

18 September 2004

Mr Alistair Sands,
Secretary,
Senate Select Committee on the Lindberg Grievance,
Parliament House,
Canberra, ACT 2600

By email to lindeberg.sen@aph.gov.au

Dear Mr Sands,

Re: Response to the Lindeberg allegations

I thank the Committee for the provision of additional information and for its indulgence in extending the time for me to respond.

As you are aware from the volume of material which you sent to me, a thorough and comprehensive response to Mr Lindeberg's concerns would require me to read thousands of pages and write hundreds. Regrettably, in view of the demand of my position as state coroner, I am not able to devote the time it would take to do that.

As you are also aware numerous overviews of the matter have already been undertaken by various Senate committees and other review bodies. From my perusal of the material put forward by the various witnesses who have given evidence to this Committee nothing new has been raised which would warrant this Committee coming to any conclusions different to those which have examined the matter before.

I therefore intend to confine myself to very brief observations that summarise why I consider this Committee should reject any suggestion that I or anybody else involved in the CJC's handling of Mr Lindeberg's complaint has committed any contempt of the Senate.

(1) I now believe the decision to shred of the "Heiner documents" was wrong for 2 reasons:-

- The general presumption is that public records of any import should be retained unless they have no historical or personal value. In view of the circumstances in which the "Heiner inquiry" was commenced and discontinued it is likely that these exceptions could not be met.
- The hundreds of thousands, if not millions, of dollars of public funds that have since been spent examining all aspects of that shredding could have been spent far more productively. It is in my view a matter of significant public concern that such expenditure continues.

Clearly it would have been preferable had they not been shredded, but that does not mean that the decision to do so amounted to official misconduct or a criminal offence. Nor does it lend any support to a claim that those who so concluded are themselves guilty of any criminal offence or wrongdoing.

(2) The decision to shred the "Heiner documents" has caused harm to no-one other than Mr Lindeberg and those caught up in his obsessive pursuit of the issues he has vociferously ventilated for over a decade. I am one of those people and I most vehemently object to his continued defamation of me and other more eminent and worthy public officials who have had their good names tarnished by Mr Lindeberg's inability to accept that others can have opinions that differ from his without the holder of those different opinions being in any way blameworthy. The only harm to Mr Lindeberg flows from his inability to accept that governments will on occasions fail to achieve the highest standards of administrative effectiveness and the consequent waste of his life in pursuing one such failing.

(3) The suggestion that evidence of child abuse was destroyed or lost when the documents were shredded is complete nonsense. The records of any such allegation made to Mr Heiner could not have been admitted in any civil or criminal proceedings that sought to prove that such abuse had occurred. On the other hand, if people who appeared before Mr Heiner had such evidence they could and still can give to the appropriate law enforcement authorities. Nothing that was done to the "Heiner documents" in any way impacted upon that.

(4) It is regrettably apparent that Mr Lindeberg has lost completely the ability to discuss these issues with any balance or perspective. His suggestion that the shredding of the Heiner documents raises issues commensurate with the signing of the Magna Carta, the American Declaration of Independence and the signing of the Australian Constitution demonstrates in my submission that he is completely unreliable.

This is not an entirely new development. A number of years ago when engaged in discussion with one of his close conspiracy theorists I asked why, if the evidence was so compelling, after the Borbidge Government received the Morris Howard report did they not commission a larger public inquiry. My conversant responded that the impediment to such a course was that a senior member of that government had committed sex offences against children and that this was known to Labor members of Parliament who would use such an inquiry to publish this "fact". That is the level to which these people will sink to undermine anyone who fails to agree with their interpretation of this matter.

(5) Mr Lindeberg's whole case seems to be based on his having a different interpretation of s129 of the Criminal Code from me and other more eminent lawyers who dealt with his complaint to the CJC and gave evidence about that to various Senate Committees. Mr Lindeberg makes the extraordinary leap of logic to suggest that because, in his view, the opinion of the Crown Solicitor, the DPP, the Chair of the CJC, eminent senior counsel and others is wrong, I and others must have deliberately misled the Senate.

The same logic would suggest that every time an appeal court over turns a ruling on a point of law made by a court lower in the appellate hierarchy the judges whose decisions are overturned are corrupt.

(6) It can not be disputed that the decision to shred the documents was based on advice from the Crown Solicitor. Surely governments must be free to take and act on such advice. Even if Mr Lindbergh's claim that the shredding was unlawful has any substance how could action be taken against the Goss Government for acting in accordance with its legal advice? This Committee no doubt relies on advice from the Clerk of the Senate when determining how to arrange its hearing procedures. That advice presumably says that provided appropriate procedural steps are taken, allegations, comments and pronouncements, that would in any other circumstances amount to criminal defamation are privileged. Does this Committee accept that if in 14 years time someone obtains legal advice that the Clerk's advice was wrong and that these proceedings were not privileged, Committee members should be prosecuted for such offences they may have committed along with the Clerk of the Senate on the basis that he must have deliberately misled the Honourable members?

(7) I can not be sure that everything I have said on the numerous occasions I have responded to Mr Lindeberg's allegations is completely accurate or even that all of the legal opinions I have expressed accord with the most authoritative sources on all relevant points. I am absolutely certain however, that I have never deliberately misled the Senate or any other inquirer.

Michael Barnes
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