 26-27, see *The Justice Project*, at <http://www.eastes.net/justice/content/WhatTheCJCSaid.asp>

49 *Exhibit 70*, Cabinet Submission 00160 – Materials gathered by Mr N.J. Heiner during the course of his investigation into certain matters at the John Oxley Youth Centre, p. 2.

50 *Exhibit 70*, Cabinet Submission 00160 – Materials gathered by Mr N.J. Heiner during the course of his investigation into certain matters at the John Oxley Youth Centre, p. 1.

- 2.80 Later opinions, given by the Crown Solicitor and then by the DPP, Mr Royce Miller QC, supported the argument that section 129 did not apply because legal proceedings were not under way.
- 2.81 In a memorandum to the Queensland Attorney-General, provided to the Senate Select Committee in 1995 and later tabled in the Queensland Parliament, the Crown Solicitor again argued that, for the purposes of section 129 of the Queensland *Criminal Code Act 1899*, a proceeding is not pending until it has been filed in the Court, no matter how many threats might be made of a proceeding commencing.⁵¹
- 2.82 Similarly, the DPP, writing to the then Shadow Attorney-General Mr Denver Beanland MLA on 28 November 1995, quoted Form No 83 relating to an indictment for an offence against section 129 and supported the CJC's view:
- It is my view that there must be on foot a legal proceeding before this section is cable [sic] of application. The closing words of the body of the section namely 'with intent thereby to prevent it from being used in evidence' clearly indicate that there must at the time the action is undertaken by the alleged culprit an impending proceeding.⁵²
- 2.83 According to Mr Lindeberg, the DPP 'took the same view when asked to act in this matter by the then Shadow Attorney-General the Hon Denver Beanland who wrote in light of Mr Callinan QC's opinion on the matter in his special submission to the Senate'.⁵³ Mr Callinan QC's opinion is discussed later in this Chapter.
- 2.84 This interpretation of section 129 has been relied upon by successive Governments, even to the end of 2003 as is evident from Premier Beattie's press release:

On 5 March 1990 the Goss Cabinet was informed that representations had been received from a solicitor representing certain staff at the centre. At that time, no formal

51 *The Public Interest Revisited*, Report of the Senate Select Committee on Unresolved Whistleblower Cases, October 1995, Canberra, pp. 56-7.

52 A copy of the letter can be found on *The Justice Project* website, at <http://www.eastes.net/justice/content/Miller2.asp>

53 Mr Kevin Lindeberg, *Submission 142*, p. 19.

legal proceedings had been instituted, nor was any legal action subsequently instituted.⁵⁴

- 2.85 None of the comments by the Queensland Government have addressed the question of whether the Minister and Cabinet were aware of the evidence of abuse at the time.
- 2.86 A number of academics and eminent jurists have disputed the Queensland Government's interpretation of section 129 of the Queensland *Criminal Code Act 1899*.
- 2.87 According to Senior Lecturer in Law at the Queensland University of Technology, Mr Alastair MacAdam, the Crown Solicitor's reliance on optional form No. 83 of the Criminal Practice Rules 1900 (Qld), clause 2 is untenable:
- 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 129.⁵⁵
- 2.88 Mr MacAdam further argued that:
- 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.⁵⁶
- 2.89 In fact,
- it goes even further than that: the criminal practice rules make it clear that this is an optional form of indictment.⁵⁷
- 2.90 The Committee recognises that, if there are two possible constructions of a statute, it has been seen to be acceptable to apply the construction that is in favour of the subject.
- 2.91 Mr MacAdam, however, pointed out that:

54 The Hon Peter Beattie MP Press Release, 'Federal Liberal Inquiry Will Waste Thousands of Dollars', 27 October 2003.

55 Mr Alastair MacAdam, *Transcript of Evidence*, p. 1417.

56 Mr Alastair MacAdam, *Transcript of Evidence*, p. 1417.

57 Mr Alastair MacAdam, *Transcript of Evidence*, p. 1417.

It is perfectly clear that unless Parliament has authorized the amendment of an Act of parliament by a piece of subordinate (delegated) legislation ... the views of the executive contained in a subsequent piece of subordinate legislation cannot possibly be of assistance in ascertaining the intention that the Parliament had in enacting the statute.⁵⁸

- 2.92 Furthermore, Mr MacAdam referred the Committee to the High Court's decision in *R v Rogerson and Ors* (1992), where the High Court held that the offence (in that case it was conspiring to pervert the course of justice) 'could be committed even though no court proceedings had been commenced at the time of the alleged offence'.⁵⁹
- 2.93 The Committee accepts the High Court interpretation in *R v Rogerson and Ors* (1992) 66 ALJR 500, where Mason CJ says at page 502:
- it is enough that an act has a tendency to deflect or frustrate a prosecution or disciplinary proceedings before a judicial tribunal which the accused contemplates may possibly be implemented.⁶⁰
- 2.94 A further problem with optional form 83 being used to read down clear words is that it refers to action then pending in the Supreme Court of Queensland. According to Mr MacAdam, we would have 'an absolutely ludicrous result' if the form could be used to read down section 129 if the action were pending in a different court.⁶¹
- 2.95 Mr MacAdam believes that the views expressed by Mr Noel Nunan on behalf of the CJC are 'so fundamentally flawed that they cannot be explained away in that manner'.⁶²
- 2.96 In its advice to Mr Lindeberg in 1993, the CJC also referred to section 119 and noted that:

58 Mr Alastair MacAdam, *Submission 4* to the Senate Select Committee on the Lindeberg Grievance, p. 2. According to Mr MacAdam, the High Court has ruled against reading down clear words of an Act by delegated legislation as a method of interpretation. He points to for example the decision of the High Court in *The Great Fingall Consolidated Ltd v Sheehan* (1905) 3 CLR 117 in which Griffiths CJ at 185 (with whom Barton J agreed) said: 'I cannot assent to the argument that a regulation can be used for the purpose of construing a Statute under which it is made'.

59 Mr Alastair MacAdam, *Submission 4* to the Senate Select Committee on the Lindeberg Grievance, p. 2.

60 Mason CJ, quoted by Mr Kevin Lindeberg, *Submission 142*, p. 19.

61 Mr Alastair MacAdam, *Transcript of Evidence*, p. 1417.

62 Mr Alastair MacAdam, *Submission 4* to the Senate Select Committee on the Lindeberg Grievance, p. 2.

No ‘judicial proceeding’ was ever instituted by Mr Coyne or anyone else with respect to the Inquiry records. Certainly legal proceedings were threatened by Mr Coyne’s solicitors but none were ever instituted.⁶³

2.97 Section 119 of the Queensland *Criminal Code Act 1899* is as follows:

In this chapter - ‘judicial proceeding’ includes any proceeding had or taken in or before any tribunal, or person, in which evidence may be taken on oath.⁶⁴

2.98 Mr MacAdam told the Committee that the argument advanced is that because judicial proceeding is defined as ‘had or taken’, the implication is that proceedings must be in existence.⁶⁵ In other words, because Mr Coyne’s solicitors had not actually filed a writ, proceedings could not be considered to have been under way.

2.99 Mr MacAdam pointed out that this would be an incorrect reading of a legal definition, because the definition 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.⁶⁶

2.100 According to Mr Roland Peterson, a barrister, and Mr Ian Callinan QC, now a Justice of the High Court, the CJC’s ‘narrow/strict interpretation of “judicial proceeding” is too significant to ignore’.⁶⁷ Mr Callinan QC told the Senate Select Committee on Unresolved Whistleblower Cases in 1995:

The course of justice, when it begins to run, is a matter that has been much debated in the court and there is a serious open question about when the course of justice does begin to run in cases ... The real point about the matter is that it does

63 *Exhibit 70*, Letter from Mr Michael Barnes to Mr Kevin Lindeberg, 20 January 1993.

64 *Exhibit 107*.

65 Mr Alastair MacAdam, *Transcript of Evidence*, p. 1417.

66 Mr Alastair MacAdam, *Transcript of Evidence*, p. 1418.

67 Mr Ian Callinan QC and Mr R D Peterson, *Correspondence*, Senate Select Committee on Unresolved Whistleblower Cases, 7 August 1995, p. 3.

not matter when, in technical terms, justice begins to run. What is critical is that a party in possession of documents knows that those documents might be required for the purposes of litigation and consciously takes a decision to destroy them. That is unthinkable. If one had commercial litigation between two corporations and it emerged that one of the corporations knowing or believing that there was even a chance that it might be sued, took a decision to destroy evidence, that would be regarded as a conduct of the greatest seriousness – and much more serious, might I suggest, if done by a government.⁶⁸

2.101 According to Mr Callinan QC, in its investigation, the CJC relied on Mr Lindeberg's assertion that there were going to be defamation proceedings when:

as they say, perhaps there may not be going to be defamation proceedings. The real point on any view of this matter, is that legal proceedings that were threatened would inevitably involve necessary recourse to the documents. The document ought not, for that reason, to have been destroyed.⁶⁹

2.102 The proceedings by Mr Coyne:

would either be defamation or proceedings by way of prerogative writ or judicial review to get access to the documents. So, in either case, those documents were critically important and critically relevant to any proceedings that Mr Coyne might take.⁷⁰

2.103 On 30 March 1995, the Crown Solicitor tabled a further opinion in the Queensland Legislative Assembly, in response to the submission to the Senate by Mr Callinan QC and Mr Peterson, and the subsequent oral evidence to the Senate.⁷¹ According to additional evidence from Mr Callinan QC and Mr Peterson, that opinion by Mr O'Shea:

clearly misses the fundamental point that the Crown, being a 'model litigant' both actual and imminent must not be party

68 Mr Ian Callinan QC, *Transcript of Evidence*, Senate Select Committee on Unresolved Whistleblower Cases, 23 February 1995, p. 39.

69 Mr Ian Callinan QC, *Transcript of Evidence*, Senate Select Committee on Unresolved Whistleblower Cases, 23 February 1995, p. 39.

70 Mr Ian Callinan QC, *Transcript of Evidence*, Senate Select Committee on Unresolved Whistleblower Cases, 23 February 1995, p. 39.

71 *The Public Interest Revisited*, Report of the Senate Select Committee on Unresolved Whistleblower Cases, October 1995, p. 52.

to destroying documents for the purposes of the Public Service Regulations. It ignores Mr Coyne's letters ...

There are certainly rules of law that prohibit the destruction of evidence once proceedings are issued but the real issue that was missed was the proposition that the Government was aware that a prospective litigant wanted the document preserved and gave due notice through the Department of Family Services. All relevant documents that are in the system have not been disclosed ...

Mr O'Shea alludes to the fact that if one acted reasonably, fairly and in accordance with common sense that the law would vindicate one's actions. The simple fact is that by seeking to destroy these documents, the Crown removed a prospective litigant of his rights. This cannot in any true sense of the word be in accordance with our democratic principles.⁷²

- 2.104 The CJC had also argued that the documents belonged to the Crown, to which Mr Callinan QC had responded that it:

does not matter to whom they belong; the real point is that they were documents that might be required for litigation.⁷³

- 2.105 The Committee notes that the advice of the Crown Solicitor of 16 February 1990 clearly spelt out that the documents were not the Cabinet's property, but were public documents. Yet the same Crown Solicitor appears to have different view of the documents in 1995, when he told the Senate inquiry that there was no basis for any allegation of criminal responsibility under section 132 of the Queensland *Criminal Code Act 1899*:

I can only wonder how it can be seriously suggested that a Government's destruction of its own property in accordance with a Statutory regime which permitted its destruction (the *Libraries and Archives Act 1988*), in order to keep faith with and protect a retired Magistrate and witnesses misled by the actions of a previous Government could constitute a case of Conspiracy ... [the shredding] represented a reasonable, fair

72 Mr Ian Callinan QC and Mr R D Peterson, *Correspondence*, Senate Select Committee on Unresolved Whistleblower Cases, 5 May 1995.

73 Mr Ian Callinan QC, *Transcript of Evidence*, Senate Select Committee on Unresolved Whistleblower Cases, 23 February 1995, p. 39.

and commonsense approach to a difficult problem not of the Government's making.⁷⁴

2.106 According to Mr Peterson and Mr Callinan QC:

Mr O'Shea infers that the right to destroy documents is a personal one, this is inconsistent with his earlier advice that the documents were public records. The right to destroy public records must be scrutinised closely and dealt with properly. The legal significance of this is clearly overlooked.⁷⁵

2.107 On 7 August 1995, Mr Peterson and Mr Callinan QC provided a further opinion following evidence by Mr Michael Barnes from the CJC to the Senate on 29 May 1995. Mr Barnes had made it clear that the Queensland Cabinet and various Government officials were aware that the documents were required for future litigation:⁷⁶

it is clear that Cabinet made a decision to destroy the documents knowing full well that Coyne wished access to them. It may be that Cabinet made that decision to destroy the documents on the basis that, in its view, the public interest in protecting the people who gave evidence before Heiner outweighed Coyne's private interest in having access to them.⁷⁷

2.108 According to Mr Peterson and Mr Callinan QC:

It is evident that the Criminal Justice Commission failed to appreciate the considerable implication of cabinet's decision to shred documents when litigation is being foreshadowed by a party who is the subject of the relevant documents.⁷⁸

74 *The Public Interest Revisited*, Report of the Senate Select Committee on Unresolved Whistleblower Cases, October 1995, Canberra, p. 57.

75 Mr Ian Callinan QC and Mr RD Peterson, *Correspondence*, Senate Select Committee on Unresolved Whistleblower Cases, 5 May 1995.

76 The Senate Select Committee had come to the same conclusion, pointing out that when Cabinet decided on 5 March 1990 to shred the Heiner documents, it knew that they were being sought by Mr Coyne with legal action in mind, even though no writ had been served. Both Ms Matchett and her executive assistant, Mr Trevor Walsh, had been aware of Mr Coyne's desire to obtain the documents through letters and phone conversations. Ms Matchett presumably briefed her minister (the Hon Anne Warner) on the matter prior to the Cabinet discussion, see *The Public Interest Revisited*, Report of the Senate Select Committee on Unresolved Whistleblower Cases, October 1995, Canberra, pp. 57-58.

77 Mr Michael Barnes, *Transcript of Evidence*, Senate Select Committee on Unresolved Whistleblower Cases, 29 May 1995, p. 655.

78 Mr Ian Callinan QC and Mr R D Peterson, *Correspondence*, Senate Select Committee on Unresolved Whistleblower Cases, 7 August 1995, p. 2.

2.109 Mr Barnes had:

conceded that the shredding of the documents was undertaken to avoid defamation proceedings or at least to make their prosecution practically impossible.⁷⁹

Official misconduct and the rights of a prospective litigant

2.110 The CJC had also told the Senate inquiry that its investigation into the shredding was specifically to determine whether any official misconduct had occurred. According to Mr Le Grand of the CJC, it was not up to the CJC to arbitrate between different legal claims, but it had to determine whether the advices had been properly derived.⁸⁰

2.111 The CJC found no evidence that when the Government decided to shred the documents it had any reason to believe it was acting unlawfully. The Committee notes that the CJC in effect avoided the question of the legality of the shredding.

2.112 However, Mr Callinan QC found that, even in terms of investigating potential official misconduct, the CJC's investigation fell short:

Let me assume for present purposes in favour of the CJC that the commission got the law right on the matter. That is not the end of it. It is not the end of it whether Mr Lindeberg's allegation in legal terms is precisely correct. What is also critically important is whether there may have been some official misconduct, falling short of criminal conduct and that is not even explored.⁸¹

2.113 This argument is based on the notion of the model litigant. The CJC had advised the Senate that Cabinet decided to destroy the Heiner documents, knowing that Mr Coyne had requested access to them.⁸² The Committee notes also that the CJC would have been aware that the shredded documents contained evidence of child abuse.

2.114 Mr Michael Barnes, from the CJC, thought that the Government may have decided that

79 Mr Ian Callinan QC and Mr R D Peterson, *Correspondence*, Senate Select Committee on Unresolved Whistleblower Cases, 7 August 1995, p. 3.

80 *The Public Interest Revisited*, Report of the Senate Select Committee on Unresolved Whistleblower Cases, October 1995, Canberra, p. 41.

81 Mr Ian Callinan QC, *Transcript of Evidence*, Senate Select Committee on Unresolved Whistleblower Cases, 23 February 1995, p. 40.

82 *The Public Interest Revisited*, Report of the Senate Select Committee on Unresolved Whistleblower Cases, October 1995, Canberra, p. 58.

the public interest in protecting the people who gave evidence before Heiner outweighed Coyne's private interest ... it raises no issue of official misconduct.⁸³

2.115 It is this very admission of judging the public versus the private interest that, according to Mr Callinan QC and Mr Peterson, raises the question of misconduct:

by seeking to destroy these [Heiner] documents, the Crown has removed a prospective litigant of his rights. This cannot in any true sense of the word be in accordance with our democratic principles.⁸⁴

2.116 Indeed, Mr Callinan QC argued that, even though a defamation case might be almost impossible to prove without the documents, destroying the documents 'does not mean the defamation case goes away'. But of course, destroying the documents can then be considered an obstruction of justice.⁸⁵

2.117 According to Mr Lindeberg, Mr Coyne:

had a legal right to access the records pursuant to *Public Service Management and Employment Regulation 65*, and sought to enjoy that right or have that right affirmed by a court ruling. The Queensland Government **was aware** of that right at all times, and Crown Law accepted that right of access in its advice to government but never told Mr Coyne.⁸⁶

2.118 Mr Lindeberg also told the Committee that he was merely representing his member's interests – while Mr Coyne may have been considering defamation proceedings:

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.⁸⁷

83 Mr Michael Barnes, quoted in *The Public Interest Revisited*, Report of the Senate Select Committee on Unresolved Whistleblower Cases, October 1995, Canberra, p. 58.

84 Mr Callinan QC and Mr R D Peterson, quoted in *The Public Interest Revisited*, Report of the Senate Select Committee on Unresolved Whistleblower Cases, October 1995, Canberra, p. 57.

85 Mr Ian Callinan QC, *Transcript of Evidence*, Senate Select Committee on Unresolved Whistleblower Cases, 23 February 1995, p. 40.

86 Mr Kevin Lindeberg, *Submission 142*, p. 10, author's emphasis.

87 Mr Kevin Lindeberg, *Transcript of Evidence*, 27 October 2003, p. 1449.

2.119 The Committee was also advised that, not only did the Government remove Mr Coyne’s rights, it failed to inform him of its actions until after the shredding:

The Queensland Government informed the would-be litigants (i.e. Mr Coyne and two trade unions) on 16 February and 19 March that its position was “*interim*” and that the Crown Solicitor was still considering the question of access, and once that advice was received, they would be informed. **They were not informed until 22 May 1990 after the Heiner records had been clandestinely disposed of.**⁸⁸

2.120 It should be noted that that advice of 22 May 1990 was provided by Ms Ruth Matchett. The Committee concurs with the Senate inquiry’s judgement that delay in providing the advice can be regarded as ‘unacceptable and reflecting bureaucratic ineptitude at best or deliberate deceit at worst’.⁸⁹

2.121 The Committee concurs that the actions of the Government in shredding the documents may constitute official misconduct by depriving an individual (Mr Coyne) of his rights as a prospective litigant and not informing him of the fact. It is indeed a curious rationale to deny Mr Coyne access to documents on the basis that legal proceedings were not under way, when the likelihood of them ever being under way would be slim because the documents required were destroyed.

2.122 Mr Lindeberg’s contention that ‘the ordinary punter in the street would know this is ludicrous’⁹⁰ certainly has merit.

The conviction of Pastor Douglas Ensbey

2.123 The opinion of the ‘ordinary punter’ was vindicated on 11 March this year, when Pastor Douglas Ensbey was found guilty under section 129 of the Queensland *Criminal Code Act 1899* for destroying pages from the diary of a child sex abuse victim required in a judicial proceeding. Of particular significance is the fact that the shredding occurred some *five years prior* to the girl reporting the incident to police, and a further year before the perpetrator was brought to justice.

88 Mr Kevin Lindeberg, *Submission 142*, p. 11, author’s emphasis.

89 *The Public Interest Revisited*, Report of the Senate Select Committee on Unresolved Whistleblower Cases, October 1995, Canberra, p. 61.

90 Mr Kevin Lindeberg, *Transcript of Evidence*, 16 March 2004, p. 1667.

2.124 Mr Lindeberg told the Committee that the current DPP had submitted to the Court that at the time the Pastor guillotined the diary:

it was beyond reasonable doubt that he knew that the document would be required in a judicial proceeding (and any prospective police investigation) and in destroying the document, he breached section 129.⁹¹

2.125 At the time of Mr Lindeberg's first submission to the Committee, the Pastor had only been committed for trial; Mr Lindeberg submitted then that whether or not the Pastor would be found guilty was less relevant. Critically relevant was the fact that his alleged criminal conduct was put before the court under section 129, or alternatively, section 140:⁹²

if it is good enough to charge a Minister of religion and put him before the Magistrates court for committal pursuant to section 129 of the *Criminal Code (Qld)*, why shouldn't Ministers of the Crown in Heiner be treated equally for the same, if not more serious, conduct?⁹³

2.126 Following the committal for trial of the Pastor, Mr Lindeberg submitted to the Committee that the issues could no longer be seen as 'simple academic difference between lawyers'. Rather, the question now was whether the lawyers advising the Government 'got it plainly wrong' or whether it was deliberate which would amount to abuse of office and conspiracy to pervert the course of justice.⁹⁴

2.127 Further, it shows that the proposition put forward by the CJC, Mr Noel Nunan and Crown Law that judicial proceedings had to be commenced to trigger section 129 was 'always legal nonsense'.⁹⁵ On balance, the Committee concurs with this view.

2.128 The Committee notes Pastor Ensbey was indicted under section 129, but Form No 82, not 83 which is the form the Queensland Government used in its defence of the Heiner documents shredding. The Committee was informed by Mr MacAdam that, as the Ensbey trial took place in March 2004 after the replacement of the Criminal Practice Rules 1900 (Qld), the optional form of indictment used was rule 82, which is the new form of the Criminal Practice Rules 1999

91 Mr Kevin Lindeberg, *Submission 142*, p. 22.

92 Mr Kevin Lindeberg, *Submission 142*, p. 22.

93 Mr Kevin Lindeberg, *Submission 142*, p. 22.

94 Mr Kevin Lindeberg, *Submission 142.1*, p. 8.

95 Mr Kevin Lindeberg, *Submission 142*, p. 23.

(Qld). According to Mr MacAdam, the form of indictment was a ‘mere matter of procedure’.⁹⁶

2.129 However, the alleged destruction of the documents occurred in 1996 and Ensbey therefore needed to be prosecuted in accordance with the law at the time (i.e. prior to the amendments to the Criminal Practice Rules). Interestingly, the Committee notes that:

What the defence and somewhat surprisingly the prosecution both sought to argue was that form 83 of the Criminal Practice Rules 1900 (Qld), which were the rules in existence in 1996, could be used to read down the clear words of s 129 of the Criminal Code [1899] (Qld).⁹⁷

2.130 Judge Samios however rejected this argument and, on 8 March 2003, had this to say:

I am not persuaded at this stage that the form, as it may have appeared at that point in time, can govern the construction of the section ... The section is wide enough to cover the potential for a proceeding to arise in the future, and that there may be a view of the facts – and it would be a matter for the jury whether they would draw the inference – that the intention was to ensure that there would never be a proceeding.⁹⁸

2.131 It appears that, a few days later, the position of the prosecution may have changed – Mr Lindeberg advised the Committee that when putting final arguments to the Magistrate on 11 March 2003:

the Crown Prosecutor argued that section 129 **did not require** a judicial proceeding to be on foot to trigger it, and, in the alternate, stated that an attempt to pervert the course of justice could occur before curial proceedings commenced, and cited *R v Rogerson*.⁹⁹

2.132 This lends further credence to the view by Mr Ian Callinan QC when he argued in August 1995 that the CJC’s narrow interpretation of ‘judicial proceeding’ is too significant to ignore.

96 Mr Alastair MacAdam, *Submission 184*, p. 2.

97 Mr Alastair MacAdam, *Submission 184*, p. 2.

98 Mr Alastair MacAdam, *Submission 184*, Attachment, Transcript of Proceedings, *The Queen v Douglas Roy Ensbey*, 8 March 2004, p. 6.

99 Mr Kevin Lindeberg, *Submission 142.1*, p. 9, author’s emphasis.

- 2.133 The Committee notes that the current Attorney-General of Queensland has actually appealed the sentence on the basis it is not severe enough for the crime that has been committed.¹⁰⁰
- 2.134 The Committee concurs with Mr Lindeberg's contention that:
- Put bluntly, the DPP ran my legal argument and that of Messrs Callinan QC, Morris QC and Greenwood QC (in Heiner) against this citizen, which has been scoffed at for over a decade by the Queensland law-enforcement authorities, including the Goss and Beattie Queensland Governments.¹⁰¹
- 2.135 Mr Lindeberg put his submission in the following terms:
- All I am suggesting is that it be put before a court of law so that the citizens can make up their own mind ... the fact is that when you get sufficient prima facie evidence – as there plainly is here ... - if we are all equal before the law, it should be put before the courts.¹⁰²
- 2.136 The Committee considers that the reasoning that charges cannot be brought under section 129 of the Queensland *Criminal Code Act 1899* against those responsible for the shredding because legal proceedings were not under way was always open to question in interpretation. It has now been confirmed that it was never a valid contention.

The role of the State Archivist

- 2.137 The Crown Solicitor's advice of 16 February 1991 required the Cabinet to seek the permission of the Archivist prior to the destruction of the documents. According to the Queensland Government and the CJC, since this approval was sought in line with the Crown Solicitor's advice, the Cabinet acted appropriately.
- 2.138 However, while the Cabinet certainly wrote to the State Archivist, Ms Lee McGregor, Mr Lindeberg stated that the Cabinet:

did not provide all the known relevant information about the records. That is, information concerning the legal claims on

100 *Exhibit 136*, Form 391 – Notice of Appeal by Attorney-General, *The Queen v Douglas Roy Ensbey*, 25 March 2004.

101 Mr Kevin Lindeberg, *Submission 142.1*, p. 9. The argument by Mr Morris QC will be covered later in this Chapter.

102 Mr Kevin Lindeberg, *Transcript of Evidence*, 27 October 2003, p. 1443.

the records was withheld, and she was deliberately misled into believing that no one wanted the records, let alone as evidence for a judicial proceeding.¹⁰³

2.139 According to Mr Lindeberg, the Queensland Government is using the Archivist's approval as a 'shield' from charges over its decision to destroy the records:

plainly it was, and remains, the obligation of the applicant to properly and honestly inform the State Archivist of all relevant information concerning public records (ie. beforehand) when seeking to have them destroyed.¹⁰⁴

2.140 Indeed, Crown Law and Cabinet together had agreed on the content of a letter to Ms McGregor, seeking her urgent approval to shred the documents but 'withholding the known information that the records were required for anticipated court proceedings.'¹⁰⁵

2.141 Ms McGregor replied on the same day, indicating her satisfaction that the documents were not required for permanent retention and giving her approval for destruction.¹⁰⁶

2.142 It was over two months later, on 16 May 1990, that, according to Mr Lindeberg, Ms McGregor was made aware by Mr Coyne that 'the records she had approved for destruction on 23 February 1990 were, in fact, required for foreshadowed court proceedings'.¹⁰⁷ When Ms McGregor sought advice from the Department, she was instructed to advise Mr Coyne to contact the Department or the Office of Crown Law.¹⁰⁸ Mr Lindeberg also states that:

In her 30 May 1990 internal report on the matter, the State Archivist acknowledged reading the Heiner records before authorising their disposal on the basis that they had no permanent value and noted that some of the contents were of a defamatory nature concerning the management of the Centre.¹⁰⁹

103 Mr Kevin Lindeberg, *Submission 142.1*, p. 17.

104 Mr Kevin Lindeberg, *Submission 142.1*, p. 17.

105 Mr Kevin Lindeberg, *Submission 142*, p. 11.

106 *The Public Interest Revisited*, Report of the Senate Select Committee on Unresolved Whistleblower Cases, October 1995, Canberra, p. 54.

107 Mr Kevin Lindeberg, *Submission 142*, p. 11.

108 Mr Kevin Lindeberg, *Submission 142*, p. 11.

109 Mr Kevin Lindeberg, *Submission 142*, p. 12.

2.143 Significantly, Mr Noel Nunan did not interview the State Archivist in his investigation of the shredding of the documents in 1992-1993 on behalf of the CJC.¹¹⁰ The Committee is not aware whether she was interviewed by any other inquiry.

2.144 The Committee concurs with the earlier findings of the Senate Select Committee that, while the Queensland Government in strict interpretation adhered to the law in seeking the State Archivist's permission prior to the destruction of the documents, aspects of this process were open to question, in particular:

- in correspondence with the State Archivist, it was not specifically mentioned that the documents were sought for possible legal action, but it was alluded to that legal action was a possibility; and
- the State Archivist's examination of the material would have been cursory, given that her decision was apparently made within a few hours of receiving the voluminous material.¹¹¹

2.145 Mr Callinan QC drew attention to the potential implications when he posed the question:

Why was the state archivist not informed that the documents might be required for the purposes of litigation? There may or may not have been a necessity to inform the state archivist, in strict legal terms, in order to enable her to exercise her discretion, but it is unthinkable, had this lady been informed that there was even the possibility of litigation, that she would have authorised the destruction of the documents.¹¹²

2.146 In a further submission to the Senate inquiry of 1995, Mr Peterson also referred to the CJC's evidence to the Senate Select Committee with regard to the State Archivist. The CJC had told the Senate that:

The archivist's duty is to preserve public records which may be of historical public interest; her duty is not to preserve documents which other people may want to access for some personal or private reason. She has a duty to protect documents that will reflect the history of the state. Certainly she can only preserve public records, but there is no commonality necessarily between public records and records

110 Mr Kevin Lindeberg, *Submission 142*, p. 21.

111 *The Public Interest Revisited*, Report of the Senate Select Committee on Unresolved Whistleblower Cases, October 1995, Canberra, p. 59.

112 Mr Ian Callinan QC, *Transcript of Evidence*, Senate Select Committee on Unresolved Whistleblower Cases, 23 February 1995, p. 41.

to which Coyne or other public servants may be entitled to access pursuant to regulations made under the Public Service Management and Employment Act ... the fact that people may have been wanting to see these documents – and there is no doubt that the government knew that Coyne wanted to see the documents – does not bear on the archivist’s decision about whether these are documents that the public should have a right to access forevermore, if necessary. That is the nature of the discretion that the archivist exercises. The question about whether people have a right to access these documents is properly to be determined between the department, the owner of the document and ... the people who say they have got that right. That is nothing to do with the archivist, so I suggest to you that the fact that was not conveyed to the archivist is neither here nor there. That has no bearing on the exercise of her discretion.¹¹³

2.147 According to Mr Peterson, this statement:

clearly overlooks the fact that public records should not be shredded with haste particularly when it could avoid foreshadowed litigation of whatever description ... The natural implication from the CJC’s submission ... is that the State Archivist has almost unfettered discretion to destroy public records. This view is indefensible and clearly misguided ...

[it] represents a real threat to the security of evidence (in this case public records) required in foreseeable and foreshadowed litigation. It is also at odds with the Crown’s duty to be a model litigant.¹¹⁴

2.148 It is pertinent to note the view of the Australian Society of Archivists’ opinion on the matter. The Society did not make a submission to the Committee; however it did make a submission to the Senate Select Committee on the Lindeberg Grievance and is also quoted extensively by Mr Lindeberg in his submissions to this Committee.

113 The CJC, quoted by Mr R D Peterson, *Correspondence*, Senate Select Committee on Unresolved Whistleblower Cases, 26 May 1995, pp. 1-2.

114 Mr R D Peterson, *Correspondence*, Senate Select Committee on Unresolved Whistleblower Cases, 26 May 1995, p. 2.

- 2.149 The Society has publicly and on a number of occasions rejected the view of the State Archivist's role as propagated by the CJC.¹¹⁵
- 2.150 Mr Chris Hurley is the former General Manager of the New Zealand Archives and former State Archivist of Victoria. Commenting on the Queensland Electoral and Administrative Review Commission (EARC)'s push that Queensland's archives system needed to be upgraded, Mr Hurley had this to say:
- Can anyone suppose, as CJC would apparently have us believe, that EARC's concern was for the lack of an adequate *historical* record?¹¹⁶
- 2.151 In terms of the shredding itself, Mr Hurley judged that '[T]he CJC's contention that there is no evidence of criminal intent is dubious to say the least'.¹¹⁷ In 1999, the Society issued a position paper on the Heiner Affair and 'roundly criticised the misleading evidence provided by the CJC to the Senate Select Committee on Unresolved Whistleblower Cases in 1995'.¹¹⁸
- 2.152 Indeed, the shredding of the Heiner documents is featured as one of the world's worst shredding and archives scandals of the 20th century in a major academic work published in 2002.¹¹⁹
- 2.153 The Committee was concerned about the knowledge held by the State Archivist at the time, and particularly the fact that she may have failed in her duty after the initial shredding occurred. As Mr Lindeberg told the Committee, if Ms McGregor would have been informed that the documents might be required for legal action she 'would not have given the approval to shred those documents'. However, she 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

115 See for example Australian Society of Archivists, *Submission 2* to the Senate Select Committee on the Lindeberg Grievance.

116 Quoted by Mr Kevin Lindeberg, *Submission 142*, p. 32.

117 Quoted by Mr Kevin Lindeberg, *Submission 142*, p. 33.

118 Mr Kevin Lindeberg, *Submission 142*, p. 33.

119 Mr Kevin Lindeberg, *Submission 142*, p. 32.

no-one wanted them, she contacted the department and they told her to keep her mouth shut.¹²⁰

- 2.154 The Committee agrees with the position taken by the Australian Society of Archivists that:

If government archivists are to engage in their role as a key agent of public accountability, then they require appropriate statutory independence from political or other improper interference in the discharge of their responsibilities to appraise the public record.¹²¹

- 2.155 The Society noted that, unlike the comparable legislation of New South Wales:

The provisions of the *Libraries and Archives Act 1988* (QLD) did not provide the State Archivist with any level of protection from political or bureaucratic interference in disposal decisions.¹²²

- 2.156 The Committee notes that the independence and impartiality of the Queensland State Archivist have now been recognised under section 27(1) of the *Public Records Act 2002* (Qld).¹²³

Treatment of the Heiner Affair by successive governments

- 2.157 According to Premier Peter Beattie, the Heiner Affair has been investigated to the 'nth degree' and nothing has been found. The Committee has received evidence that this is untrue on both counts.

- 2.158 Commenting on some of the inquiries that were held following the shredding, Mrs Beryce Nelson had this to say:

some of those inquiries that were held in that period also felt a need to protect ministers. I think there was the need to protect. They knew they had made a wrong decision in

120 Mr Kevin Lindeberg, *Transcript of Evidence*, 27 October 2003, p 1441.

121 Australian Society of Archivists, *Submission 2* to the Senate Select Committee on the Lindeberg Grievance, p. 5.

122 Australian Society of Archivists, *Submission 2* to the Senate Select Committee on the Lindeberg Grievance, p. 5.

123 Australian Society of Archivists, *Submission 2* to the Senate Select Committee on the Lindeberg Grievance, p. 5.

destroying the documents and that meant they were collectively legally responsible ...¹²⁴

- 2.159 The Queensland Government has maintained that the Heiner Affair has been the subject of a number of inquiries, including inquiries by two Senate Select Committees, the CJC, the Parliamentary Criminal Justice Committee, the Electoral and Administrative Review Committee, the Auditor-General (twice), Connolly and Ryan, and Messrs Morris QC and Howard.¹²⁵
- 2.160 According to Messrs Lindeberg, Grundy and MacAdam, each of these inquiries was limited and/or hamstrung in its investigations. Mr Lindeberg provided the Committee with significant evidence about each investigation and a full review of each is beyond the scope of this Chapter. However, the Committee notes the following salient points:
- in the case of the CJC's investigation in particular, Mr Lindeberg argues that its own conduct must come under independent review; it is a protagonist in the matter.¹²⁶
 - the Committee found the claim that the issue had been exhaustively investigated questionable given that two of the people central to the Heiner Affair have never been called to give evidence: Mrs Beryce Nelson, who established the inquiry,¹²⁷ and Mr Heiner, after whom the affair is named. Indeed, Mr Heiner told the Committee:

What amuses me is that there have been seven inquiries into my inquiry and this is the first time I have ever been called.¹²⁸
 - as far as this Committee is aware, other central figures, such as the archivist, Ms McGregor, and the Director-General of the Department of Family Services, Ms Ruth Matchett, have never been called to give evidence, nor for that matter have relevant Cabinet Ministers. This is regrettable, especially since the passage of time after an event inevitably affects the capacity of subsequent investigations of that event. As Mr Heiner told the Committee:

124 Mrs Beryce Nelson, *Transcript of Evidence*, 18 June 2004, p. 1796.

125 The Hon Peter Beattie MP Press Release, 'Federal Liberal Inquiry Will Waste Thousands of Dollars', 27 October 2003.

126 Mr Kevin Lindeberg, *Transcript of Evidence*, 27 October 2003, p. 1355.

127 Mrs Beryce Nelson, *Transcript of Evidence*, 18 June 2004, p. 1784.

128 Mr Noel Heiner, *Transcript of Evidence*, 18 May 2004, p. 1693.

Had I been approached closer to when it occurred, my memory would have been excellent.¹²⁹

- contrary to Premier Beattie’s assertion that none of the inquiries ‘found anything’, the Morris/Howard Report *did* find something, but this was never acted upon.

The Morris/Howard Report

2.161 Messrs Morris QC and Howard were commissioned by the Borbidge Government to investigate the allegations made by Mr Lindeberg. The terms of reference were limited to examining the ‘paper trail’; they could call no witnesses.¹³⁰

2.162 Mr MacAdam told the Committee:

Premier Beattie constantly says ... 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 ... The Morris-Howard report, just by looking at the documents, has found that there is a likelihood of some criminal offences having been committed and that others warranted further investigation.¹³¹

2.163 Mr Grundy did not know why the Borbidge Government limited the inquiry that way, but he had this to say:

at the end of the process [Morris and Howard] recommended a full, public, open inquiry on the basis that there was prima facie evidence of numerous breaches of the criminal law ... 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.’¹³²

2.164 When Messrs Morris QC and Howard conducted their investigation, the then Leader of the Opposition, Mr Beattie, denied access to the Cabinet documents at the time of the shredding. Messrs Morris QC and Howard were therefore unable to ‘resolve the question whether members of State Cabinet may have committed criminal offences or

129 Mr Noel Heiner, *Transcript of Evidence*, 18 May 2004, p. 1694.

130 Mr Bruce Grundy, *Transcript of Evidence*, 27 October 2003, p. 1402.

131 Mr Alastair MacAdam, *Transcript of Evidence*, 27 October 2003, p. 1419.

132 Mr Bruce Grundy, *Transcript of Evidence*, 27 October 2003, p. 1402.

may have committed “official misconduct”’.¹³³ However, their report found that ‘it is open to conclude’ that officers of the Department of Family Services breached sections 129, 132 and/or 140 by destroying the Heiner documents and destroying the photocopies of the original complaints on 23 May 1990.¹³⁴

- 2.165 It is reasonable to conclude that Messrs Morris QC and Howard would have found similarly in relation to the conduct of the Queensland Cabinet, had they been aware of Cabinet’s knowledge of Mr Coyne’s intended legal action.
- 2.166 Further, crucial observations made by Messrs Morris QC and Howard support Mr Lindeberg’s contention of the CJC as a protagonist in the affair. Messrs Morris QC and Howard criticised the CJC’s conduct of the initial investigation and commented that there is cause for concern in relation to the ‘exhaustiveness – to say nothing as to the independence – of the Commission’s investigation into this matter.’¹³⁵
- 2.167 Following the establishment of the Morris/Howard inquiry, the then CJC Chairman, Mr Clair, was quoted as saying:
- The present probe is a waste of scarce resources much better used in the fight against organised crime and official corruption ... Surely the time has come to call an end to this review process – its purpose has long since been exhausted.¹³⁶
- 2.168 Mr Grundy advised the Committee that once Messrs Morris QC and Howard had completed their report with its recommendations, the matter was referred to the DPP, but the advice has never been made public. A press release from Premier Borbidge does not mention section 129:

We do not know what the DPP said, because we have never seen anything more than a press release from the Premier. So

133 *Report to The Honourable Premier of Queensland and The Queensland Cabinet of An Investigation into Allegations by Mr Kevin Lindeberg and Allegations by Mr Gordon Harris and Mr John Reynolds*, Mr Anthony Morris QC and Mr Edward Howard, 1996, p. 212.

134 *Report to The Honourable Premier of Queensland and The Queensland Cabinet of An Investigation into Allegations by Mr Kevin Lindeberg and Allegations by Mr Gordon Harris and Mr John Reynolds*, Mr Anthony Morris QC and Mr Edward Howard, 1996, p. 203.

135 *Report to The Honourable Premier of Queensland and The Queensland Cabinet of An Investigation into Allegations by Mr Kevin Lindeberg and Allegations by Mr Gordon Harris and Mr John Reynolds*, Mr Anthony Morris QC and Mr Edward Howard, 1996, p. 215.

136 *The Courier-Mail* newspaper, 9 May 1996, quoted in *Report to The Honourable Premier of Queensland and The Queensland Cabinet of An Investigation into Allegations by Mr Kevin Lindeberg and Allegations by Mr Gordon Harris and Mr John Reynolds*, Mr Anthony Morris QC and Mr Edward Howard 1996, p. 214.

the final outcome of all of that is still ... in limbo ... 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 129.¹³⁷

... 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.¹³⁸

2.169 Apparently the DPP, Mr Miller QC, questioned whether the public interest was being served in pursuing the matter, which, according to Mr Grundy:

is an interesting observation, but it has got nothing to do with the prosecution of the law.¹³⁹

2.170 Mr Lindeberg told the Committee that the Borbidge Government did nothing about the advice received from the DPP. According to Mr Lindeberg, this may be because:

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 ... 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.¹⁴⁰

2.171 There is conjecture as to what was included in the DPP's advice. Mr Lindeberg told the Committee he was aware of the contents of the advice and that it:

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 may it is time to put it all to bed.¹⁴¹

137 Mr Bruce Grundy, *Transcript of Evidence*, 27 October 2003, pp. 1402-3.

138 Mr Bruce Grundy, *Transcript of Evidence*, 27 October 2003, p. 1413.

139 Mr Bruce Grundy, *Transcript of Evidence*, 27 October 2003, p. 1413.

140 Mr Kevin Lindeberg, *Transcript of Evidence*, 27 October 2003, p. 1444.

141 Mr Kevin Lindeberg, *Transcript of Evidence*, 27 October 2003, p. 1444.

- 2.172 Mr MacAdam, on the other hand, thought that the DPP had ‘recanted from his first erroneous decision and agreed with Tony Morris that that provision could not be used to read it down.’¹⁴²
- 2.173 The Committee believes that, particularly in light of inconsistent opinions as to the content of the advice, it would be appropriate to have that advice made public. Given the Ensbey indictment, it would be helpful to know whether the DPP in 1996 did still adopt the original view that a legal proceeding had to be under way, or whether opinion had already changed on that matter.

Recommendation 1

- 2.174 **That the Queensland Government publicly release the 1996 advice on the Morris/Howard Report provided by the Director of Public Prosecutions to the then Borbidge Government.**

Protection of the executive government

- 2.175 The Morris/Howard Report was the only investigation of the Heiner Affair by two independent barristers. The remainder were investigations (albeit partial or limited ones) by government bodies. According to Mr MacAdam, perhaps the most serious concern of the Heiner Affair is 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 ... they have collapsed around the executive government and said that the executive government can do no wrong.¹⁴³

- 2.176 The role of the CJC is again of particular concern to the Committee. However, equally, it is noted that Mr Lindeberg has approached every government agency capable of – and indeed obliged to – investigate his complaints with very limited success.
- 2.177 The Committee also notes, for instance, that in his letter of 28 November 1995 to the then Shadow Attorney-General

142 Mr Alastair MacAdam, *Transcript of Evidence*, 27 October 2003, p. 1427.

143 Mr Alastair MacAdam, *Transcript of Evidence*, 27 October 2003, p. 1418.

Denver Beanland, the DPP stated that the complaint should be directed to the CJC, because the DPP is not an investigative agency. It is the CJC that summarily dismissed Mr Lindeberg's complaint in 1993.¹⁴⁴

2.178 Mr MacAdam had the following to say on the matter:

Before and after the Fitzgerald Inquiry, various Queensland Government bodies were established designed, at least in part, to protect citizens against excesses of the Executive Government. However, when serious allegations were made against the Executive Government, rather than doing their duty in a fair and impartial manner, they collapsed around it and protected it, generally giving spurious reasons for not fulfilling their responsibilities to the people of Queensland.¹⁴⁵

2.179 Mr MacAdam concurs with Mr Lindeberg that the following Queensland Government bodies are involved and that 'many of these bodies simply adopted Noel Nunan's fundamentally flawed interpretation of section 129 of the Queensland *Criminal Code Act 1899*, as their justification for doing nothing':

- the CJC
- Crown Law
- the Crown Solicitor
- the DPP
- the Attorney-General
- the Queensland Police
- the Ombudsman
- the Information Commissioner
- the Auditor-General
- the State Archivist
- the Department of Family Services.¹⁴⁶

144 A copy of the letter can be found on *The Justice Project* website, at <http://www.eastes.net/justice/content/Miller2.asp>.

145 Mr Alastair MacAdam, *Submission 4* to the Senate Select Committee on the Lindeberg Grievance, p. 3.

146 Mr Alastair MacAdam, *Submission 4* to the Senate Select Committee on the Lindeberg Grievance, pp. 3-4. See also Mr Kevin Lindeberg, *Submission 142*, p. 19, footnote 22.

2.180 Mr MacAdam further believes that the following can be added to the list:

- The Queensland Parliament
- The Speaker
- Parliamentary Committees, particularly the Parliamentary Criminal Justice Committee and its various Chairmen, which include the current Premier, Peter Beattie
- Premier Goss, who as a member of Cabinet, was a party to the original destruction of the Heiner documents
- The Forde Inquiry
- Premier Rob Borbidge, who started to pursue the matter, but let it drop
- Premier Beattie, who refuses to pursue the matter, falsely claiming that the matter has been investigated to the 'nth degree', and nothing found.¹⁴⁷

2.181 On the evidence presented to it, it is the Committee's contention that allegations concerning the conduct by these agencies and individuals in relation to the Heiner Affair may raise ineptitude and/or serious issues of official (and possibly criminal) conduct. The Committee concludes therefore that detailed investigations are best undertaken by a special prosecutor. A recommendation detailing the tasks for a special prosecutor follows in Chapter 3.

Was the Heiner inquiry properly set up?

2.182 As noted earlier in this Chapter, the putative justification for the aborting of the Heiner inquiry and subsequent shredding of the material was the lack of indemnity for Mr Heiner and the witnesses resulting from the defective establishment of the inquiry.

2.183 Mr Lindeberg, however, told the Committee that the Heiner inquiry had been lawfully established, and that its records were

always public records pursuant to section 5(2) of the *Libraries and Archives Act 1988*. The witnesses were known to be covered by qualified privilege; and that the State had

147 Mr Alastair MacAdam, *Submission 4* to the Senate Select Committee on the Lindeberg Grievance p. 4.

accepted any liability flowing out of consequential court proceedings.¹⁴⁸

- 2.184 It is clear that Mr Heiner had doubts about his appointment. He told the Committee that he had never presented a report, but, that during the process of preparatory work for the report, he had wanted to check the terms of his appointment:

I satisfied myself that my appointment was not as I thought it was. I thought I was acting in an inquiry on behalf of cabinet, where of course I would have the authority of cabinet behind me and indemnification for any report I put in. I found out – or I thought I found out – that it was an appointment by or through the Department of Family Services.¹⁴⁹

- 2.185 Mr Heiner told the Committee that he had wanted to put into his report:

the facts of my appointment and what it involved – what it entailed, and what I could do and could not do – and I arrived at the conclusion that I did not know what it was all about or who appointed me or under what authority they appointed me or what indemnification or protection anybody had.¹⁵⁰

- 2.186 He had been concerned about his own protection, as well as that of those who came before him, having previously assumed that:

we were all protected in the same way as witnesses are in a court case or the magistrate sitting on the bench is – that we had all the protection of a court for anything they wanted to volunteer. I was not satisfied that this was the case.¹⁵¹

- 2.187 He told the Committee that he believed his appointment was ‘completely aboveboard’:

I thought originally that I was working as part of an inquiry on behalf of cabinet and that I had all the protection of an inquiry under cabinet, and I was not satisfied by my own personal inquiries before I made the report that that was so.¹⁵²

148 Mr Kevin Lindeberg, *Submission 142*, p. 10, author’s emphasis.

149 Mr Noel Heiner, *Transcript of Evidence*, 18 May 2004, p. 1675.

150 Mr Noel Heiner, *Transcript of Evidence*, 18 May 2004, p. 1679.

151 Mr Noel Heiner, *Transcript of Evidence*, 18 May 2004, p. 1679.

152 Mr Noel Heiner, *Transcript of Evidence*, 18 May 2004, p. 1679

- 2.188 Mr Heiner referred the Committee to the letter he had written to Ms Matchett on 19 January 1990 querying his appointment, following discussions earlier that day with Ms Matchett about the 'validity of the establishment and appointment and approval' for his conducting the inquiry.¹⁵³
- 2.189 In the letter, Mr Heiner advised that:
- In view of the confusion which exists and my doubt as to the validity of my actions so far, I am not prepared to continue any further with my inquiry ... I am therefore ceasing from now to continue any further with the matter until I have obtained written information and confirmation that my actions to date including my appointment and authority to act are validated ... There has been reference to legal proceedings being taken as a result of my enquiries. I believe if there is any legal action taken, the Department ... should take action to indemnify all my actions to date.¹⁵⁴
- 2.190 Mr Heiner confirmed to the Committee that he had had no knowledge 'of any legal proceedings either commenced, about to commence or otherwise' up until that time of discussions with Ms Matchett.¹⁵⁵
- 2.191 Further, he advised that he never received a written reply to his letter; he was telephoned by an officer of the Department and told that Cabinet had indemnified him, as well as the people who had given evidence. However he was also told that Cabinet had decided that the inquiry was to be aborted and he was required to send everything back to the Department.¹⁵⁶ Mr Heiner agreed with the aborting of the inquiry because 'at that time it was the only thing that could have been done to protect me and anybody who volunteered to come before me.'¹⁵⁷
- 2.192 The Committee notes that, given Mr Heiner had been advised that indemnity was in place, the question of defamation proceedings would have had less relevance. Once indemnity was provided, none of Mr Heiner's records could be used in evidence if any proceedings were brought, and hence there would be no need to shred the

153 *Exhibit 126*, Letter from Mr Noel Heiner to Ms Ruth Matchett, 19 January 1990.

154 Mr Noel Heiner, *Transcript of Evidence*, 18 May 2004, p. 1681

155 Mr Noel Heiner, *Transcript of Evidence*, 18 May 2004, p. 1681.

156 Mr Noel Heiner, *Transcript of Evidence*, 18 May 2004, p. 1681.

157 Mr Noel Heiner, *Transcript of Evidence*, 18 May 2004, p. 1674.

documents. As noted earlier, *The Sun* newspaper, a month after the shredding, had reported Minister Warner as stating that Mr Heiner had indeed been given indemnity from prosecution.¹⁵⁸

2.193 The Committee further notes that if Mr Heiner were indemnified, there must have been a Cabinet document demonstrating this, or otherwise Mr Heiner had been misled.¹⁵⁹

2.194 Mr Heiner further clarified that, to claim he was concerned about defamation action was going ‘one step too far’:¹⁶⁰

I was concerned about my appointment. I was concerned about the people who were told at the start that they did not have to give evidence if they did not want to – it was all volunteers – but if they did give evidence they would have the protection of a witness in a court case to fall back on if something happened. But at no time did I believe that any legal proceedings were pending or about to take place. I just wanted indemnification for everybody.¹⁶¹

2.195 On the other hand, Mrs Beryce Nelson, who instituted the Heiner inquiry while Minister for Family Services, categorically stated that:

I was, and remain satisfied that the inquiry I set up did not place either the person running it, or the people who gave evidence to it, at any risk.¹⁶²

2.196 She told the Committee that she had directed that her inquiry into JOYC be structured to avoid criticism of ‘length, expense and lack of outcomes of some inquiries’. Mrs Nelson advised that Mr Pettigrew, the then Director-General of the Department of Family Services, had advised her he had obtained legal advice to the effect that:

a ministerial inquiry could be established which would provide ample protection for both witnesses and the person conducting the inquiry. Further, if it became necessary to move to a full inquiry under the Commissions of Inquiry Act, this could be done by way of extension via a cabinet minute

158 ‘Labor Blocks Secret Probe’, *The Sun*, 11 April 1990, p. 1.

159 Mr Noel Heiner, *Transcript of Evidence*, 18 May 2004, p. 1683.

160 Mr Noel Heiner, *Transcript of Evidence*, 18 May 2004, p. 1692.

161 Mr Noel Heiner, *Transcript of Evidence*, 18 May 2004, p. 1692.

162 *Exhibit 115*, Signed statement by Mrs Beryce Nelson, 15 May 1998, p. 3.

without the need to go back and repeat work already done by the initial ministerial inquiry.¹⁶³

2.197 Mrs Nelson disputes the response given by the Hon Anne Warner (quoted earlier in this Chapter) to the question asked in Parliament in 1993 insofar as it referred to the setting up of the Heiner inquiry.¹⁶⁴

2.198 Mrs Nelson wanted to:

set the record straight in terms of dispelling the myth that was perpetuated at that time that the inquiry had not been fully and properly established and therefore had to be wound up and that the evidence had to be destroyed. That was simply not correct.¹⁶⁵

2.199 She told the Committee that she had felt it inappropriate to establish a full commission of inquiry 'because it was too close to a state election'.¹⁶⁶ It was more appropriate to 'initiate a shorter term inquiry to give us preliminary findings so that there was room for an incoming government ... to establish a full commission of inquiry'.¹⁶⁷

2.200 Mrs Nelson advised the Committee that she believed the advice to Mr Heiner that the inquiry had not been properly constituted was 'an absolute red herring' and 'a diversionary tactic to get the whole thing shut down and hidden away.' Mr Heiner should have been provided with 'a quite specific statement of reassurance that his inquiry was properly established – which it was.'¹⁶⁸

2.201 She stated that she has reason to believe that Mr Heiner approached Minister Warner in early January 1990 with a request to bring the inquiry under the Queensland *Commissions of Inquiry Act 1950*, which Mrs Nelson believes could have been achieved via Cabinet minute.¹⁶⁹

2.202 The Committee finds that, on balance, there may have been some potential issues in relation to the setting up of the Heiner inquiry, possibly relating to the pressure the National Party Government was under to address the alleged problems at JOYC in the climate of an approaching election. However, the Committee agrees with

163 *Exhibit 115*, Signed statement by Mrs Beryce Nelson, 15 May 1998, p. 3.

164 *Exhibit 115*, Signed statement by Mrs Beryce Nelson, 15 May 1998, p. 4.

165 Mrs Beryce Nelson, *Transcript of Evidence*, 18 June 2004, p. 1784.

166 Mrs Beryce Nelson, *Transcript of Evidence*, 18 June 2004, p. 1784.

167 Mrs Beryce Nelson, *Transcript of Evidence*, 18 June 2004, p. 1784.

168 Mrs Beryce Nelson, *Transcript of Evidence*, 18 June 2004, p. 1789.

169 *Exhibit 115*, Signed statement by Mrs Beryce Nelson, 15 May 1998, p. 4.

Mrs Beryce Nelson's assessment that, even if there had been problems with the way the inquiry had been set up:

[Heiner and the witnesses] could quickly and easily have been given complete protection, made effective retrospectively if necessary.¹⁷⁰

2.203 The Committee notes that Mr MacAdam agrees with Mrs Nelson's assessment – he argued that, if the papers were shredded because Noel Heiner and his witnesses had not been properly indemnified, legislation could easily have been passed retrospectively to validate Mr Heiner's appointment.¹⁷¹

2.204 Mr Callinan QC also posed the question:

If the government was concerned about the people who had given evidence to Mr Heiner or about Mr Heiner's own position, why did the government not pass, as it could have done, a two sentence statute, simply declaring that Mr Heiner should be deemed to have had all the powers, authorities and protection of a commission of inquiry, and that those who gave evidence before him or submitted documents to him were to be similarly protected? One could draft the legislation in five minutes.¹⁷²

2.205 On balance, therefore, the Committee considers that arguments that the documents were shredded to protect Heiner and the witnesses from potential legal action are somewhat spurious.

2.206 The Senate inquiry had concluded that the most plausible explanation for the shredding of the documents was to 'protect the public purse from the expenses of litigation'; accordingly, 'the rights of an individual (Mr Coyne) were negated' and some might argue, 'sacrificed for a reason'.¹⁷³

2.207 Other possible motives for the shredding will be discussed in detail in the following Chapter.

170 *Exhibit 115*, Signed statement by Mrs Beryce Nelson, 15 May 1998, p. 5.

171 Mr Alastair MacAdam, *Transcript of Evidence*, 27 October 2003, p. 1420.

172 Mr Ian Callinan QC, *Transcript of Evidence*, Senate Select Committee on Unresolved Whistleblower Cases, 23 February 1995, p. 41.

173 *The Public Interest Revisited*, Report of the Senate Select Committee on Unresolved Whistleblower Cases, October 1995, Canberra, p. 59.

Conclusion

- 2.208 The Committee finds that that there is sufficient evidence to conclude that the Labor Government, in deciding to shred the Heiner documents, has a case to answer under the Queensland *Criminal Code Act 1899* for destroying evidence required in legal proceedings. It is open to conclude that the Government's actions - and possibly those of Government departments and agencies - were illegal, but equally importantly, immoral.
- 2.209 While the Committee is cognisant of the fact that there may have been competing interpretations of section 129 of the Queensland *Criminal Code Act 1899* at the time of the shredding of the documents, on balance, the evidence shows that destruction of evidence that may be required in legal proceedings is an indictable offence.
- 2.210 The Committee's main finding in this Chapter therefore relates to the interpretation of that section. On the evidence provided, the Committee finds that the indictment (and then conviction) of an ordinary citizen on the charge of destruction of evidence demonstrates conclusively that previous interpretations of the sections put forward by the Government, the Crown Solicitor, the DPP and the CJC are not justifiable.
- 2.211 Further, the Committee does not accept as a valid defence the argument that the Cabinet (or officers of the Department of Family Services) is absolved of blame because it acted on legal advice. While the Committee accepts that, once a charge is brought, the prosecution would need to establish intent, acting on legal advice is not an argument against an indictment to proceed with a prosecution.
- 2.212 The Committee makes the following recommendation bearing in mind that:
- while certain Cabinet documents concerning the decision to shred the Heiner inquiry documents are now publicly available, the actual discussions in respect of the decision-making process at Cabinet level would most likely not be admissible in evidence; and
 - the Federal Government has no jurisdictional power in this area.

Recommendation 2

2.213 Given that:

- it is beyond doubt that the Cabinet was fully aware that the documents were likely to be required in judicial proceedings and thereby knowingly removed the rights of at least one prospective litigant;
- previous interpretations of the applicability of section 129 as not applying to the shredding have been proven erroneous in the light of the conviction of Pastor Douglas Ensbey; and
- acting on legal advice such as that provided by the then Queensland Crown Solicitor does not negate responsibility for taking the action in question.

the Committee has no choice but to recommend that members of the Queensland Cabinet at the time that the decision was made to shred the documents gathered by the Heiner inquiry be charged for an offence pursuant to section 129 of the Queensland *Criminal Code Act 1899*. Charges pursuant to sections 132 and 140 of the Queensland *Criminal Code Act 1899* may also arise.

2.214 The Committee also considers that officers of the Department of Family Services and the CJC at the time of the shredding of the documents have failed to do their duty and may have a case to answer under sections 132 and 140 of the Queensland *Criminal Code Act 1899*. The conclusion that potential offences under these sections may have occurred forms the basis for a recommendation in Chapter 3.

The Heiner Affair – motives for the shredding

Introduction

- 3.1 Chapter 2 of this Volume discussed the legal issues associated with the shredding of the Heiner inquiry documents. The Committee found sufficient evidence to recommend that those responsible be charged under section 129 of the Queensland *Criminal Code Act 1899* and possibly under a number of other sections.
- 3.2 This Chapter examines the motives for the shredding and evidence with regard to child abuse at JOYC. The Committee considers that, apart from the legal issues involved, a second question in the Heiner Affair relates to competing claims concerning the Cabinet's motive in taking the decision to shred the Heiner documents.
- 3.3 In order to come to a conclusion in this regard, the Committee thought it imperative to hear directly from Mr Noel Heiner in terms of the evidence he gathered during his inquiry, as well as Mrs Beryce Nelson, the Minister who set up the inquiry.
- 3.4 In order to assess the competing explanations for the shredding of the Heiner inquiry documents, the Committee considers the following to be essential issues:
 - the extent and nature of abuse (physical and sexual) at JOYC;

- the extent of evidence relating to child abuse provided to Mr Heiner during his inquiry;
 - the state of knowledge of the Queensland Cabinet and officers of the Department of Family Services and other government institutions; and
 - whether the Cabinet and officers of government bodies have engaged in a cover-up and if so, why.
- 3.5 The Committee considers that the extent of awareness of abuse at JOYC within the Goss Cabinet is not relevant in determining whether the Cabinet had a case to answer under section 129 of the Queensland *Criminal Code Act 1899*. As the previous Chapter discussed, section 129 applies simply on the basis that the documents might have been required in judicial proceedings. Extensive reference was made to Mr Coyne's requests for the documents and hence Cabinet's undoubted knowledge that the documents would indeed be required.
- 3.6 It is open to the Committee to conclude, however, that the documents may well also have been required by other staff and, most importantly, the victims of abuse at JOYC.
- 3.7 If the Heiner documents contained evidence of abuse – physical and/or sexual – it does not change the nature of the charge itself. It does, however, make the offence much more serious.

Evidence of child abuse at JOYC and culpability

- 3.8 The Committee heard evidence, particularly from Mr Bruce Grundy, of significant abuse at JOYC, including sexual abuse.
- 3.9 The Committee notes that a considerable amount of evidence concerning abuse at JOYC has come to light since the Senate first investigated the Heiner Affair. In that sense, the Senate inquiry was limited.
- 3.10 Indeed, when Mr Lindeberg first pursued the issue of the shredding of the documents, he did so without awareness of the allegations of abuse at JOYC. He pursued the issue on the basis that the Government wilfully destroyed records required for legal proceedings. The Committee notes Mr Lindeberg only became aware of abuse allegations in 1997 when he met a youth worker from JOYC who:

after the closure of the Heiner Inquiry ... had been contacting the CJC on a regular basis to ask them to investigate the allegations of suspected child abuse.¹

- 3.11 Mr Lindeberg only became aware of allegations of sexual abuse, and the alleged cover-up of a rape of a minor earlier this year, with the disclosures made by Mr Bruce Grundy.²
- 3.12 Mr Grundy provided the Committee with much evidence that abuse, including a pack-rape of a then 14 year old resident, occurred at JOYC and further, that nothing was done about it. The pack-rape took place in May 1988, some 18 months prior to the Heiner inquiry commencing. The Committee holds the view that if evidence such as knowledge of the pack-rape or other abuse was given to Mr Heiner, it potentially adds a further dimension of criminality to the shredding of the documents.

The Forde inquiry findings

- 3.13 There is no doubt that JOYC was a volatile environment throughout the 1980s and 1990s. As found by the Forde inquiry,³ which tabled its report into the abuse of children in Queensland institutions in June 1999, JOYC was an overcrowded youth detention centre, with inadequate facilities, low staffing levels and inexperienced and untrained staff and management. Management practices were divisive and there were 'factional tensions'.⁴
- 3.14 There is little doubt that many of the staff recruited to JOYC were inexperienced and underqualified. The report of the Forde inquiry cites a yardsman and a kitchenhand who became youth workers without qualifications.⁵ The Committee also notes that Michael Roch, who was employed by JOYC to look after detainees at the time of the

1 Mr Kevin Lindeberg, quoted by 'Queensland's Secret Shame', Channel NINE *Sunday* program, 21 February 1999.

2 Mr Kevin Lindeberg, *Submission 142.3*, p. 3.

3 The Commission of Inquiry into Abuse of Children in Queensland Institutions was established by the Queensland Government in 1998. It is hereafter referred to as the Forde inquiry.

4 *Report of the Commission of Inquiry into Abuse of Children in Queensland Institutions*, 1999, p. 164.

5 *Report of the Commission of Inquiry into Abuse of Children in Queensland Institutions*, 1999, p. 164.

Heiner inquiry (and who gave evidence to the Committee), had no formal training in this area; he was a qualified airline pilot.⁶

3.15 A staff member told the Forde inquiry that the lack of training led to volatility in JOYC. Another said that staff had resorted to force in some circumstances because they had no training and therefore did not know how to deal with problems. Staff often acted 'out of fear rather than professional intervention'.⁷

3.16 The Forde inquiry report noted that JOYC had been 'plagued by disturbances'. The report stated that this:

is not surprising given the combination of inappropriate premises, lack of staff training and an absence, over much of its history, of operational plans and procedures to deal with major disturbances.⁸

3.17 In terms of incidences during the period in question, the Forde inquiry recorded a riot at the centre on 15 March 1989. Detainees 'went on a rampage through the Centre'⁹. There was also a history of self-harming behaviour at the Centre by inmates.¹⁰

3.18 The Forde inquiry investigated three specific instances of alleged abuse at JOYC, all involving the handcuffing of inmates. It found the following to be substantiated: the handcuffing of two girls and one boy on 26 September 1989. Mr Coyne had written a report about the incidents to the Executive Director, Department of Family Services, on 9 October 1989. Apparently, Mr Coyne had instructed a youth worker over the phone to handcuff the residents involved. He claimed that his actions were 'to prevent a major incident such as a riot from occurring at the Centre'.¹¹

3.19 The inquiry found that Mr Coyne's behaviour was inappropriate and unnecessary. His behaviour was interpreted as an overreaction due to

6 Mr Michael Roch, *Transcript of Evidence*, 16 March 2004, p. 1632.

7 *Report of the Commission of Inquiry into Abuse of Children in Queensland Institutions*, 1999, p. 164.

8 *Report of the Commission of Inquiry into Abuse of Children in Queensland Institutions*, 1999, p. 164.

9 Report on riot, quoted in *Report of the Commission of Inquiry into Abuse of Children in Queensland Institutions*, 1999, p. 165.

10 *Report of the Commission of Inquiry into Abuse of Children in Queensland Institutions*, 1999, p. 166.

11 *Report of the Commission of Inquiry into Abuse of Children in Queensland Institutions*, 1999, p. 171.

a number of factors that were primarily the responsibility of the Department of Family Services and its senior officers,¹² including:

- the appointment of Mr Coyne despite the fact that he was inexperienced and untrained in the management of a juvenile detention centre;¹³
- a lack of adequate training for Mr Coyne following his appointment;
- Mr Coyne's immediate supervisor had no hands-on experience in the management of a youth detention centre;
- the building had major design faults, particularly when the resident mix changed as a result of closure of other centres;
- little action from the Department to improve the design faults of the building and defects in security as recommended by Mr Coyne following the riot in March of that year; and
- no response from the Department to Mr Coyne's complaints about the quality of staff at JOYC.¹⁴

3.20 The Forde inquiry found that it was unable to substantiate another alleged incident of handcuffing due to inconsistencies in accounts of the incident.¹⁵

3.21 The report concluded that:

events such as the handcuffing incident of 1989 exemplifies how untrained, unsupervised and unsupported people can make careless decisions. Well-trained staff can prevent major disturbances and reduce the risks of abuse.¹⁶

Alleged sexual abuse at JOYC

3.22 The Committee notes that the Forde inquiry did not report any evidence of sexual abuse at JOYC during the late 1980s.

12 *Report of the Commission of Inquiry into Abuse of Children in Queensland Institutions*, 1999, pp. 172-3.

13 This was confirmed by Mr Michael Roch who described Mr Coyne as 'totally immature and inexperienced', *Transcript of Evidence*, 16 March 2004, p. 1635.

14 *Report of the Commission of Inquiry into Abuse of Children in Queensland Institutions*, 1999, p. 173.

15 *Report of the Commission of Inquiry into Abuse of Children in Queensland Institutions*, 1999, p. 174.

16 *Report of the Commission of Inquiry into Abuse of Children in Queensland Institutions*, 1999, p. 171.

3.23 The Committee notes from the documents provided by Mr Grundy, however, that there is ample evidence to demonstrate that a 14 year old girl was sexually assaulted while in the care of JOYC staff in May 1988. The evidence also demonstrates that the police, JOYC staff and management, as well as the Department of Family Services failed in their duty of care in relation to the girl.¹⁷

3.24 Mr Grundy first discovered evidence of the alleged pack-rape of a JOYC female resident in 2001. The incident occurred on 24 May 1988 during an outing of JOYC inmates. Based on documentation released under Freedom of Information legislation with copies provided to the Committee, Mr Grundy told the Committee that:

- the girl had been sent on an outing in the bush with six boys without adequate supervision. This alone should not have occurred, as staff had been aware that the girl had been a victim of sexual abuse as a child.¹⁸
- what happened after staff had suspicions that ‘sexual contact’ had occurred on the excursion is ‘simply appalling’.¹⁹
- rather than immediately calling the police, the manager and staff discussed the incident that evening and agreed to meet the following day, to ‘develop a strategy for investigating the concern about [the girl] being sexually assaulted’.²⁰
- when Mr Coyne met with the girl on the following day, she confirmed that she had had sexual intercourse with two of the boys and had ‘indicated that she felt under a lot of pressure from the boys’. Mr Coyne then ‘asked if she wanted the boys to be charged by the Police and she tentatively said yes’.²¹ According to Mr Grundy, this is an:

indication of the outrageous treatment the girl received ...

That the girl’s desire to have the boys charged was described as ‘tentative’ is a disgrace.²²

17 *Exhibits 117 to 122*, provided by Mr Bruce Grundy.

18 Mr Bruce Grundy, *Submission 171.1*, p. 3.

19 Mr Bruce Grundy, *Submission 171.1*, p. 5.

20 *Exhibit 121*, Memo from Mr Peter Coyne to Mr George Nix, Deputy Director-General, Community and Youth Support, 27 May 1988.

21 *Exhibit 121*, Memo from Mr Peter Coyne to Mr George Nix, Deputy Director-General, Community and Youth Support, 27 May 1988.

22 Mr Bruce Grundy, *Submission 171.1*, p. 6.

- the police were not contacted until Friday, 27 May 1988, three days after the rape; they then interviewed the girl on the following day.
- 3.25 Management response to the incident appears to have been inadequate. The Chairman noted that those in authority should have contacted police immediately and that not doing so was covering up a criminal act.²³
- 3.26 The Committee notes however that:
- some of the boys had absconded on the outing which had preoccupied staff and resulted in inadequate supervision;
 - upon the return of the party to JOYC, there was unrest and some of the inmates were provoking physical confrontations with staff;
 - Mr Coyne had left the Centre but, on being informed of the unrest, returned and met with staff at which point he was informed of staff's suspicion about a sexual assault; and
 - following the calming of the children, Mr Coyne checked on the girl and she was asleep.
- 3.27 Mr Coyne should have contacted police. That he did not do so certainly appears to be negligent. The Committee considers, however, that he acted appropriately in contacting the girl's parents, in seeking advice from his immediate supervisor, Mr Ian Peers, in requesting staff reports on the outing, and in informing his supervisors at the Department of Family Services with a full report.²⁴
- 3.28 Mr Coyne however also interviewed the girl – a job that should have been left for police - and asked her whether she wished the boys to be charged. Clearly:
- it was not a matter to be determined by the girl. She was a minor. It was not her call. She had been raped (since she was under the age of 16, consent was not an issue) and there was a clear demand that the police be informed (as they should have been the previous day).²⁵
- 3.29 Mr Coyne also interviewed the boys involved on the day following the excursion; however, due to large parts of the document being blacked out when released under Freedom of Information legislation,

23 Chairman, *Transcript of Evidence*, 27 October 2003, p. 1618.

24 *Exhibit 121*, Memo from Mr Peter Coyne to Mr George Nix, Deputy Director-General, Community and Youth Support, 27 May 1988.

25 Mr Bruce Grundy, *Submission 171.1*, p. 7.

the Committee was unable to determine the outcome of these interviews.

- 3.30 Mr Grundy also commented on the amount of material that has been blacked out in the released documents. It is clear that one person was referring to particular incidents that demonstrated that 'what he knew was going on in the centre at that time is absolutely critical, but we do not know' because the information had been blacked out.²⁶
- 3.31 Mr Coyne's further actions indicate that he wished to establish the veracity of the claims first, and perhaps ascertain whether the sexual contact was consensual. It is obvious that he did not consider the fact that the girl's age would mean consent would not be an issue; it is conceivable to suggest that he was not aware of the girl's age, or, alternatively, not aware of the law.
- 3.32 The Committee notes that the then deputy manager, Ms Jenny Foote, had also spoken with the girl on the day following the outing prior to Mr Coyne's conversation with her. At first, the girl had told her that there had been no sexual contact, but, when told that the boys had spoken of what had occurred, she told Ms Foote that she had had sexual intercourse with two boys.²⁷
- 3.33 Following a visit by the girl's mother and the girl's decision that she wanted a complaint to be made to police, Mr Coyne then contacted the police, who, as previously mentioned, interviewed her on the Saturday, four days after the incident. The Committee notes that the girl was not examined by a paediatrician until Friday 27 May 1988.²⁸
- 3.34 Mr Grundy also referred the Committee to a report by *The Courier-Mail* newspaper on 17 March 1989 which relates the rape of a 15 year old resident on an outing from JOYC.²⁹ The following day saw then Family Services Minister the Hon Craig Sherrin claim that the girl was 17 and that, although encouraged to do so, she did not wish to lay charges.³⁰
- 3.35 It is not clear whether the rape referred to is in fact the pack-rape of the 14 year old uncovered by Mr Grundy, incorrectly reported as the rape of a 15 year old by *The Courier-Mail* newspaper. However, if, as

26 Mr Bruce Grundy, *Transcript of Evidence*, 27 October 2003, p. 1410.

27 *Exhibit 122*, memo from Ms Jenny Foote to Mr Peter Coyne, 27 May 1988.

28 *Exhibit 121*, letter from Dr Maree Crawford to Dr Harold Forbes, 9 June 1988.

29 Mr Bruce Grundy, *Submission 171.2*, p. 2; 'Wacol centre 'paradise' for young crims', *The Courier-Mail*, 17 March 1989, p. 3.

30 'Repression 'not way' to youth reform', *The Courier-Mail*, 18 March 1989, p. 5.

Minister Sherrin pointed out, the girl was in fact 17, this may mean that there were two rapes on outings that were not investigated.

- 3.36 Mr Lindeberg told the Committee that, assuming there had only been one rather than two pack-rape incidents, the Minister was either misled by his bureaucracy or was part of the cover-up, whereby:

a picture could be painted that the girl was above the age of consent thereby creating a false impression that it was highly likely – in the mind of the reader – that she was perhaps a consensual party to multiple-sexual partners on the bush/art outing and had thought the better of laying charges despite the department being happy for her to bring them forward at the time.³¹

- 3.37 Mr Grundy also related some evidence of further sexual misconduct at JOYC. He advised the Committee that, shortly after his first story appeared in *The Courier-Mail* newspaper in 2001, another woman mentioned:

she was raped in her cell by a worker and taken on weekend release to his place, and many staff knew what was happening.³²

- 3.38 The Committee has also become aware that abuse at JOYC may have continued into the 1990s. There has been an allegation of a further rape at the JOYC, which was reported in *The Independent Monthly* in August 2004 and was also the subject of an interview on ABC Radio.³³ The former female resident at JOYC claims that she was raped by a male youth worker while on an excursion to Wivenhoe Dam in Queensland on 11 April 1991. Upon return to the Centre, she was assaulted by several other female residents whom she claims were sexually involved with the youth worker in question. When her complaints were taken to JOYC management, the youth worker was offered the opportunity to be sacked or voluntarily resign; he chose the latter. At the time the girl also chose not to press charges. Shortly after the resignation of the youth worker, the girl in question received several death threats, presumably from the female inmates who assaulted her.

31 Mr Kevin Lindeberg, *Submission 142.3*, p. 5.

32 Mr Bruce Grundy, *Transcript of Evidence*, 27 October 2003, p. 1399.

33 'Death Threats Latest Detention Centre Scandal', *The Independent Monthly*, August 2004, p. 1; 'Interview with 'Shelley'', *Mornings*, ABC Radio Brisbane, 19 July 2004.

The actions of government agencies

- 3.39 The Committee was most concerned with the apparent inaction by the police in relation to the rape. The police notebook records an interview on Saturday, 28 May 1988. The incident was recorded as a 'sexual type incident', occurring on Tuesday, 24 May 1988. Signed by the girl and witnessed by two officers and a youth worker, it states: 'I do not wish to make an official complaint to the Police and I am happy with Police enquiries made in relation to this matter'. The police notebook also stated that the girl was 14 years old.³⁴
- 3.40 According to Mr Grundy, there is no evidence that any of the staff or boys concerned were interviewed by police.³⁵ If consent was a non-issue given the girl's age, it would appear that the police were negligent in not charging the boys involved with rape.
- 3.41 Given that Mr Coyne provided his supervisors at the Department of Family Services with a full report on the rape, there is no doubt that relevant officers at the Department, as well as the Minister at the time, were aware of the incident. However, there is little indication that the welfare of the girl was a matter of major concern.
- 3.42 The Committee was particularly concerned about a memorandum from the then Director-General of the Department of Family Services, Mr Alan Pettigrew, dated 30 May 1988, to the then Minister. By that time, the pack-rape had become 'interference' by four boys with the girl. Further, Mr Pettigrew wished to assure the Minister that no blame had been placed on JOYC staff. He also expressed some concern that it may leak to the media.³⁶
- 3.43 The Committee was also provided with a copy of a memo of 30 May 1988 to Mr Pettigrew from Mr George Nix, Deputy Director-General Community and Youth Support, to which Mr Coyne's report of the incident was attached. The memo is a summary of Mr Coyne's report. Of note is that Mr Nix does not comment on the management response as inadequate. Mr Nix appears to be greatly relieved at the fact that 'it was very unlikely that she would fall pregnant'.³⁷
- 3.44 No-one appeared to question the fact that the girl did not want to lay charges because of the apparent length of a court process and that she

34 *Exhibit 119*, Notes from police notebook, 28 May 1988.

35 Mr Bruce Grundy, *Submission 171.1*, p. 8.

36 *Exhibit 121*, Memo from Mr Alan Pettigrew to Minister, 30 May 1988.

37 *Exhibit 121*, Memo from Mr George Nix to Mr Alan Pettigrew, 30 May 1988.

was being threatened at the Centre. Moving her to another location did not seem to occur to JOYC management, nor to Mr Coyne's supervisors. According to Mr Grundy, this demonstrates that 'people at a senior level in the department knew what had happened to the girl, and did nothing'.³⁸

3.45 The Committee also notes that the memo from Mr Nix, passed on to the Minister by Mr Pettigrew, carried a notation that it had been seen by the Minister. The Committee was concerned to learn that despite this knowledge, an inquiry into JOYC was only set up when Mrs Beryce Nelson was appointed Minister by Premier Cooper. The Committee also found it unusual that no action was taken by Messrs Pettigrew and Nix at the time.

3.46 The most poignant observation regarding the pack-rape incident came from Mr Roch, who told the Committee that the girl had been 'happy, full of fun and could have a joke' prior to the incident, whereas following the incident, she was 'withdrawn':

It was a horrific thing that happened to her. What is so sad is that we were there to protect these little children. Okay, they had done wrong, but that is beside the point. We were there to look after their wellbeing. Because of the administration, this was not done in the best way it could have been. In this case, the staff who were supposed to supervise her on this outing did not do their duty. Then, to compound the whole thing, it was hushed up, which I think is pretty disgusting. The manager ... was innocent of the act but he was not innocent of the consequences. He was very culpable of that.³⁹

3.47 The Committee believes that, on the evidence provided to it, if Mr Coyne was culpable of a cover-up, his superiors at the Department of Family Services, the then Minister, the police, and, more particularly, the CJC, were at least as culpable. The investigation of the alleged rape by the CJC is dealt with later in this Chapter.

38 Mr Bruce Grundy, *Submission 171.1*, p. 7.

39 Mr Michael Roch, *Transcript of Evidence*, 16 March 2004, p. 1671.

Goss Cabinet awareness of child abuse at JOYC

- 3.48 There is sufficient evidence that the Goss Cabinet was fully aware of abuse going on at JOYC, even though, arguably, it may not have been aware of the extent and nature of the abuse.
- 3.49 A number of examples which demonstrate the Government's knowledge of abuse at JOYC were brought to the Committee's attention by Mr Lindeberg. In particular, while in opposition, the Hon Anne Warner had called on the Cooper Government to establish an inquiry into JOYC because of allegations of abuse. The Committee notes that the Hon Anne Warner referred to an incident of handcuffing and another of sedation. She also referred to the riot in March and called on the Government to review security measures at the Centre.⁴⁰
- 3.50 The evidence provided by Mrs Beryce Nelson sheds further light on the knowledge of the Queensland Cabinet. Mrs Nelson also advised the Committee that the Hon Anne Warner had run 'quite a strong campaign' on the abuses allegedly happening at JOYC prior to becoming Minister.⁴¹
- 3.51 According to Mrs Nelson, she herself had become aware of problems at the JOYC before she became a Minister.⁴² Allegations centred on lack of accountability for staff, illegal drugs being brought into the Centre and allegations 'that some staff were physically and sexually abusing children in their care'.⁴³
- 3.52 Goss Cabinet Minister the Hon Pat Comben publicly admitted on Channel NINE's *Sunday* program 'Queensland's Secret Shame' in February 1999 that at the time the destruction of the documents was ordered:

In broad terms we were all made aware that there was material about child abuse. Individual members of cabinet

40 *Exhibit 111*, 'Teens Handcuffed: MP', *The Sunday-Sun*, 1 October 1989, p. 18; Mr Kevin Lindeberg, *Submission 142*, pp. 15-16.

41 Mrs Beryce Nelson, *Transcript of Evidence*, 18 June 2004, p. 1789.

42 Mrs Beryce Nelson, *Transcript of Evidence*, 18 June 2004, p. 1785.

43 *Exhibit 115*, p. 1. Mrs Beryce Nelson's signed statement of 15 May 1998, witnessed by former Queensland Police Commissioner N R Newnham, was subsequently tabled in the Queensland Parliament on 25 August 1998. Mrs Beryce Nelson was the Minister for Family Services in the National Party Government from September until December 1989. She lost her seat in the 2 December 1989 election.

were increasingly concerned about whether or not the right decision had been taken [with regard to the shredding].⁴⁴

- 3.53 The Committee notes, however, that the Hon Pat Comben, following the airing of the *Sunday* program, publicly stated that:

We were talking about getting rid of these documents because they were defamatory between the staff members accusing each other of all sorts of things about their professional lives and it was not about child abuse in any way.⁴⁵

- 3.54 The *Sunday* program also quoted former Queensland Police Commissioner Noel Newnham:

Some complaints concerned the handcuffing of children ... allegations the children had been sedated inappropriately to cope with a management problem, and of course there were allegations of bad management practice in general. Those kinds of things were all known in 1989. Quite high up in the department.⁴⁶

- 3.55 Reference was previously made in this Chapter to *The Courier-Mail* newspaper report of 17 March 1989 concerning the rape of a 15 year old at JOYC with a subsequent statement that she had in fact been 17. Although it is uncertain whether this referred to the pack-rape of the 14 year old girl, it certainly means that information about *sexual* misconduct, in addition to other physical abuse, was in the public domain at the time. The Committee thought it unlikely that, at minimum, (then) Opposition spokesperson Anne Warner would not have been aware of these issues, considering her later statements on other instances of abuse at JOYC.⁴⁷

Child abuse evidence to the Heiner inquiry

- 3.56 The public admissions by members of the Goss Government have led Mr Lindeberg to state that:

44 'Queensland's Secret Shame', Channel NINE *Sunday* program, 21 February 1999; see also Mr Kevin Lindeberg, *Submission 142*, p. 15.

45 The Hon Pat Comben, quoted by Premier Peter Beattie, Queensland Legislative Assembly Hansard, 4 March 1999, p. 285.

46 'Queensland's Secret Shame', Channel NINE *Sunday* program, 21 February 1999.

47 *Exhibit 111*, 'Teens Handcuffed:MP', *The Sunday Sun*, 1 October 1989, p.18.

It is therefore open to conclude that the Goss Cabinet and the ALP's transition-into-government team were fully aware of why the Heiner inquiry was established and the type of evidence it was gathering, and to suggest otherwise is not credible. With such a state of knowledge, it was lawfully never open to the Queensland Government to destroy such important evidence as it may have contained evidence of inappropriate and/or criminal behaviour against children in care as was later established, after a decade of cover-up, to be true.⁴⁸

The aim and scope of the Heiner inquiry

3.57 The terms of reference for the Heiner inquiry were:

To investigate and report to the Honourable the Minister and Director-General on the following:

1. the validity of the complaints received in writing from present or former staff members and whether there is any basis in fact for those claims.
2. compliance or otherwise with established Government policy, departmental policy and departmental procedures on the part of management and/or staff.
3. whether there is a need for additional guidelines or procedures or clarification of roles and responsibilities.
4. adequacy of, and implementation of, staff disciplinary processes.
5. compliance or otherwise with the Code of Conduct for Officers of the Queensland Public Service.
6. whether the behaviour of management and/or staff has been fair and reasonable.
7. the adequacy of induction and basic training of staff, particularly in relation to the personal safety of staff and children.

48 Mr Kevin Lindeberg, *Submission 142*, p. 16.

8. the need for additional measures to be undertaken to provide adequate protection for staff and children and to secure the building itself.⁴⁹

3.58 Mr Heiner advised the Committee that he had been told on at least two occasions not to concern himself with issues relating to the treatment of children at JOYC. Indeed, that had been his understanding of the terms of reference:

When I got those eight items, I saw that most of them related to the first one, which was the management of the homes. Then I saw that the last one related to the children and I queried any relation of my own inquiry to the treatment of the children. I was told: no, if any question that came up, it would be the subject of another inquiry. Somebody else would look into that; I was not to.⁵⁰

3.59 Mr Heiner recalled that the first time he was told not to concern himself with the treatment of children was when he met with Mr Alan Pettigrew (then the Director-General) and Mr George Nix (then Deputy Director-General) from the Department of Family Services, to discuss the terms of reference. He was told that the objective of the inquiry was to collect evidence concerning the management of JOYC. Mr Heiner advised the Committee that he had queried the last term of reference about the treatment of children and been ‘told in no uncertain terms that it had nothing whatsoever to do with my inquiry into the complaints about the management’.⁵¹

3.60 Mr Heiner understood the first term of reference to encompass all the others. Indeed, he subsequently re-stated his understanding of this in his letter of 19 January 1990 to Ms Matchett:

I perceived my enquiry to encompass the first of these numbers ... I believed that the other seven matters in that annexure were concomitant with the first matter and they formed part and parcel of my enquiry.⁵²

3.61 The Committee heard that Mr Heiner had approached the Department of Family Services about the evidence relating to the handcuffing and sedation incidents. According to Mr Heiner, he was

49 *Exhibit 125*, Terms of reference accompanying letter from Mr A C Pettigrew to Mr Noel Heiner, 13 November 1989.

50 Mr Noel Heiner, *Transcript of Evidence*, 18 May 2004, p. 1686.

51 Mr Noel Heiner, *Transcript of Evidence*, 18 May 2004, pp. 1676-7.

52 *Exhibit 126*, Letter from Mr Noel Heiner to Ms Ruth Matchett, 19 January 1990.

told again 'in no uncertain terms' that the treatment of children would be inquired into separately; he should only concern himself with the management of the home.⁵³ Mr Heiner thought:

the whole inquiry was curtailed, that the management of the home also involved the treatment of the children. You could not have one without the other. My hands were tied and everything was hamstrung, I believed. I thought that, when I queried it, they may have opened up the terms of reference to enable me to continue with the treatment of the children as well, but they did not.⁵⁴

3.62 Mr Heiner advised the Committee that:

all the people who came before me to give testimony were volunteers. I made it known that it was up to them to volunteer anything that they wanted to tell me about it. My inquiry was into the administration of the home – nothing else. There were eight or 10 different issues I was to inquire into, but they all related to the management of the homes. I queried that when I got it in relation to the treatment of any of the children. I was told in no uncertain terms not to worry myself about that; that would be treated as an entirely different matter altogether. My only inquiry was into the written complaints that had been received by the department in relation to the running and management of the home, and that is what I did.⁵⁵

3.63 Further, 'somebody in the department' had told him that:

If any question of the treatment of children came up at any time, I was to relate that, if I could, back to the management or the running of the home, not to the treatment simpliciter of anybody there.⁵⁶

3.64 This comment is at variance with evidence provided to the Committee by Mrs Beryce Nelson, who disputed that the inquiry was intended to focus on the first term of reference. Indeed, she told the Committee that the inquiry was all about the allegations of abuse at

53 Mr Noel Heiner, *Transcript of Evidence*, 18 May 2004, p. 1685.

54 Mr Noel Heiner, *Transcript of Evidence*, 18 May 2004, p. 1689. Mr Heiner thought the Goss Government was in power at the (second) time he was told to curtail the inquiry. The Committee notes that the first time was when he received the terms of reference.

55 Mr Noel Heiner, *Transcript of Evidence*, 18 May 2004, p. 1674.

56 Mr Noel Heiner, *Transcript of Evidence*, 18 May 2004, p. 1677.

the Centre; the management by Mr Coyne was never the central issue. She also advised the Committee that both Mr Pettigrew and Mr Nix were well aware of her thoughts on the matter and would have conveyed those to Mr Heiner. Terms 5 to 8 inclusive were ‘the issues of most concern to me and my Director General’.⁵⁷ Addressing all terms of reference gave the Government the opportunity to:

look specifically at the John Oxley youth centre but it also gave us the opportunity to look at the overall issue of the management of staff and the funding of the department and what policy and program changes there might need to be.⁵⁸

- 3.65 Mrs Nelson advised the Committee that she is confident that Mr Heiner was briefed adequately by Departmental staff and that the last seven points were not encompassed within the first point:

That is to say, Heiner was not supposed to act only in respect of ‘the complaints received in writing from present or former staff members’ of JOYC.⁵⁹

- 3.66 In evidence to the Committee, Mrs Nelson said that she found Mr Heiner’s evidence ‘very contradictory’; from reading the transcript of evidence, she thought it was clear that Mr Heiner had taken evidence from people in relation to issues outside the first term of reference (the validity of complaints received in writing) and ‘items 2 to 8 were obviously also superficially examined’.⁶⁰ For Mrs Nelson:

The merit or otherwise of Peter Coyne was never a principal issue ... and the inquiry was not set up aimed at him.⁶¹

- 3.67 However, Mr Coyne ‘became the focus of protection and was paid quite a substantial amount of money as a severance payment to him.’⁶² Indeed:

The objective of the inquiry was never to ‘get’ anybody. It was to obtain facts on which to build a full commission of inquiry which would allow a restructuring and refinancing of the department.⁶³

57 *Exhibit 115*, Signed statement by Mrs Beryce Nelson, 15 May 1998, p. 3.

58 Mrs Beryce Nelson, *Transcript of Evidence*, 18 June 2004, p. 1794.

59 *Exhibit 115*, Signed statement by Mrs Beryce Nelson, 15 May 1998, p. 4.

60 Mrs Beryce Nelson, *Transcript of Evidence*, 18 June 2004, p. 1794.

61 *Exhibit 115*, Signed statement by Mrs Beryce Nelson, 15 May 1998, p. 4.

62 Mrs Beryce Nelson, *Transcript of Evidence*, 18 June 2004, p. 1788.

63 Mrs Beryce Nelson, *Transcript of Evidence*, 18 June 2004, p. 1788.

- 3.68 Mrs Nelson further stated that Mr Nix was:
- just one senior officer who knew that the struggles and troubles between Peter Coyne and his staff were just a sideshow in the Heiner inquiry, and that there more serious issues at stake – essentially whether the children in the Centre were at risk and if so in what way or ways.⁶⁴
- 3.69 Mrs Nelson stated that she was also aware of problems between the staff and the manager of JOYC, Mr Coyne, but she:
- saw that issue as less important than the issue of ensuring that the children detained at JOYC were given proper custodial and rehabilitative care, and [were] properly protected against any maltreatment.⁶⁵
- 3.70 Mrs Nelson had discussed her requirements for the inquiry with Mr Pettigrew, emphasising that the person conducting the inquiry should not feel inhibited; accordingly, ‘the terms of reference of the inquiry needed to be wide ranging’.⁶⁶
- 3.71 She also expressed confidence that Mr Nix and other senior departmental officers understood her concerns, and that:
- so far as I was concerned the internal differences between staff were subservient to the issue of the proper treatment and protection of the detainees at JOYC.⁶⁷
- 3.72 The Committee was unable to reconcile the two accounts of the intent of the Heiner inquiry, or whether it was an issue of interpretation of the terms of reference only.
- 3.73 However, on balance, the Committee contends that it seems improbable that a person would be asked to inquire into the management of a youth detention centre without regard to the treatment of the inmates of the centre. The distinction Mr Heiner was allegedly asked to draw therefore appears to be an artificial one.
- 3.74 The Committee considers that a plausible explanation for this difference in interpretation is that, despite Mrs Nelson’s confidence in her intentions being conveyed clearly to Mr Heiner by her Family

64 *Exhibit 115*, Signed statement by Mrs Beryce Nelson, 15 May 1998, p. 5.

65 *Exhibit 115*, Signed statement by Mrs Beryce Nelson, 15 May 1998, p. 2.

66 *Exhibit 115*, Signed statement by Mrs Beryce Nelson, 15 May 1998, p. 2.

67 *Exhibit 115*, Signed statement by Mrs Beryce Nelson, 15 May 1998, p. 3.

Department executives Mr Pettigrew and Mr Nix, this may not have eventuated.

- 3.75 As mentioned earlier, the documentation provided by Mr Grundy demonstrates that both Mr Pettigrew and Mr Nix had been aware of the sexual ‘incidents’ which had occurred 18 months prior to the establishment of the inquiry, but had taken no action.
- 3.76 The Committee believes that Mrs Nelson’s intent would have been less open to misinterpretation if the terms of reference had adequately reflected her primary interest in the treatment of children at JOYC. It may be that, in designing the terms of reference, the Minister was careful to avoid open criticism of staff so that she would have had the support of the unions for the inquiry. Mrs Nelson recalls a meeting with union representatives, including Mr Lindeberg and Mr Martindale from the QPOA. Mr Pettigrew and Mr Nix were also present. At the meeting, Mrs Nelson:

undertook to institute a short, fixed term, ministerial inquiry, and also to plan for better selection, training and rehabilitation procedures and programs for staff, if the unions would give us a three month period of grace without trying to stir up any further bad feeling against the department or to score any unnecessary political points.⁶⁸

The type of evidence gathered by Heiner

- 3.77 The evidence presented to the Committee on the type of evidence gathered by the Heiner inquiry was sketchy and inconsistent. The passage of time is a major factor. As Mr Heiner told the Committee, his memory of the events of 1989 to 1990 is:

completely at variance with what has been said ... I have done everything in my power to forget it since the inquiry was aborted.⁶⁹

- 3.78 Mr Heiner advised the Committee that he recalls being told of only two incidents of alleged abuse of children at JOYC – one child being sedated and another being handcuffed. The latter was also related by Mr Grundy. However, Mr Grundy thought it was a girl being handcuffed, while Mr Heiner believed it was a boy. Mr Heiner told the Committee that it is not his recollection that the handcuffing had

68 *Exhibit 115*, Signed statement by Mrs Beryce Nelson, 15 May 1998, p. 2.

69 Mr Noel Heiner, *Transcript of Evidence*, 18 May 2004, p. 1674.

anything to do with a fence or a grate or a grille, as Mr Grundy alleged.⁷⁰ Mr Heiner also recollected the sedation of an uncontrollable child, but cannot remember the sex of the child. Mr Heiner's account of two incidents accords with the Hon Anne Warner's statement of 1 October 1989 as reported by *The Sunday Sun* newspaper.⁷¹

- 3.79 Mr Heiner did not know whether these actions, which occurred prior to his inquiry,⁷² were taken by management, but upon hearing of them during the course of the inquiry, he was 'convinced... that it was for the betterment of the child, or for the safety of the child rather than anything else'.⁷³ However, Mr Heiner told the Committee, 'I vehemently deny anybody having spoken to me about a pack-rape'.⁷⁴
- 3.80 The Committee notes that a youth worker confirmed to the *Sunday* program of 21 February 1999 that he had made complaints about abuse at JOYC to the CJC, which were 'the same ones he had made to the abandoned Heiner Inquiry'.⁷⁵
- 3.81 The Committee also took evidence from Mr Michael Roch, a former employee of JOYC. The Committee found a number of gaps and inconsistencies in Mr Roch's evidence regarding the Heiner inquiry. Mr Roch stated that he thought he had been interviewed by Mr Heiner in relation to the rape as well as the disposal of the documents.⁷⁶ As Mr Heiner reminded the Committee, however, 'both of these cannot run together'.⁷⁷
- 3.82 The Committee notes that Mr Roch was previously interviewed by phone by the ABC on 7 November 2001,⁷⁸ when he said that he had been interviewed by Mr Heiner. However, in evidence to the Committee in 2004, Mr Roch could not be sure it was Mr Heiner who had interviewed him, although he was sure it was no-one related to JOYC.⁷⁹

70 Mr Noel Heiner, *Transcript of Evidence*, 18 May 2004, p. 1685.

71 *Exhibit 111*, 'Teens Handcuffed:MP', *The Sunday Sun*, 1 October 1989, p.18.

72 Mr Noel Heiner, *Transcript of Evidence*, 18 May 2004, p. 1678.

73 Mr Noel Heiner, *Transcript of Evidence*, 18 May 2004, p. 1677.

74 Mr Noel Heiner, *Transcript of Evidence*, 18 May 2004, p. 1688.

75 'Queensland's Secret Shame', Channel NINE *Sunday* program, 21 February 1999.

76 Mr Michael Roch, *Transcript of Evidence*, 16 March 2004, p. 1635.

77 Mr Noel Heiner, *Transcript of Evidence*, 18 May 2004, p. 1688.

78 *Exhibit 117*, 'Interview with 'Michael'', *Mornings*, ABC Radio Brisbane, 7 November 2001.

79 Mr Michael Roch, *Transcript of Evidence*, 16 March 2004, pp. 1636-7 and p. 1640.

- 3.83 Mr Roch also told the Committee that ‘everybody’ had knowledge of the alleged rape.⁸⁰ He stated that he was told by Mr Coyne that all employees were subject to secrecy provisions that prevented them from speaking about the children’s treatment.⁸¹
- 3.84 Mr Grundy told the Committee that, when he had first interviewed Mr Roch, Mr Roch’s information matched up with the circumstances of the Heiner inquiry in terms of timing and the place of the interview: ‘In light of what he and others have told me, I think it reasonable to assume that it was Mr Heiner (who interviewed Roch)’.⁸²
- 3.85 When Mr Grundy first spoke with Mr Roch, he had only asked him to talk about his work at JOYC and:
- quite of his own volition and quite voluntarily he said, ‘And then, of course, there was the matter of the pack rape’ ... At that time he did not talk about any material being shredded but he was quite clear about what happened to that girl.⁸³
- 3.86 While there are a number of other inconsistencies,⁸⁴ the evidence that Mr Roch spoke to Mr Heiner is solid.⁸⁵ Despite this, however, the Committee is unable to reconcile the differing accounts regarding evidence of the pack-rape that were given to the Heiner inquiry.
- 3.87 While it may seem inconceivable that, although everyone at JOYC apparently knew about the pack-rape, the evidence was not given to Heiner, there are number of possible explanations if this was indeed the case.

80 Mr Michael Roch, *Transcript of Evidence*, 16 March 2004, p. 1640.

81 Mr Michael Roch, *Transcript of Evidence*, 16 March 2004, pp. 1640 and 1634.

82 Mr Bruce Grundy, *Transcript of Evidence*, 16 March 2004, p. 1642; see also Mr Bruce Grundy, *Submission 171.1*, p. 3.

83 Mr Bruce Grundy, *Transcript of Evidence*, 16 March 2004, p. 1643.

84 Mr Heiner’s recollection differed significantly from that of Mr Roch. For instance, Mr Roch recalled giving evidence to someone in a building on the river, *Transcript of Evidence*, 16 March 2004, p. 1635; but Mr Heiner advised the Committee that he supposed ‘the building on the river’ to be the Children’s Courts and he had not taken evidence in this location, *Transcript of Evidence*, 18 May 2004, p. 1691.

85 The Committee was given a tape by Mr Grundy (*Exhibit 124*) where a woman identifying herself as Barbara Flynn, an assistant to Heiner during his inquiry, says Mr Heiner interviewed an airline pilot in her presence. She recalled that an airline pilot had told Mr Heiner that he had spent a number of hours on the phone with Mr Coyne who wanted him to retract a complaint about an inmate who had assaulted him. Mr Roch related this incident to the Committee, *Transcript of Evidence*, 16 March 2004, p. 1669; see also Mr Bruce Grundy, *Submission 171.2*.

Comments on evidence given to the Heiner inquiry

- 3.88 The Committee does not question the evidence of sexual abuse and bureaucratic inaction at JOYC, and indeed the fact that ‘everyone at the Centre knew about it’. It does not follow conclusively, however, that Mr Heiner was informed about this.
- 3.89 Firstly, the Committee notes that Mr Heiner had advised that his inquiry was public – and that ‘I agreed to take evidence from anybody about anything that they wanted to give evidence about in relation to the management of the homes’.⁸⁶ If hearings were public, evidence of abuse may have been withheld, particularly if the evidence was given by the abusers.⁸⁷ The Committee was unable to substantiate Mr Heiner’s claim and notes that the press at the time referred to ‘four weeks of secret sittings into the operation of the youth centre’ while the Senate inquiry also commented in this vein.⁸⁸
- 3.90 The Committee believes Mrs Beryce Nelson’s intention of gathering evidence regarding sexual and other serious child abuse would have been better served by in-camera hearings, however Mrs Nelson did not confirm that this had indeed been the case in evidence.
- 3.91 It is conceivable that JOYC staff refrained from giving evidence about sexual abuse or systemic child abuse because they were concerned that if such allegations were aired, they themselves may have had a case to answer. Instead, if the inquiry was mainly about management of JOYC, as Mr Heiner asserts, it provided an opportunity for staff to complain about Mr Coyne, as well as the deputy manager, Anne Dutney.
- 3.92 An example is the incident of the pack-rape. If, for instance, the supervisors at the outing had given evidence to Mr Heiner, highlighting that incident would also have drawn attention to their failure to provide appropriate supervision on the outing. As Mr Roch told the Committee:

these teachers’ lack of supervision was appalling – just to sit down and smoke in the park. As I said, they were not bad little children; they needed guidance. But they were in there

86 Mr Noel Heiner, *Transcript of Evidence*, 18 May 2004, p. 1675.

87 Mr Noel Heiner, *Transcript of Evidence*, 18 May 2004, p. 1690.

88 ‘Labor blocks secret probe’, *The Sun*, 11 April 1990, p. 1; *The Public Interest Revisited*, Report of the Senate Select Committee on Unresolved Whistleblower Cases, October 1995, p. 65.

for crimes. You do not just let them run around without supervision. That is appalling.⁸⁹

- 3.93 While such a conclusion is purely speculative, it would appear to provide one plausible explanation - particularly in light of the 'Dutney Memorandum' which detailed extensive shortcomings by staff (as opposed to management) at JOYC. The memorandum was written three weeks prior to the shredding of the Heiner inquiry material.⁹⁰ It would be plausible to suggest that staff took the opportunity arising out of the Heiner inquiry to air their grievances about Mr Coyne's management style which may have threatened *their* careers.
- 3.94 Mr Heiner's evidence to the Committee supports some of these suppositions. He told the Committee that much of the testimony that came before him was a 'lot to do about nothing': staff wanted to air their frustrations about the running of the homes; they were 'hard done by' because there was nepotism; they complained about their treatment by the manager, including one instance recalled by Mr Heiner where Mr Coyne allegedly 'crept around during the night shift in soft-soled shoes to see whether people were asleep on duty'.⁹¹ Mr Coyne's behaviour was also mentioned by Mr Roch,⁹² who told the Committee that he 'detested that man (Coyne) and he was detested by 98 per cent'.⁹³
- 3.95 While Mr Roch interprets these actions as management shortcomings, it is equally valid to interpret them as appropriate management responses to the actions of untrained and unqualified staff within a highly volatile environment, as observed by the Forde inquiry report referred to earlier in this Chapter. Staff may well have felt threatened by the arrival of Mr Coyne because of a 'new broom' philosophy and the hard line he may have taken to address incompetence and/or

89 Mr Michael Roch, *Transcript of Evidence*, 16 March 2004, p. 1641.

90 The contents of the Dutney memorandum are summarised in 'Ten year mystery begins to unravel', *The Justice Project*, at <http://gwb.com.au/gwb/news/goss/2000b.htm>.

91 Mr Noel Heiner, *Transcript of Evidence*, 18 May 2004, pp. 1694-5.

92 Mr Michael Roch, *Transcript of Evidence*, 16 March 2004, p. 1632. Mr Roch told the Committee that Mr Coyne used to 'creep around' at night in rubber shoes to check whether people were sleeping on duty. Mr Coyne also allegedly stayed up all night with a friend of Mr Roch's waiting for the friend to sign a statement which was allegedly not true; and Mr Coyne apparently waited for Mr Roch until 2am one morning for him to sign a document relating to an incident where an Aboriginal inmate had spat on Mr Roch. Mr Coyne had allegedly charged Mr Roch with 'using excessive force to restrain him afterwards', *Transcript of Evidence*, 16 March 2004, p. 1635.

93 Mr Michael Roch, *Transcript of Evidence*, 16 March 2004, p. 1639.

misconduct by JOYC staff.⁹⁴ Indeed, as stated earlier, the Forde inquiry had found that management practices at JOYC were 'divisive'.

3.96 There is also evidence to suggest that Mr Coyne's philosophy focused on rehabilitation rather than punishment and this may have had its detractors amongst staff.⁹⁵ One employee was quoted by *The Courier-Mail* newspaper as saying that the management philosophy was wrong:

most of these children, some as young as 13, behave like hardened criminals. We have rapists, murderers, arsonists ... These kids are living in a paradise here, not a secure disciplined environment that is needed.⁹⁶

3.97 However, the Committee also considered that the issue may indeed be one of interpretation of 'child abuse'. A case in point is Mr Heiner's interpretation of the handcuffing of one child and the sedating of another, which differs from that of the Committee; he had been told that the actions were taken 'for their own protection, and for the protection of others, because they were uncontrollable'.⁹⁷ The Committee acknowledges however that Mr Heiner had not accepted this and wanted to find out more.

3.98 The Committee notes that either of these incidents could and should have resulted in legal proceedings where the shredded documents would be required. Clearly, there has been a breach of duty of care to the children in JOYC.

3.99 A strong case has been made that, in addition to the pack-rape, there was, at best, systemic negligence, which in itself may have constituted abuse at JOYC. The 'Dutney Memorandum' reveals other instances, including:

- staff (against instructions) placing a suicidal child in a room with another who was encouraging her to kill herself;
- staff providing painkillers to a child who had earlier overdosed on the same drug;

94 This is supported for example by 'Repression 'not way' to youth reform', *The Courier-Mail*, 18 March 1989, p. 5.

95 'Repression 'not way' to youth reform', *The Courier-Mail*, 18 March 1989, p. 5.

96 'Wacol centre 'paradise' for young crims', *The Courier-Mail*, 17 March 1989, p. 3.

97 Mr Noel Heiner, *Transcript of Evidence*, 18 May 2004, p. 1698.

- staff sleeping on duty to the point where inmates feared for their safety; and
 - staff issuing prescription drugs to a child without authorisation.⁹⁸
- 3.100 This memorandum was addressed to the Director of Organisational Services for the Department of Family Services. Copies were sent to Deputy Director-General Mr George Nix and Executive Director of JOYC, Mr Ian Peers.
- 3.101 The Committee also notes that Ms Dutney provided evidence to Mr Heiner, as did indeed Mr Coyne – apparently for one whole day, although Mr Heiner could not recall this.⁹⁹
- 3.102 Reference had also been made at the Committee’s hearings regarding ‘Document 13’,¹⁰⁰ which allegedly had been made available to the Senate inquiry in 1995 in an altered form.¹⁰¹ The document summarises witnesses’ complaints. The Committee notes that all the complaints bar one listed on this document concern themselves with essentially ‘management style’: staff felt ‘victimised’ and ‘harrassed over trivial matters’. One complaint, however, is summarised as follows:
- report of use of handcuffs as a restraint – chains used to attach a child to a bed – handcuffed to permanent fixtures – medication to subdue violent behaviour – resident child attached to swimming pool fence for a whole night – all inappropriate management.¹⁰²
- 3.103 It is open to the Committee to conclude that this reflects a history of what is appropriately defined as abuse of children, and a failure of duty of care. Further, it is conceivable that some incidents, within the volatile JOYC environment, may have been considered by staff at the time as appropriate, even as ‘trivial’. Indeed, Mrs Beryce Nelson’s comment about a culture of protecting adults rather than children would support this contention.

98 ‘Ten year mystery begins to unravel’, *The Justice Project*, at <http://gwb.com.au/gwb/news/goss/2000b.htm>; see also Chairman, *Transcript of Evidence*, 27 October 2003, p. 1361.

99 Mr Coyne submitted to the Senate inquiry in 1995 that he had answered Mr Heiner’s questions for a ‘whole day’ on 11 January 1990; see Mr Bruce Grundy, *Submission 172.1*, p. 1.

100 Mr Bruce Grundy, *Submission 171.2*, Attachment.

101 Mr Kevin Lindeberg, *Transcript of Evidence*, 27 October 2003, p. 1360.

102 Mr Bruce Grundy, *Submission 171.2*, Attachment.

Motives for the shredding - the role of the unions

- 3.104 Some of the evidence referred to above led the Committee to investigate the role relevant unions may have played at JOYC. As observed previously, the Forde inquiry had found ‘factional tensions’ to be a significant factor in the problems at JOYC.
- 3.105 Mr Desmond O’Neill was an Executive Member of the then Queensland State Service Union (QSSU) at the time of the Heiner inquiry. Mr O’Neill told the Committee that the operation of JOYC had become dysfunctional in 1989, with an ‘us and them’ attitude between members of the four unions represented at JOYC. Managerial and professional staff were represented by the QPOA, teachers by the Queensland Teachers’ Union (QTU), youth workers primarily by the QSSU, and some youth workers and other staff by the Australian Workers’ Union (AWU).¹⁰³
- 3.106 Mr O’Neill apprised the Committee of a QSSU Executive Meeting at which the Executive was advised of plans for the establishment of the Heiner inquiry by the Director of Industrial Services, Ms Janine Walker. The Executive was told that there had been complaints against Mr Coyne by JOYC employees, but there were also ‘complaints of a very sensitive nature which Ms Walker could not disclose to the Executive’.¹⁰⁴
- 3.107 Mr O’Neill stated he believed Mr Coyne held information on some staff members indicating physical abuse, including an AWU workplace representative or union delegate.¹⁰⁵ Mr O’Neill also made this important observation:
- I have no doubt that the youth worker staff were keen to tell Mr Heiner of the pack rape, which occurred at the Portals as only the professional staff were on this particular outing and it was seen as a stuff-up ...
- I believe that if there was any push by the unions at the JOYC to shred the Heiner documents that the most likely source was the AWU.¹⁰⁶
- 3.108 This appears to support Mrs Beryce Nelson’s belief that the findings of the Heiner inquiry created panic:

103 Mr Desmond O’Neill, *Submission 172*, p. 2.

104 Mr Desmond O’Neill, *Submission 172*, p. 2.

105 Mr Desmond O’Neill, *Submission 172*, p. 3.

106 Mr Desmond O’Neill, *Submission 172*, p. 4.

I think the findings were so damaging against some key players at the John Oxley centre that it became a union catfight – it was the fors and the againsts, and anyone that wanted to keep the inquiry going was just destroyed and pushed aside.¹⁰⁷

- 3.109 Mrs Nelson believes that the briefing document written by Mr Ian Peers to Ms Ruth Matchett, the Acting Director-General of the Department, demonstrates that ‘they were not panicking about the abuse that was happening at the centre’; rather, they were ‘panicking about their mates getting into trouble’.¹⁰⁸ According to Mrs Nelson:

It is very clear that pressure was brought to bear on the director-general and the minister to shut down the inquiry ... the briefing document that Ian Peers wrote for the acting director-general at the time in terms of how to deal with the matter of the inquiry ... indicates quite clearly that there was no concern – there is not one mention in there about what was happening to the children. The whole thing is about protecting the people who were on the staff or in the department.¹⁰⁹

- 3.110 Mr Heiner did not recall any particular competition between the AWU and the QPOA during his inquiry¹¹⁰ and did not think unionism played any part.¹¹¹

- 3.111 The Committee notes the following comment in *Archives and the Public Good: Accountability and Records in Modern Society*:

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-

107 Mrs Beryce Nelson, *Transcript of Evidence*, 18 June 2004, p. 1786.

108 Mrs Beryce Nelson, *Transcript of Evidence*, 18 June 2004, p. 1790; Mrs Nelson is referring to *Exhibit 127*, Memo from Mr Ian Peers to Ms Ruth Matchett, undated.

109 Mrs Beryce Nelson, *Transcript of Evidence*, 18 June 2004, p. 1790.

110 Mr Noel Heiner, *Transcript of Evidence*, 18 May 2004, p. 1695.

111 Mr Noel Heiner, *Transcript of Evidence*, 18 May 2004, p. 1696.

General stated: 'The Goss government's sole motivation was to protect Noel Heiner'.¹¹²

- 3.112 The Committee was unable to reach a conclusion concerning the role of the unions in the Goss Government's decision to shred the Heiner inquiry documents. There is however sufficient evidence to demonstrate that there was conflict between unions and the members they represented at JOYC at the time and allegations may have been aired at the Heiner inquiry accordingly. The Committee also notes that the Goss Government was beholden to the AWU and its leadership for its win in the 1989 election. According to Mrs Nelson, the AWU was:

the leading faction in the election of the Goss government and certainly was the powerful force within that government. It remains the powerful force within the current government ...¹¹³

- 3.113 AWU members who were employed at JOYC 'had to be protected at all costs. The children were of less relevance, of less value.'¹¹⁴

- 3.114 The Committee found the following questions asked by Mr Lindeberg indicative of this:

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.¹¹⁵

112 Quoted from *Archives and the Public Good: Accountability and Records in Modern Society* (2002), edited by Richard J. Cox and David A. Wallace, by Chairman, *Transcript of Evidence*, 27 October 2003, pp. 1450-1.

113 Mrs Beryce Nelson, *Transcript of Evidence*, 18 June 2004, p. 1785.

114 Mrs Beryce Nelson, *Transcript of Evidence*, 18 June 2004, p. 1792.

115 Mr Kevin Lindeberg, *Transcript of Evidence*, 27 October 2003, p. 1438.

The response by the Queensland Government

The CJC investigation

- 3.115 The Committee received extensive evidence that the investigation of the rape allegations by the CJC was inadequate and potentially obstructive, lending further credence to Mr Lindeberg's view of the CJC as a protagonist in the matter.
- 3.116 Mr Grundy told the Committee that the CJC investigated the rape allegations following the publication of his first story in November 2001. The Committee notes that the documentation was only made available to Mr Grundy under Freedom of Information legislation following the article in *The Courier-Mail* newspaper.
- 3.117 Prior to publication of the story, Mr Grundy had been advised by the Department of Family Services and the police that no records were held. In light of documentation provided by Mr Grundy, the Committee considers that this was an inaccurate response by the CJC. In particular, the Committee notes that the CJC would have had access to the documentation in full, without the sections as deleted, which may well have provided further information to the CJC. The CJC would have been aware of the age of the girl and the Committee considers their refusal to address the matter to be reprehensible.
- 3.118 Following the 3 November 2001 story by Mr Grundy in *The Courier-Mail* newspaper, the CJC was asked to investigate whether there had been 'official misconduct'. According to its press release, the CJC found:
- there is no reasonable basis to suspect any official misconduct by any departmental staff in respect of their duty to report the alleged rape of the girl.¹¹⁶
- 3.119 The conclusion appeared to have been reached following a search of Department of Family Services records which showed the allegations had been referred to police and that the girl had been examined by a paediatrician at the time.
- 3.120 The Committee notes however, that the media release occurred only two weeks following the appearance of the story in *The Courier-Mail*

116 *Exhibit 117*, Criminal Justice Commission Press Release, 'CJC Completes Investigation of Alleged Rape Cover-up', 16 November 2001.

newspaper, which does not appear to be sufficient time to investigate thoroughly.

- 3.121 The Committee concurs with Mr Grundy that the CJC appeared to have come to a 'remarkable conclusion':

Following the CJC's determination, the Head of the Families Department then released a press statement in which he welcomed the CJC's finding clearing his department of a cover-up. And so they all got off – scot free. Just as those who shredded the Heiner documents (which were being sought at the time for legal action) did. As we know, such destruction was said by the CJC (advised by a private barrister, Mr Noel Nunan) not to be an offence. Except that a citizen is going to trial next Monday in Brisbane because destroying evidence likely to be needed in a legal proceeding is an offence.¹¹⁷

- 3.122 Mr Grundy told the Committee:

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.¹¹⁸

- 3.123 Mr Grundy told the Committee that the CJC had contacted him with regard to the incident referred to earlier, where a woman had alleged that she had been raped in her cell by a worker and taken to his place on weekend release. According to Mr Grundy, the CJC had asked him if he would 'encourage the girl to come forward' since the CJC had been in touch with the Department, which apparently could not identify who the girl was.¹¹⁹ Mr Grundy related to the Committee the girl's story, noting that he had asked at the time 'how many people in care would fit that description? It would surely be no more than one.'¹²⁰ Mr Grundy also pointed out that:

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.¹²¹

117 Mr Bruce Grundy, *Submission 171.1*, p. 10.

118 Mr Bruce Grundy, *Transcript of Evidence*, 27 October 2003, p. 1393.

119 Mr Bruce Grundy, *Transcript of Evidence*, 27 October 2003, p. 1400.

120 Mr Bruce Grundy, *Transcript of Evidence*, 27 October 2003, p. 1400.

121 Mr Bruce Grundy, *Transcript of Evidence*, 27 October 2003, p. 1400.

- 3.124 When Mr Grundy subsequently spoke again to the woman, she told him that she had been contacted by the Department and advised that there was no point in suing them.¹²²
- 3.125 The CJC press release was issued just weeks prior to the merger of the CJC with the Queensland Crime Commission to become the Crime and Misconduct Commission on 1 January 2002. According to Mr Lindeberg, he had been advised by the Crime Commission that the alleged pack-rape fell within the legal definition of ‘criminal paedophilia’¹²³ and the Commission had a standing reference to investigate such crimes.¹²⁴ Mr Lindeberg advised that there is no evidence of any action taken, and the *Crime and Misconduct Act 2001* repealed the standing reference to investigate criminal paedophilia as at 1 January 2002. No further action was taken by the Crime and Misconduct Commission.¹²⁵
- 3.126 The Committee also notes that complaints of abuse at JOYC had been referred to the CJC previously: as noted earlier, Mr Lindeberg had told the *Sunday* program that he had met a JOYC youth worker in 1997 who had told him that he had contacted the CJC on ‘a regular basis’ with regard to allegations of suspected child abuse. *Sunday* confirmed complaints to the CJC in 1994 and 1997 with the youth worker.¹²⁶

The Forde inquiry

- 3.127 The findings of the Forde inquiry have already been covered in this Chapter. However, the Committee has also been presented with

122 Mr Bruce Grundy, *Transcript of Evidence*, 27 October 2003, p. 1400.

123 Subsections 6(1) and (2) of the *Crime Commission Act 1997* defined ‘criminal paedophilia’ as follows: ‘“Criminal paedophilia” means activities involving – (a) offences of a sexual nature committed in relation to children; or (b) offences relating to obscene material depicting children. (2) It is immaterial whether the offence is committed in Queensland or elsewhere if the offender or the child is ordinarily resident in Queensland.’ This definition of ‘criminal paedophilia’ is essentially the same as that contained in Schedule 2 of the *Crime and Misconduct Act 2001*.

124 Mr Kevin Lindeberg, *Submission 142*, p. 35.

125 Mr Kevin Lindeberg, *Submission 142*, p. 36. Subsection 355(2) of the *Crime and Misconduct Act 2001* states: ‘However, the standing reference to investigate criminal paedophilia mentioned in section 46(7) of the repealed Crime Commission Act 1997 ended on that Act’s repeal.’ The Committee notes that the website of the Crime and Misconduct Commission states that the CMC ‘combats major crimes such as paedophilia, drug trafficking, extortion and murder, in collaboration with police taskforces’; see <http://www.cmc.qld.gov.au/BEGINNINGS.html>

126 ‘Queensland’s Secret Shame’, Channel NINE *Sunday* program, 21 February 1999.

evidence that the Forde inquiry failed to exhaustively investigate abuse at JOYC.

- 3.128 According to Mr Lindeberg, the Forde inquiry rejected his submission that it examine the shredding of the Heiner documents, claiming it fell outside the terms of reference for the inquiry.¹²⁷ Without judging the appropriateness of that response, there is no doubt that the incident of the pack-rape, as well as other potential instances of sexual and other abuse, would fall within the Forde inquiry's terms of reference.
- 3.129 According to Mr Grundy, 'the woman who created the Heiner inquiry' (it is presumed he referred to Minister Nelson) had provided a submission to the Forde inquiry, mentioning 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.¹²⁸

- 3.130 The Committee notes, however, that the Forde inquiry report, while making a number of general observations about the shortcomings at JOYC in terms of staff, management and facilities, confined its investigation of abuse to three alleged incidents of handcuffing.¹²⁹ There is no mention of any sexual abuse, although the inquiry would have been able to gain access to the relevant documents. Mr Grundy also told the Committee that, at the time of the Forde inquiry,¹³⁰ the inquiry was already aware of a number of other incidents of abuse.
- 3.131 Mr Grundy advised the Committee that when public hearings were conducted by the Forde inquiry into JOYC matters, 'it was the handcuffing incident that was the thrust of the public hearings.'¹³¹ The witnesses were all questioned about that, 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.¹³²

127 Mr Kevin Lindeberg, *Submission 142.2*, pp. 18-19.

128 Mr Bruce Grundy, *Transcript of Evidence*, 27 October 2003, p. 1387.

129 *Report of the Commission of Inquiry into Abuse of Children in Queensland Institutions*, 1999, Chapter 7.

130 *The Report of the Commission of Inquiry into Abuse of Children in Queensland Institutions*, 1999, was presented to the Queensland Legislative Assembly on 31 May 1999.

131 Mr Bruce Grundy, *Transcript of Evidence*, 27 October 2003, p. 1397. Mr Grundy here refers to a girl who was handcuffed; Mr Heiner thought it was a boy.

132 Mr Bruce Grundy, *Transcript of Evidence*, 27 October 2003, pp. 1397-8.

3.132 Mr Grundy further advised that 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 ... this exchange of letters had occurred and it was seen as improper to the point that a man was recommended for disciplinary action, but no disciplinary action was taken against him ... he was given permanency and an increase in salary.¹³³

A further cover-up?

3.133 Mr Grundy told the Committee that, shortly after the rape victim had lodged a claim for compensation, a warrant was issued (on 23 December 2002) for her arrest for a violation of parole.¹³⁴

3.134 Mr Grundy told the Committee he had found it a strange coincidence that the warrant was issued at that time, considering the violation of parole had taken place some years prior. He also commented on the fact that the system appears to continue to violate the young woman, while the perpetrators of the rape, as well as those who initiated and continue in the cover-up, go 'scot free'. Mr Grundy said 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.¹³⁵

3.135 He also commented 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.¹³⁶

3.136 Mr Grundy questioned why there had been no action when she actually breached parole some five years earlier. Rather, the State chose to act shortly after she had lodged a claim against the State for the abuse while she was in the State's care - the warrant was signed

133 Mr Bruce Grundy, *Transcript of Evidence*, 27 October 2003, p. 1398. Mr Grundy advised the Committee that he possessed copies of some of those letters.

134 *Exhibit 117*, Warrant for Arrest and Conveyance of Prisoner to Prison, 23 December 2002.

135 Mr Bruce Grundy, *Transcript of Evidence*, 27 October 2003, p. 1388.

136 Mr Bruce Grundy, *Transcript of Evidence*, 27 October 2003, p. 1389.

on 23 December 2002, '19 days after the writ was filed for the second claim'.¹³⁷

3.137 Mr Grundy also told the Committee he thought it relevant that the warrant for the young woman's arrest had been signed by Mr Noel Nunan, now a Brisbane magistrate. Mr Nunan, when a barrister, had been contracted by the CJC to investigate the Lindeberg allegations concerning the shredding of the documents. As discussed in Chapter 2, the Committee was provided with evidence that the CJC's investigation of the Heiner Affair was, at best, inadequate, and, at worst, a cover-up by the CJC.

3.138 Mr Lindeberg referred to the Labor connection when he told the Committee:

the first time [the Heiner Affair] went to the PCJC [Parliamentary Criminal Justice Commission] 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.¹³⁸

3.139 The Committee further notes that Mr Michael Barnes, the former CJC Chief Complaints Officer who signed off on Mr Nunan's investigation of the Lindeberg complaint, was appointed the Queensland State Coroner on 1 July 2003.

3.140 Mr Grundy told the Committee of a further incident that was of concern relating to a shotgun murder some 10 years earlier. The injured man found at the scene of the murder had never been interviewed by police nor the coroner. That man had the same name as one of the boys at JOYC involved in the sexual assault of the girl:

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.¹³⁹

137 Mr Bruce Grundy, *Transcript of Evidence*, 27 October 2003, p. 1392.

138 Mr Kevin Lindeberg, *Transcript of Evidence*, 27 October 2003, p. 1438.

139 Mr Bruce Grundy, *Transcript of Evidence*, 27 October 2003, p. 1410.

- 3.141 The material presented by Mr Grundy does indicate potential linkages between seemingly unrelated incidents, and the Committee believes further investigation is necessary.

Conclusion

- 3.142 The Committee understands that the two facts of the shredding of the Heiner inquiry documents and the evidence of abuse at JOYC could lead to a conclusion that the Heiner inquiry documents were shredded to protect people *because* they contained serious allegations of abuse. This is the conclusion arrived at by Messrs Grundy and Lindeberg.
- 3.143 The Committee considers this to be a reasonable conclusion. It further accepts the view that, if that were the case – that is, the Heiner inquiry documents did indeed contain serious allegations of child abuse including possibly allegations as a pack-rape of a minor – shredding the documents was not only illegal, but also immoral.
- 3.144 The Committee notes that the very fact that the Queensland Government admitted that the Heiner records included material that was potentially defamatory,¹⁴⁰ along with the hurry with which the documents were destroyed, would certainly suggest that the documents contained allegations of child abuse and (potentially criminal) misconduct by staff at JOYC.
- 3.145 Unlike other inquiries into the Heiner Affair before it, this Committee has had the benefit of evidence given by Mr Noel Heiner, which raises some doubts as to the evidence contained in the documentation gathered by him, including, in particular, the alleged pack-rape incident.
- 3.146 On the other hand, Mr Heiner admitted to the Committee that his memory of the events was sketchy, and Mr Grundy and Mrs Nelson in particular have drawn the Committee's attention to inconsistencies within his evidence.
- 3.147 However, the evidence shows that at minimum, two cases of abuse were brought to the attention of Mr Heiner – one of handcuffing and another of sedation.

140 *Exhibit 70*, Letter from Mr Ken O'Shea to Mr Stuart Tait, 16 February 1990.

- 3.148 The Committee accepts that, for the reasons detailed previously in this Chapter, not all instances of abuse may have been drawn to the attention of Mr Heiner. However, there is sufficient documentation to prove that abuse occurred at JOYC.
- 3.149 The Committee found, without reservation, that the evidence suggests certainly misconduct, possibly extending to criminal conduct, by officers within the Department of Families, the CJC, and possibly the Queensland police, in not investigating – and hence covering up - abuse at the Centre. It is clear these agencies knew about the abuse and did nothing. It is also clear that the Forde inquiry did not adequately address these issues.
- 3.150 While these particular allegations may not have been aired to Mr Heiner, the Committee would think that, at minimum, the Minister for Family Services, the Hon Anne Warner, would have been aware of the extent of abuse at JOYC. It would appear highly unlikely that the Minister would not have been briefed by her Director-General, Ms Ruth Matchett.
- 3.151 The Committee concludes that the Queensland Labor Government at the time, as well as successive Governments, have, at minimum, failed in their duty to protect children in their care at the Centre.

Motive for the shredding

- 3.152 As observed in Chapter 2, in 1995, the Senate Select Committee - without the evidence available today - thought that the most plausible explanation for the shredding of the documents was to protect the public purse from the expenses of litigation. In doing so, the individual rights of Mr Coyne were denied and, it could be argued, sacrificed for a reason.
- 3.153 An argument may be made that, if all the problems at JOYC were due to Mr Coyne's shortcomings as a manager, the Goss Government decided to shred the documents because it did not want him to benefit financially from any potential defamation suit against JOYC employees – it may have been protecting the 'whistleblowers'.¹⁴¹
- 3.154 The introduction to this Volume described the Committee's view of a culture in Queensland that puts the protection of adults ahead of that of children. While the Committee is unable to conclusively ascertain

141 The Hon Peter Beattie MP Press Release, 'Federal Liberal Inquiry Will Waste Thousands of Dollars', 27 October 2003.

the exact content of the Heiner inquiry documents, there is sufficient evidence to show the content was such that, at minimum, the careers of public servants employed at JOYC and the Department of Family Services were threatened.

- 3.155 On the evidence available to it, the Committee contends that a decision was taken to protect certain people at the time and possibly, to guard against potential future litigation by children in the care of the State at JOYC.
- 3.156 The Committee has been presented with significant evidence that there may have been a push by the unions, particularly the AWU, to have the documents shredded. Mr Coyne was seeking access to the complaints against him; it is conceivable that, if he would have commenced a defamation action or other legal proceedings, his defence would have included information about staff at JOYC, including abuse such as that revealed by the 'Dutney Memorandum'.
- 3.157 Mrs Beryce Nelson's comment is pertinent:

I believe the inquiry was not shut down to protect the innocent; the inquiry was shut down to protect the guilty behaviour of some members of the AWU who were operating at the John Oxley centre at the time. That particular union was the leading faction in the election of the Goss government and certainly was the powerful force within that government. It remains the powerful force within the current government, and I think it exercises the same powers of collusion and concealment in cases that are before the public at the moment ...¹⁴²

- 3.158 Mrs Nelson further advised the Committee:

The simple fact is that I set up an inquiry to find out the facts about serious allegations about the operations of JOYC and that children detained there were being seriously physically and/or sexually abused. Evidence was obtained and the newly incoming Government ignored that evidence, destroyed it, and closed down the inquiry. The children remained at risk because their needs were ignored to protect the position of the newly elected Labor government.¹⁴³

142 Mrs Beryce Nelson, *Transcript of Evidence*, 18 June 2004, p. 1785.

143 *Exhibit 115*, Signed statement by Mrs Beryce Nelson, 15 May 1998, p. 4.

- 3.159 The Committee's inquiry into the Heiner Affair has raised further questions. Accordingly, the Committee does not accept the Queensland Government's position that the Heiner Affair has been investigated to the 'nth degree'.
- 3.160 As concluded in Chapter 2, the evidence presented to the Committee demonstrates that the destruction of the Heiner documents constitutes an indictable offence.
- 3.161 However, the question with regard to the motive of the Goss Government in shredding the documents is somewhat less clear. The evidence presented to the Committee raises doubts according to exactly what the Heiner documents contained, although it certainly appears that there was 'a culture of concealment and collusion that occurred in the early part of 1990',¹⁴⁴ which, arguably, continues to this day.
- 3.162 The Committee is also cognisant of the fact that, given the documents have been shredded, the actual content may never be fully brought to light. Having regard to the fact that the paper trail would therefore necessarily be limited has informed the following Committee recommendation:

Recommendation 3

- 3.163 **That a special prosecutor be appointed to investigate all aspects of the Heiner Affair, as well as allegations of abuse at John Oxley Youth Centre that may not have been aired as part of the Heiner inquiry and may not have been considered by the Forde or other inquiries.**

That this special prosecutor be empowered to call all relevant persons with information as to the content of the Heiner inquiry documents, including but not necessarily limited to:

- **Public servants at the time, including staff of the then Department of Family Services, the Criminal Justice Commission, Queensland Police, and the John Oxley Youth Centre**
- **Relevant union officials**

That the special prosecutor be furnished with all available

144 Mrs Beryce Nelson, *Transcript of Evidence*, 18 June 2004, p. 1785.

documentation, including all Cabinet documents, advices tendered to Government, records from the John Oxley Youth Centre and records held by the Department of Family Services, the Criminal Justice Commission and the Queensland Police.

- 3.164 As detailed earlier in this Chapter, there is some evidence to suggest allegations of further sexual abuse have continued at JOYC into the 1990s. One allegation in particular concerns a rape in 1991 of an inmate by a youth worker, revealed in an interview with the woman on ABC radio. The Committee is of the belief that this, and other further abuses, could have been prevented, had government agencies not failed in their duty of care when the pack-rape occurred.
- 3.165 The Committee also concludes that by shredding the evidence provided to Mr Heiner, the apparent culture of abuse was allowed to continue. This has informed the following recommendation:

Recommendation 4

- 3.166 **That the Commonwealth, through the Council of Australian Governments process, obtain a commitment from the States and Territories to legislate to require the retention for 30 years of documentation relating to allegations of abuse of children.**
- 3.167 The Committee also concludes that there is evidence of abuse at JOYC which appears not to have been investigated exhaustively by the Forde inquiry or the CJC. Indeed, the investigation of the CJC at least arguably points to a cover-up. Despite the limitations of the Forde inquiry with respect to abuse at JOYC, it did uncover much evidence of abuse at other institutions, both state and privately run.
- 3.168 Of grave concern to the Committee is the fact that serious abuse in Queensland institutions, and particularly in youth detention centres, appears to be continue unabated – despite the Forde inquiry in 1999. For example, on 17 June 2004, *The Courier-Mail* newspaper reported allegations of staff brutality, including the beating of children while handcuffed, at the Brisbane Youth Detention Centre. That Centre opened in 2001 as the replacement for JOYC.

3.169 Indeed, the Committee tends to concur with Mr Grundy's statement that child abuse in Queensland is an 'endemic problem' and 'not confined to the state-run institutions'.¹⁴⁵

145 Mr Bruce Grundy, *Transcript of Evidence*, 27 October 2003, p. 1386.

Abuse at Bribie Island

'Mum, is this ever going to happen to me again?' ... 'Well, I hope it's not ... I'm going to spend the rest of my life for as long as it takes to make sure that you are safe and other people like you.'¹

- 4.1 The Committee received shocking evidence of physical, sexual and psychological abuse of residents at a respite and rehabilitation care facility operated by Care Independent Living Association Inc (CILA) at Bribie Island in Queensland and oversighted by the Queensland Government. Some of the evidence relating to this matter was received by the Committee on a confidential basis.

The Peter Rowe case

- 4.2 The Committee received a considerable amount of evidence in relation to Peter Rowe, a former resident of the Bribie Island facility. Peter has Downs Syndrome and communicates via a communication board due to a lack of speech. Peter was placed at the facility by his parents as a remedy for the isolation he was experiencing:

We lived out west – we were on a sheep property out west – and so, because Peter was isolated, we would send him into respite because he needed socialisation and he needed company.²

1 Mrs Betty Rowe, *Transcript of Evidence*, 18 June 2004, p. 1804.

2 Mrs Betty Rowe, *Transcript of Evidence*, 18 June 2004, p. 1803.

- 4.3 The evidence indicated that Peter Rowe was assaulted and sexually abused at the Bribie Island facility by two staff members in 2001, and that he suffered considerable physical and psychological trauma as a result. Peter's parents told the Committee of his distress upon first returning home from the facility:

my son when he first came home said to me, 'Mum, is this ever going to happen to me again?' He speaks on a communication board; he has no speech. I said, 'Well, I hope it's not.' But he was so traumatised that I could not say to him, 'I can't protect you yet, Peter; I can only hope I can protect you.' So I said to him, 'But I'm going to spend the rest of my life for as long as it takes to make sure that you are safe and other people like you.'³

- 4.4 The evidence further indicated that the psychological trauma suffered by Peter is still ongoing.

- 4.5 Peter's parents also told the Committee of the shadow that the abuse of Peter has cast on the future prospects for his care:

since finding out what happened to Peter at Care, our lives are just upside down. We have lost complete trust. We are frightened, along with Peter, to put him anywhere. We do not want to die because we do not know what is going to happen to him because we do not have any answers yet.⁴

- 4.6 The Committee is utterly appalled at the mistreatment of Peter while he was at the facility. It is a shameful episode of an individual in a highly vulnerable position being abused and victimised quite unspeakably.

Further abuse of residents and operational negligence

- 4.7 In addition to the case of Peter Rowe, the Committee heard further evidence on the public record of abuse of residents at the Bribie Island facility. Mrs Kay McMullen, a Registered Nurse who was employed by CILA at the facility from May 2002 to June 2003, detailed the following shocking incidents of resident abuse:

The behavioural management was unreal. They were often denied food and had cold showers. They held someone down to cut their fingernails, using half-a-dozen people, until their

3 Mrs Betty Rowe, *Transcript of Evidence*, 18 June 2004, p. 1804.

4 Mrs Betty Rowe, *Transcript of Evidence*, 18 June 2004, p. 1803.

fingers bled. Buckets of water were thrown over them. They had chillies put in their mouths. The Adult Guardian has also agreed with this. They were deprived of sleep. There was emotional and physical abuse. There was hitting residents with a broom handle and a fly swat. There was intimidation and harassment and there was extreme verbal abuse. Residents were often locked in their bedrooms and were often publicly humiliated in front of other people. The treatment for head lice was fly spray. The residents were often tied to chairs and toilet seats. One boy, who was an amputee who had been in a car accident and who was still going to school, often had his leg removed and he would have to crawl. The withholding of meals and food and water was a very common abuse. There was sexual abuse as well.⁵

4.8 Peter Rowe's father related an instance of a paralysed boy being publicly humiliated:

There was a boy there ... who was completely paralysed except for his thumb. He came out of a shower room completely naked on his bed and he was wheeled through the whole set-up ... Through the living room in front of four young DSQ carers—women, DSQ caseworkers. Nothing was done. We never heard anything about that. How is that for humiliation? That boy came off the trolley a couple of times to my knowledge—fell off, on the ground. They did not care about it.⁶

4.9 Mrs McMullen also informed the Committee of operational negligence and financial mismanagement at the facility:

when I did commence work I found that there was no accountability. The residents' files were often missing or there was very little information. Medications were not in Webster packs; they were strewn everywhere. I found that there was no handover when I would go into work. To commence work, I would not even know how many residents were on site at the time. There was never a daily shift report written

5 Mrs Kay McMullen, *Transcript of Evidence*, 18 June 2004, p. 1801. Food deprivation and physical abuse or residents were also noted in separate evidence to the Committee: *Exhibit 139*.

6 Mr Justin Rowe, *Transcript of Evidence*, 18 June 2004, p. 1809.

and there were no incident reports. There was also financial mismanagement.⁷

Conduct of Queensland Government authorities

4.10 The Committee understands that a number of complaints concerning abuse at the Bribie Island facility and another care establishment were made to a key Queensland Government agency, Disability Services Queensland (DSQ), but that the complaints were not addressed. The Committee was told that, in the case of the Bribie Island facility, complaints had been made about the treatment of residents from 1999 onwards.⁸ It was suggested that:

the department's complaints function ... requires considerable attention due to the long periods of not having complaints addressed.⁹

4.11 In relation to Peter Rowe's case, the Committee was told that there was a lack of effective oversight of the Bribie Island facility by DSQ.¹⁰ The Committee understands that DSQ was apparently negligent in properly supervising the facility and indeed ceded government funds allocated to Peter Rowe to the facility management. The Committee was astounded to learn that this transfer was effected solely by a document containing the signatures of the facility manager and Peter Rowe himself. The Committee was further informed that, subsequent to this transfer, the use of the allocated funding for Peter's communication therapy was stopped by the facility management.¹¹

4.12 The Committee also understands that both DSQ and another Government agency, the Department of Families, were continuing to recommend the referral of residents to the Bribie Island facility as late as 2002.

4.13 The Committee was informed that visits to the facility were made by the Community Visitor, a Queensland Government program which aims to safeguard the rights and interests of those with impaired capacity by conducting visits to facilities and identifying areas of

7 Mrs Kay McMullen, *Transcript of Evidence*, 18 June 2004, p. 1800.

8 Mrs Kay McMullen, *Transcript of Evidence*, 18 June 2004, p. 1802.

9 Mrs Gail Torrens, *Transcript of Evidence*, 18 June 2004, p. 1799.

10 Mr Justin Rowe, *Transcript of Evidence*, 18 June 2004, p. 1804.

11 Mr and Mrs Rowe confirmed this information with the Committee.

concern. The Committee was told however that these visits were ineffectual.¹²

- 4.14 The Committee was advised that the Adult Guardian, a Queensland Government statutory officer with the responsibility of protecting the rights and interests of adults with impaired capacity, was given incident reports in 2003 detailing abuse of residents at the Bribie Island facility.¹³ The Committee was told that the Adult Guardian agreed that some of the incidents of abuse detailed at paragraph 4.7 above had taken place.¹⁴

Conclusions

- 4.15 The evidence received by the Committee revealed shocking abuse and operational negligence at the CILA care facility on Bribie Island. Put simply, the whole matter is an outrage. The Committee was pleased to learn that the facility is no longer receiving residents or respite referrals which attract Federal funding, and that the matter is under investigation by the Queensland Police with multiple charges being brought against some former staff.¹⁵
- 4.16 The Committee was particularly dismayed by the case of Peter Rowe. Peter's parents gave the Committee a number of pieces of creative work done by Peter. These works, consisting of poetry and paintings, are an important means of communication for Peter and they reveal a perceptive, intelligent and sensitive personality. It is a tragedy that what should have been a positive and beneficial experience for Peter Rowe at Bribie Island was instead a terrifying ordeal.
- 4.17 On the evidence, the Committee is drawn to the conclusion that there was a deplorable lack of effective monitoring and oversight of the Bribie Island facility by the relevant Queensland Government authorities. The inaction of DSQ in relation to the complaints made against the facility and other care establishments, the negligence displayed by the DSQ in respect of Peter Rowe, and the continued recommendations of both the DSQ and the Department of Families to refer residents to the Bribie Island facility as late as 2002 are particularly reprehensible.

12 Mrs Kay McMullen, *Transcript of Evidence*, 18 June 2004, p. 1803; Mr Justin Rowe, *Transcript of Evidence*, 18 June 2004, p. 1806.

13 Mrs Kay McMullen, *Transcript of Evidence*, 18 June 2004, p. 1802.

14 Mrs Kay McMullen, *Transcript of Evidence*, 18 June 2004, p. 1801.

15 Mr Justin Rowe, *Transcript of Evidence*, 18 June 2004, p. 1808; Mrs Kay McMullen, *Transcript of Evidence*, 18 June 2004, p. 1801.

- 4.18 The Committee notes that there is no accreditation system in place for respite and rehabilitation care facilities in Queensland. Peter Rowe's father stated that an accreditation system similar to that put in place for aged care facilities by the Committee Chairman when she was Commonwealth Minister for Aged Care is 'the only way' forward.¹⁶
- 4.19 The Committee is of the view that an accreditation system for respite and rehabilitation care facilities in Queensland along the lines of the system introduced by the Commonwealth for aged care is necessary to ensure that incidents such as those at Bribie Island are not repeated. The Commonwealth should gain a commitment from the Queensland Government within the framework of the Council of Australian Governments to introduce such a system.

Recommendation 5

- 4.20 **The Committee recommends that the Commonwealth gain a commitment from the Queensland Government within the framework of the Council of Australian Governments to introduce an accreditation system for disabled care facilities similar to that introduced by the Commonwealth for aged care.**
- 4.21 In view of the evidence reviewed in this Chapter and throughout the Volume as a whole, the Committee also believes that public sector agencies and authorities in Queensland should be subject to stringent audit processes. The Committee notes that, under section 80 of the Queensland *Financial Administration and Audit Act 1977*, the Queensland Auditor-General may conduct audits of the performance management systems of Queensland public sector entities. The Committee understands that this audit capability is not as far-reaching as the performance audit power that is available to the Commonwealth Auditor-General.¹⁷ The Committee believes therefore that the Queensland Auditor-General should be given a comparable power to conduct performance audits.

16 Mr Justin Rowe, *Transcript of Evidence*, 18 June 2004, p. 1807.

17 See Parts 2 and 4 of the *Commonwealth Auditor-General Act 1997*.

Recommendation 6

- 4.22 The Committee recommends that the Commonwealth gain a commitment from the Queensland Government within the framework of the Council of Australian Governments that the Queensland Auditor-General be given the power to conduct performance audits of Queensland public sector entities comparable to the performance audit power available to the Commonwealth Auditor-General.**

Hon Bronwyn Bishop MP
Chairman



Appendix A – List of Submissions

1	Mr Craig Minogue
2	Mr Kenneth Leslie OAM
3	Hon Robert Brokenshire MP
4	NSW Justice Advocacy Centre Inc
4.1	NSW Justice Advocacy Centre Inc
5	Mr/Ms Clements
6	Mr Rene Hidding
7	Mr Crombie
8	Family Council of WA
9	Confidential
10	Confidential
11	Mr/Ms Wheeler
12	Confidential
13	Confidential
14	Confidential
15	Confidential
16	Northcote Benevolent Society
17	Arncliffe RSL and Community Club LTD

18	Middle Australia
19	Ms Rose Hylton
20	J Marshall
21	National Council of Single Mothers and their Children Inc
22	Dr Michael King SM
22.1	Dr Michael King SM
23	Institute for Restorative Justice and Penal Reform et al
24	Logistics Pty Ltd
24.1	Logistics Pty Ltd
25	Mr Kevin Byrne
26	Neighbourhood Watch, O'Malley
27	Mr Phil Gunnell
28	Mrs Margaret French
29	Seventh-day Adventist Church
30	Country Women's Association of NSW
30.1	Mrs Joy Potts
31	Canterbury City Council
31.1	Canterbury City Council
32	Confidential
32.1	Confidential
33	Mr David Pain
34	Mrs Carmen Miller
35	Confidential
36	Confidential
37	Mr Tom Volkofsky
38	The Police Association of Victoria
39	Confidential
40	Confidential

41	Moreland Council
42	Law Council of Australia
43	Fairfield City Chamber of Commerce Inc
44	The Cabramatta Chamber of Commerce Inc
45	Older Persons Action Centre
46	Mr Bruce Baird MP
47	The Hon Phillip Ruddock
48	Ms Irene Lojszczyk
49	Country Women's Association of Australia
50	Mr Ivan Brown
51	Mrs Horrigan
52	Sisters Inside
53	Legal Aid Queensland
54	Victorian Centres Against Sexual Assault Forum
55	Mrs Joan Olson
56	Southern Sydney Regional Organisation of Councils
57	Local Government Association of NSW
58	Police Federation of Australia
59	Domestic Violence & Incest Resource Centre
59.1	Domestic Violence & Incest Resource Centre
60	Mrs Marianne Walker
61	Inverell Shire Council
62	City of Kalgoorlie-Boulder
63	Confidential
64	Australian Federal Police
65	Confidential
66	Ms Myshell Hyde
67	Confidential

68	City of Gosnells
69	Crime and Misconduct Commission
70	Australian Federal Police Association
71	Australian Hotels Association
72	Ravenswood Neighbourhood Watch
73	Victoria Police
73.1	Victoria Police
74	Western Region Domestic Violence Collective
75	Youth and Legal Service (Logan City) Inc.
75.1	Youth and Legal Service (Logan City) Inc.
76	Mr Ian Wilson
77	Families and Friends of Drug Law Reform (ACT) Inc
78	Western Australian Local Government Association
79	Caboolture South Public Safety Project
80	Alcohol and other Drugs Council of Australia
81	Council of Small Business Organisations of Australia Ltd
82	Caxton Legal Centre
83	Confidential
84	Department of Family and Community Services
85	Federation of Community Legal Centres' Violence Against Women and Children Working Group
86	National Crime Authority
86.1	National Crime Authority
87	Great Lakes Council
88	Office of the Status of Women
89	Ms Nellie Fennell
90	Mr Nishat Mueller
91	Gosford District Chamber of Commerce and Industry

92	ACT Neighbourhood Watch (Association)
93	Mr Anthony York
93.1	Justice Action
94	Enough is Enough
95	Justice Action
96	Victims of Crime Assistance League Inc NSW
97	Family Drug Support
98	Confidential
99	Mr Bob Bottom
100	Queensland Government
101	Law Society of South Australia
102	Crime Prevention Officers' Forum
103	South Australian Government
104	Mr Tim Priest
105	Confidential
106	Mr Stephen Woods
107	Victorian Alcohol and Drug Association
107.1	Victorian Alcohol and Drug Association
108	Mr Peter Martin
109	Mr Glen McNamara
109.1	Confidential
110	Mr Larry Cook
110.1	Mr Larry Cook
110.2	Mr Larry Cook
111	Confidential
111.1	Mr Gary Matlok
112	Mr Richard McDonald
113	Mrs Ruth Mackinnon

114	Confidential
115	Fairfield City Council
116	Confidential
117	Confidential
118	Confidential
118.1	Confidential
119	Confidential
120	Confidential
121	Mr James Ritchie
122	Mr Michael McGann
122.1	Mr Michael McGann
122.2	Confidential
122.3	Mr Michael McGann
122.4	Confidential
122.5	Mr Michael McGann
123	Mr Joe Lopez
124	Attorney-General's Department
125	Mr A F Godfrey
126	Mr Michael Kennedy
126.1	Mr Michael Kennedy
126.2	Mr Michael Kennedy
126.3	Confidential
127	Mr Mark Fenlon
127.1	Mr Mark Fenlon
128	Domestic Violence Advocacy Service
129	Confidential
130	Mr Edwin Chadbourne
131	Confidential

132	Confidential
133	Mr Duncan Kennedy
133.1	Mr Duncan Kennedy
133.2	Mr Duncan Kennedy
133.3	Mr Duncan Kennedy
133.4	Mr Duncan Kennedy
133.5	Mr Duncan Kennedy
133.6	Mr Duncan Kennedy
134	Mr Kevin Moran
135	Confidential
136	Mr Noel Sharp
136.1	Mr Noel Sharp
137	Confidential
138	Ms Diane Timothy
138.1	Ms Diane Timothy
139	NSW Police
139.1	Confidential
140	Confidential
140.1	Confidential
141	Confidential
141.1	Confidential
141.2	Confidential
141.3	Confidential
141.4	Confidential
142	Mr Kevin Lindeberg
142.1	Mr Kevin Lindeberg
142.2	Mr Kevin Lindeberg
142.3	Mr Kevin Lindeberg

142.4	Mr Kevin Lindeberg
143	Confidential
144	Mr Alan Stephens
145	Confidential
146	Confidential
147	Confidential
148	Confidential
149	Mr H G Collis
150	Confidential
151	Confidential
152	Confidential
152.1	Confidential
152.2	Confidential
153	Confidential
154	Confidential
155	Confidential
155.1	Confidential
156	Confidential
157	ATSIC
158	Mission Australia
159	Confidential
160	Confidential
161	Northern Territory Police Force
162	Confidential
163	Confidential
164	Confidential
165	Confidential
166	Confidential

167	Confidential
168	Confidential
169	Mr Greg McMahon
170	Confidential
171	Mr Bruce Grundy
171.1	Mr Bruce Grundy
171.2	Mr Bruce Grundy
172	Mr Desmond O'Neill
173	Confidential
174	Confidential
175	Confidential
176	Confidential
177	Confidential
178	Confidential
179	Confidential
180	Confidential
181	Confidential
182	Mrs J L Hayden
183	Confidential
184	Mr Alastair MacAdam
185	Confidential
186	Mr Noel Turner
187	Port Stephens Crime Forum Committee



Appendix B – List of Exhibits

- 1 Professor John Braithwaite
Youth Development Circles by Professor John Braithwaite
- 2 Mr Lloyd Pearce
Community Document 2001 - Crime and Punishment
- 3 Ms Jennie George MP
Women for a Safer Community
- 4 Whyalla City Council
Whyalla Local Crime Prevention Program Study Report July 2001
- 5 *not used*
- 6 Family Court of Australia
National Council of Single Mothers and their Children Inc
- 7 NSW Justice Advocacy Centre Inc
No Single Answer
- 8 Law Council of Australia
The Mandatory Sentencing Debate
- 9 Australian Institute of Criminology
Paper written by Carlos Carcach
- 10 The Cabinet Office, New South Wales
Types of Crime
- 11 The Cabinet Office, New South Wales
Causes of Crime and Perpetrators

- 12 The Cabinet Office, New South Wales
Fear of Crime
- 13 The Cabinet Office, New South Wales
Victim Information
- 14 The Cabinet Office, New South Wales
Crime Reduction Information
- 15 The Cabinet Office, New South Wales
Sentencing Information
- 16 The Cabinet Office, New South Wales
Community Policing
- 17 Mr Ivan Brown
Various papers on court decisions and sentencing
- 18 Hon Robert Lawson QC MLC
*Drug Courts. What are they and What is the Government doing? And
The new laws on Home Invasions. What are the change?s*
- 19 Hon Robert Lawson QC MLC
*Crime Prevention a Shared Responsibility - Safety on Public Transport
August 1999*
- 20 Hon Robert Lawson QC MLC
*An overview of Crime Prevention and Community Safety Initiatives
July 1999*
- 21 Cr Julie Sutton
Does the punishment fit the crime
- 22 Border Watch Australia
The Law and You - by Bob Spanswick
- 23 Mr Ken Marslew
Enough is Enough National Resource Directory
- 24 Crime and Misconduct Commission
Crime information provided from Crime and Misconduct Website
- 25 Mr Ian Fletcher
The Local Crime Prevention Program
- 26 City of Kalgoorlie-Boulder
*Ngaanyatjarra Community Law and Justice Submission to the Attorney
General of Western Australia. April 2002*

- 27 City of Kalgoorlie-Boulder
The safer Country Community. Draft Only. A plan for the future.
- 28 Australian Federal Police
The governance arrangement and structure of law enforcement in Australia
- 29 Australian Federal Police
AFP'S presentation to Inquiry into Substance Abuse
- 30 National Crime Authority
Organised Crime In Australia: NCA Commentary 2001
- 31 Confidential
- 32 Law Society of South Australia
Restorative Justice - Australian Story - 5 August 2002 (video)
- 33 St Kilda Legal Service Co-op Ltd
Evaluation of Edinburgh District Council's Zero Tolerance Campaign
- 34 Australian Federal Police Association
Called to Account, The need for Higher Integrity Standards in the proposed Australian Crime Commission
- 35 Law Society of South Australia
Extract of "Restorative Justice and a Better Future", lecture by John Braithwaite, Australian National University (1997)
- 36 Mr Anthony York
Institute of Criminology, University of Sydney presents a public seminar, Mental Health and the Criminal Justice System.
- 37 NSW Police Service
Transcript of 2UE interview (Jon Harker) with Ross Treyvaud on 17th September 2002
- 38 Fairfield City Council
Crime Prevention Plan
- 39 Mr Ivan Brown
Supreme Court of WA decision in the case Dixon -v- Scott, 2 October 2002.
- 40 National Motor Vehicle Theft Reduction Council
Information on driving down vehicle theft 2002

- 41 Mr Tim Priest
Submission to Inquiry into Police resources in Cabramatta by Detective Sergeant M Priest, dated 2000
- 42 Ms Ariel Marguin
Various publications of Justice Action organisation
- 43 Marrickville Council
Publications from the Marrickville Council
- 44 Mr Jim Montague
Publications of the Canterbury City Council
- 45 Mr Tony Trimmingham
Publications from the Family Drug Support Organisation
- 46 NSW Bureau of Crime Statistics & Research
Presentation slides by Don Weatherburn
- 47 Dr Richard Basham
Asian Crime a Challenge for Australia
- 48 Sutherland Shire Council
Slide presentation by David Ackroyd, Sutherland Shire Council
- 49 Shires Association NSW
Press clipping Moree Champion. Dated 8/10/02 Pg. 1
- 50 Dr Chris Atmore
Men as Victims of Domestic Violence.
- 51 Ms Virginia Geddes
What's in a Name? Definitions and Domestic Violence. Discussion Paper No. 1 1998.
- 52 Ms Virginia Geddes
Is someone you know being abused in a relationship? A guide for families, friends & neighbours
- 53 Ms Virginia Geddes
Family violence hurts kids to ... even if the don't see it
- 54 Australian Institute of Criminology
AIC Trends & Issues paper no 129 - Identify-related Economic Crime: Risks and Countermeasures.
- 55 Dr Russell Smith
Travelling in Cyberspace on a False Passport: Controlling Transnational Identify-related Crime. Paper for British Society of Criminology

Conference 02

- 56 Dr Russell Smith
*Examining the Legislative & Regulatory Controls on Identity Fraud.
Marcus Evans Conferences on Identity Fraud Sydney 2002*
- 57 Ms Marg D'Arcy
Photocopy of a Ripcurl design
- 58 Ms Marg D'Arcy
Graphic depicting the influences on victims/survivors.
- 59 Victoria Police
News paper Item - Violent Crime Statistics
- 60 Mr Ashley Dickinson
2001/2002 Provisional Crime Statistics
- 61 Mr Ray Carroll
*Motor Vehicle Theft in Australia July 2000-June 2001. An Annual
Statistical Report (CD Rom)*
- 62 Mr Robert McDonald
Special Powers - NCA hearings and Notices
- 63 Victoria Police
Crime Statistics 2001/2002 Provisional
- 64 Confidential
- 65 Geraldton Newspapers Limited
Notes from Malcolm Smith
- 66 Mr Malcolm Smith
Law and Order, Geraldton January 2001
- 67 The Hon Bronwyn Bishop MP
Affidavit (James)
- 68 Mr Michael McGann
*Transcript The District Court of New South Wales in the matter of
Regina V Peter Karamihalis @ Kay Bill Bayeh @ Michael Dominic
Pedavoli, dated 17 August 1998*
- 69 Confidential
- 70 Mr Kevin Lindeberg
List of documents submitted on CD-ROM

- 71 Mr Michael Griffiths
Abuse of Medical assessments to Dismiss Whistleblowers by a member of Whistle blowers Australia, December 1997.
- 72 NSW Police
Exclusion of Sergeant AR Stephens and Detective Senior Constable P Quigg for the Sydney Cricket Ground and Sydney Football Stadium
- 73 Mr Mark Fenlon
Police TV Episode 11/99.
- 74 Mr Alan Stephens
Video tape of incident involving police at the SCG
- 75 Wadeye Palngun Wurnangat Incorporated
Plan for women and Family dreams of the Future - "Our Wealth is Family"
- 76 Wadeye Palngun Wurnangat Incorporated
Kardu Darrikardu Pumemanpinu Family Program
- 77 Wadeye Palngun Wurnangat Incorporated
Discussion paper - Proposal to establish and trial a Cool House Wadeye
- 78 Tiwi Islands Local Government
Copy of Annual Report 2001 - 2002
- 79 Mr Peter Orsto
Whole School Community - Leadership Camp and Working Together 2003 (Background papers for school priorities)
- 80 Mr Stephen Jackson
Northern Territory Quarterly Crime and Justice Statistics: Issue 3: March Quarter 2003
- 81 Mr Stephen Jackson
Key Findings - Recorded Crime March Quarter 2003 Northern Territory
- 82 Mr Stephen Jackson
Copy of Stephen Jackson's slide presentation of the March Quarter 2003 Statistics;
- 83 Ms Jenne Roberts
Copy of Ms Jenne Roberts' slide presentation about the NT Crime Prevention Programs and associated hand-outs.
- 84 Supt Graham Waite
NT Police Juvenile Pre-Court Diversion Scheme. List of Active

Programs by Program Provider (13)

- 85 Ms Sylvia Langford
Overview of the Aboriginal Interpreter Service NT
- 86 Mr Duncan Kennedy
NSW Security Industry ACT 1997 and Security Industry Regulation 1998
- 87 Mr Duncan Kennedy
Papers relating to Security Industry licensing
- 88 Mr Duncan Kennedy
Dept of Fair Trading (NSW) a selection of correspondence 1997 - 2001
- 89 Mr Duncan Kennedy
Correspondence Premier, Attorney General, Auditor General, ICAC, Ombudsman 1997-2001
- 90 Mr Duncan Kennedy
Correspondence Legislative Council 1995-2002
- 91 Mr Duncan Kennedy
Special Information and Material of Concern 1996-1998
- 92 Mr Duncan Kennedy
Rules of Fair Trading, High Court Decision on Fair Trading 2001
- 93 Mr Duncan Kennedy
Experiences 2001-2002
- 94 Mr Duncan Kennedy
Security Australia - Some of the Stories 1996-2000
- 95 Mr Duncan Kennedy
Accredited Security Industry Association, correspondence/papers 2000-2002.
- 96 Mr Duncan Kennedy
Department of Housing various papers 1989- 1997
- 97 Mr Duncan Kennedy
Department of Public Works and Services various documents 1999-2001
- 98 Mr Duncan Kennedy
Yellow pages and ads 1996-1999
- 99 Mr Duncan Kennedy
Urban Affairs and Planning correspondence 2001-2002

- 100 Mr Duncan Kennedy
OH&S Workcover correspondence and articles 2000
- 101 Mr Duncan Kennedy
Possible line of Attack various articles on security industry shambles.1995-2001
- 102 Mr James Ritchie
Policing models - Flowchart
- 103 Mr Mark Fenlon
Final Report - NSW Police handling of CIS 02000834. 3 August 2003
- 104 Mr Peter Martin
Correspondence from NSW Police 15 July 2003.
- 105 Mr Bruce Grundy
Welcome to Justice Project - May 1992.
- 106 Mr Bruce Grundy
Rule of law and Destruction of Evidence - Equality before the law? By Bruce Grundy, January 2003
- 107 Mr Alastair MacAdam
Extracts form the Criminal Code [1899](Qld) and the Criminal Practice Rules 1900 (Qld)
- 108 Mr & Mrs B & S Conroy
Video of damage to Ben Conroy's house 2000
- 109 Mr & Mrs B & S Conroy
Contract for house purchase Mr Conroy
- 110 Mr Kevin Lindeberg
Copy of the indictment of Pastor Ensbey in relation to the destruction of evidence. Dated 21 June 2003
- 111 Mr Kevin Lindeberg
Extract from Sunday Sun 1 October 1989 pg 18. Teens handcuffed
- 112 Mr Bruce Grundy
Extracts from the Morris and Howard Report in relation to the Heiner Affair
- 113 Mr Bruce Grundy
2 articles by Mr Grundy entitled "no Witness statements over shotgun death" and "Court not Custodian of its own Record"
- 114 Brain a& Mind Research Institute

Collection of papers on Cannabis and mental health

- 115 Mr Bruce Grundy
Attachment 2: Submission to commissions of Inquiry Order (No1) 1998 signed statement of Mrs Beryce Nelson 15 May 1998
- 116 Dr Michael King SM
Journal of Offender Rehabilitation. Volume 36, Numbers 1/2/3/4 2003
- 117 Mr Bruce Grundy
Phone interview with "Michael" by Steve Austin ABC Morning Radio Brisbane; 7 November 2001
- 118 Mr Bruce Grundy
Various Correspondence between Queensland Dept of Families and Queensland Police dated November 2001
- 119 Mr Bruce Grundy
Various correspondence between Queensland Police and Dept of Families August 2001
- 120 Mr Bruce Grundy
Photographs of Mt Barney Near NSW border
- 121 Mr Bruce Grundy
John Oxley File Admin File 1904 between July 1988 to November 1988
- 122 Mr Bruce Grundy
Report on Educational Program Incident 24th, May 1988
- 123 Mr Kevin Lindeberg
various documents tendered in relation to the Heiner Affair. Date range 1989-1996
- 124 Mr Bruce Grundy
Tape of conversation March 2000 between Mr Grundy and Ms Barbara Flynn
- 125 Mr Noel Heiner
Letter from A C Pettigrew, Director General Family Services to Mr Heiner dated 13 November 1989
- 126 Mr Noel Heiner
Letter from Mr Noel Heiner to Ms R Matchett, A/Director General Family Services, dated 19 January 1990
- 127 Mrs Beryce Nelson
Memo from Ian Peers to Ruth Matchett, undated, regarding John Oxley

youth Centre Inquiry

- 128 Mrs Beryce Nelson
Record of meeting between Ms Ruth Matchett, Mr Peter Coyne and Mr Leigh Carpenter held on 1 November 1990
- 129 Mrs Beryce Nelson
Memo from Mr Peter Coyne entitled 'Public Comment and Political Liberty', dated 27 June 1990
- 130 Mrs Beryce Nelson
Letter from Ms Ruth L Matchett to Mr Peter Coyne, dated 2 July 1990, directing him not to make a public comment
- 131 Mrs Beryce Nelson
Letter from Mr Peter Coyne, dated 16 July 1990, regarding correspondence pertaining to the Heiner Inquiry
- 132 Mrs Beryce Nelson
Letter from Ms Ruth Matchett to Mr Peter Coyne, dated 19 July 1990, acknowledging Mr Coyne's letter of 16 July 1990
- 133 Mrs Beryce Nelson
Letter from Ms Ruth Matchett to Mr Bill Yarrow, dated 1 August 1990 regarding Mr Peter Coyne
- 134 Mrs Beryce Nelson
Letter from Mr Peter Coyne to Ms Ruth Matchett, dated 17 September 1990, regarding reimbursement of solicitor's fees
- 135 Mr Kevin Lindeberg
Form 26 - Notice of appeal by Mr Douglas Ensbey, The Queen v Douglas Roy Ensbey, dated 8 April 2004
- 136 Mr Kevin Lindeberg
Form 391 - Notice of Appeal by Attorney-General, The Queen v Douglas Roy Ensbey, dated 25 March 2004
- 137 Mrs Kay McMullen
Letter from Advocacy worker to the Management Committee, dated 27 July 1999, re: mistreatment of a resident by a male worker & associated document
- 138 Mrs Kay McMullen
Response from Morris Lewin, Chairman, Care Independent Living Association Inc to letter from SUFY Advocacy worker, dated 20 August 1999

-
- 139 Mr & Mrs Justin & Betty Rowe
Summary of opening statement by Mr and Mrs Rowe, addressing two terms of reference for the inquiry into crime in the community
- 140 Mr & Mrs Justin & Betty Rowe
Communications program for Mr Peter Rowe, by Options Communication Therapy Centre, dated May 2001, and accompanying photographs
- 141 Mr & Mrs Justin & Betty Rowe
Copies of two paintings by Mr Peter Rowe, with accompanying text
- 142 Mr & Mrs Justin & Betty Rowe
Three poems by Peter Rowe
- 143 Mr & Mrs Justin & Betty Rowe
A folio containing two children's stories, created and illustrated by Mr Peter Rowe
- 144 Confidential
- 145 Confidential
- 146 Confidential
- 147 Confidential
- 148 Confidential
- 149 Confidential
- 150 Confidential
- 151 Neighbourhood Watch & Crime Prevention
Crime prevention schemes get \$20m
- 152 City of Gosnells
Memorandum of understanding between City of Gosnells & Department of Justice Community, Justice Services, dated April 2004
- 153 City of Gosnells
Memorandum of Understanding between City of Gosnells and Western Australia Police Service, Gosnells Police Station, dated December 2002
- 154 City of Gosnells
Opening Statement by Cr. Patricia Morris
- 155 City of Gosnells
Funding Issues for Dept of Family & Community Services

- 156 City of Gosnells
Pamphlet package on Making the City of Gosnells a Safe City
- 157 Mr Kevin Lindeberg
Letter from Auditor-General to Mr Lindeberg, dated 13 May 2004
- 158 Mr Kevin Lindeberg
Letter from Auditor-General Queensland to Mr Kevin Lindeberg dated 31 March 2004
- 159 Mr Kevin Lindeberg
Letter from Mr Lindeberg to Auditor-General dated 3 April 2004
- 160 Mr Kevin Lindeberg
Letter from Auditor-General to Mr Lindeberg dated 6 April 2004
- 161 Mr Kevin Lindeberg
Letter from Mr Lindeberg to Auditor-General dated 4 May 2004
- 162 Mr Kevin Lindeberg
Letter from Auditor-General to Mr Lindeberg dated 13 May 2004



Appendix C - List of Witnesses

Friday 21 June 2002 - Canberra (Committee Briefing)

Attorney-General's Department

Dr Dianne Heriot, Assistant Secretary, Crime Prevention Branch,
Criminal Justice Division

Australian Federal Police

Mr Brendan McDevitt , General Manager, National Operations

Commissioner Michael Keelty

Mr Peter Whowell, Principal Policy Officer

Australian Institute of Criminology

Mr Carlos Carcach, Senior Research Analyst, Head of Communities
and Crime Analysis Program

Monday, 9 September 2002 - Melbourne

Australian Institute of Criminology

Dr Russell Smith, Deputy Director of Research

Logistics Pty Ltd

Mr Adrian Stephan, Managing Director

Older Persons Action Centre

Ms Sue Healy

Mrs Edith Morgan, Member

University of Melbourne

Professor Arie Freiberg, Head of Department, The Department of Criminology

Victoria Police

Mr Ashley Dickinson, A/g Commander

Mr Robert Read, Manager, Victim Advisory Unit

Victorian Alcohol and Drug Association

Ms Carol Bennett, Executive Officer

VOICES

Ms Ada Conroy

Ms Elizabeth Olle, Member

Tuesday, 10 September 2002 - Melbourne**Barwon Centre Against Sexual Assault**

Ms Pamela O'Neill, Coordinator

Domestic Violence & Incest Resource Centre

Ms Virginia Geddes, Co-ordinator

Ms Janet Hall, Finance Coordinator

Federation of Community Legal Centres' Violence Against Women and Children Working Group

Ms Jacinta Maloney, Community Education Lawyer

Gippsland Centre Against Sexual Assault

Ms Pauline Gilbert, Coordinator, Administrative Services Counsellor Advocate

Moreland Council

Ms Frances Grindlay, Social Policy Unit

National Motor Vehicle Theft Reduction Council

Mr Ray Carroll, Executive Director

Mr Geoffery Hughes, Project Manager

St Kilda Legal Service Co-op Ltd

Dr Chris Atmore

The Police Association of Victoria

Mr Paul Mullett, Secretary

Victorian Centres Against Sexual Assault Forum

Ms Marg D'Arcy, Public Officer

Thursday 19 September 2002 - Canberra (Committee Briefing)**Australian Institute of Criminology**

Ms Patricia Mayhew, Consultant Criminologist

Thursday, 26 September 2002 - Canberra**Attorney-General's Department**

Mr Peter Ford, Acting General Manager, Criminal Justice and Security

Mr Geoffrey Main, Special Advisor, Proof of Identity Project, Strategic Law Enforcement Branch

Mr Christopher Meaney, Assistant Secretary, Criminal Justice Division

Mr Tim Morris, Director, Criminal Justice Division

Wednesday, 9 October 2002 - Sydney**Individuals**

Dr Richard Basham

Councillor Maria Heggie

Mr Stephen Odgers

Fairfield Chamber of Commerce

Mr Philip O'Grady, Vice-President

National Crime Authority

Mr David Gray, Director of Intelligence

Mr Robert McDonald, National Director, Sydney Office

NSW Bureau of Crime Statistics & Research

Dr Don Weatherburn, Director

NSW Justice Advocacy Centre Inc

Mr Eric McCormack CJA, Chief Executive Officer

NSW Police

Mr DB Madden, Deputy Commissioner Operations

Ms Cheryl McCoy, Director, Operational Policy and Programs

The Cabramatta Chamber of Commerce Inc

Mr Ross Treyvaud, President

Thursday, 10 October 2002 - Sydney**Individuals**

Mr Bob Bottom

Mr Tim Priest

Mr Stephen Woods, Clinical and Consultant Psychologist

Councillor Peter Woods, Local Government Association of NSW

Canterbury City Council

Mr Andrew Sammut, Senior Operations Manager, Community Services

Country Women's Association of NSW

Mrs Joy Potts

Family Drug Support

Mr Tony Trimmingham

Justice Action

Mr Brett Collins, Spokesperson

Ms Anna Lawarik, Spokesperson

Ms Ariel Marguin, Co-ordinator

Mr Anthony York

Marrickville Council

Ms Linda Livingstone, Manager Community Development

Shires Association NSW

Mr Michael Montgomery, President

Southern Sydney Regional Organisation of Councils

Ms Melissa Gibbs, Executive Director

Sutherland Shire Council

Mr David Ackroyd, Manager, Community services

Monday, 18 November 2002 - Geraldton**Community Justice Services**

Mr Peter Chandler, Previous Regional Manager

Geraldton & Districts Senior Citizens Action Group

Mr James Graham, President

Geraldton Community Legal Centre

Mrs Sarah James-Wallace, Principal Solicitor

Geraldton Police & Citizens Youth Club

Ms Anne Finlay, Branch Manager

Geraldton Streetwork Aboriginal Corporation

Mr Gordon Clinch, Member

Mrs Merrilyn Green, Manager

Give me Geraldton Anyday

Mr Brian Beardman, Board Member

Mr Laurence Campbell, Coordinator

Safer WA

Mrs Karen Godfrey, Vice Chairman

WA Police Service

Mr Geoffrey Fuller, Senior Sergeant

Wednesday, 19 February 2003 - Sydney**Individuals**

Mr Glen McNamara

Thursday, 20 February 2003 - Sydney**Individuals**

Mr Edwin Chadbourne

Mr Peter Martin

Mr Michael McGann

Wednesday, 26 February 2003 - Sydney**Individuals**

Mr Mark Fenlon

Mr Michael Kennedy

Thursday, 27 February 2003 - Sydney**Individuals**

Mr Larry Cook

Mr Richard McDonald

Friday, 28 March 2003 - Sydney**Individuals**

Mr A F Godfrey

Mr Alan Stephens

Wednesday 11 June 2003 - Darwin**Northern Territory Police Force**

Divisional Superintendent Richard Bryson, Northern Territory Police Force

Senior Sergeant Dean McMasters, Officer in Charge Wadeye Police Station

Kardu Numida Incorporated

Mr Rick Bliss, Housing Manager

Mr Terry Bullemor, Town Clerk

Thamarrurr Regional Council

Mr Felix Bunduck, Joint Chair

Mr Leon Melpi, Member

Mrs Theadora Narndu, Joint Chair

Ngepan Patha Centre (Women's Centre), Palngun Wurnangat Association

Ms Suzanne Demos, Helper/Coordinator

Thursday, 12 June 2003 - Darwin**Individuals**

Supt Graham Waite, Superintendent, Juvenile Diversion Scheme

Department of Community Development Sport and Cultural Affairs

Ms Sylvia Langford, Deputy Chief Executive

Ms Ann Vincent, A/Manager Aboriginal Interpreter Service

Department of Justice

Ms Jenne Roberts, Principal Policy Advisor, Office of Crime Prevention

Department of Justice NT

Mr Stephen Jackson, Director Research & Statistics, Office of Crime Prevention

Northern Territory Police Force

Senior Constable Scott Mitchell, Senior Policy Advisor

NT Department of Chief Minister

Ms Pam Griffiths, Deputy Director, Social Policy Unit

Friday 13 June 2003 Nguiu (Bathurst Island)**Northern Territory Police Force**

Constable Chris Galati,

Tiwi Islands Local Government

Mr John Cleary, Chief Executive Officer

Mr Kevin Doolan, Coordinator, Diversionary Program

Mr Adam Kerrinauia, Member

Mr Maralampuwi Kurrupuwu, President

Mr Luke Puruntatameri, Member

Mr Gavin Tipiloura, Community Services Officer, Nguiu Community Management Board

Mr Hyacinth Tungatalum, Member

Tiwi Health Board

Mr Barry Puruntatameri, Manager

Xavier Community Education Centre

Mr Brian Clancy, Co-Principal

Mr Peter Orsto, Co-Principal

Wednesday, 20 August 2003 - Canberra**Individuals**

Mr Duncan Kennedy

Mr Peter Martin

Mr James Ritchie

Monday, 27 October 2003 - Brisbane**Individuals**

Mr Kevin Lindeberg

Queensland University of Technology

Mr Alastair MacAdam, Senior Lecturer in Law, Law School

University of Qld

Mr Bruce Grundy, School of Journalism

Tuesday, 28 October 2003 - Brisbane**Individuals**

Mr & Mrs B & S Conroy

Mr Des O'Neill

Caxton Legal Centre

Ms Matilda Alexander, Solicitor

Mr Scott McDougall, Director

Ms Narelle Sutherland, Social Worker

Logan Youth Legal Service

Mr Lawrie Moynihan, Manager

Sisters Inside

Ms Debbie Kilroy OAM, Director

Friday, 7 November 2003 - Sydney**Individuals**

Mr Mark Fenlon

Brain and Mind Research Institute

Prof Ian Hickie, Executive Director

Thursday, 4 March 2004 - Canberra**Australian Children's Music Foundation (ACMF)**

Mr Donald Spencer, Founder

Tuesday, 16 March 2004 - Brisbane**Individuals**

Mr Kevin Lindeberg

Mr Michael Roch

University of Qld

Mr Bruce Grundy, School of Journalism

Tuesday, 18 May 2004 - Brisbane**Individuals**

Mr Noel Heiner

Monday, 7 June 2004 - Raymond Terrace**Individuals**

Mr Ian Beckett

Ms Valda Earnshaw

Mr Robert Owen

Mr James Ritchie

Mr Trevor Wark

Mr Gregory Whittall

Blue Water Security Pty Ltd

Mr Paul Colley, Managing Director

Cabramatta Police Station

Senior Constable Natalie Carman

Federal Member for Paterson

Mr Bob Baldwin, MP

NSW Police, Lower Hunter Command

Superintendent Charles Haggett, Commander

Port Stephens Council

Mrs Sally Dover, Councillor

Port Stephens Crime Forum Committee

Mr Peter Mason, Chairman

Port Stephens Shire Council

Mr Ronald Swan, Deputy Mayor

Publicity Officer, Port Stephens Crime Forum

Mrs Doreen Bradley, Publicity Officer

Spokesman for Port Stephens Crime Forum

Mr Sean Brennan, Spokesman

Worimi Local Aboriginal Land Council, Worimi Aboriginal Traditional Elders & Owners Group

Mr Leonard Anderson, Chief Executive Officer, Senior Ranger

Monday, 7 June 2004 - Forster**Individuals**

Mr Malcolm Abbo

Mr Kevin Austwick

Mr Edgar Bickford

Mr Brett Bramble

Mr Kevin Lean

Mrs Iris Miles

Mrs Michelle Moffat

Mr Christian Patteson

Mr William Paulson

Mrs Anne Reid

Ms Leigh Vaughan

Aboriginal Justice Adv-Council / Public

Ms Teresa French, Councillor, Many Rivers

Beaches International

Mr Greg Randall, Manager

Bella Villa Motor Inn

Mrs Margaret Krzemien, Manager

Federal Member for Paterson

Mr Bob Baldwin, MP

Forster - Tuncurry Security Service

Mr James McShane, Manager

Forster and Tuncurry Golf Club

Mr David Little, Director

Forster Local Aboriginal Land Council

Ms Donna Hall, Chairperson

Forster Neighbourhood Watch

Mrs Mary Holstein, President

Mr Thomas Short, Secretary

Forster Tuncurry and District Chamber of Commerce Inc

Mrs Judith Payne, President

Great Lakes Council

Mr John Chadban, Mayor

Mr John Stephens, Councillor

Manning-Great Lakes Police

Senior Constable Kenneth Sheather, Crime Prevention Officer

Mid North Coast Area Health Service

Ms Chloe Beevers, Area Health Promotion Officer, Safe Communities

Friday, 18 June 2004 - Brisbane**Individuals**

Mrs Kay McMullen

Mrs Beryce Nelson

Mr Joe Nikolich

Mr Justin Rowe and Mrs Betty Rowe

Mrs Gail Torrens

Thursday, 1 July 2004 – Gosnells**Individuals**

Mrs Vibeke Elise Ahnstrom

Westan Aboriginal Corporation

Mr Clive Abraham

Mr Cleave Lucas Narkle

West Australia Police

Mr Christopher John Clark, Legal Services

Superintendent Ross McKenzie Napier, Divisional Superintendent,
Crime Prevention and Community Support

Rehabilitation and Management Western Australia (DRUG-ARM WA)

Mr John Morris Dunn, Program Coordinator

Mrs Susy Thomas, Executive Director, Drug Awareness

Moorditch Koolaak Housing Service

Mr Leon Harp, Tenant Support Officer

City of Gosnells

Mr Stuart Jardine, Chief Executive Officer

Councillor Patricia Morris, Mayor

Friday, 23 July 2004 - Murray Bridge**Murray Bridge Business & Tourism**

Mr Jerry Wilson, President

Neighbour hood Watch & Crime Prevention

Mr Robert Wheare, Chairperson

Rural City of Murray Bridge

Mr Allan Arbon, Mayor

Mr David Wade, Human services Officer

Councillor Milton Weinert, Elected member

SA Police Department - Murray Bridge

Mr John Gigger, Officer in Charge, Murray Bridge Police Station