

Dissenting Report

By Senator Santo Santoro

Senator for Queensland

With regret, I am unable to agree with the findings of this Committee, and specifically, I do not believe that the Committee is in a position to find that no contempt of the Senate was committed and that there is no basis for reconstituting the Committee and concluding this inquiry in a timely, but comprehensive, manner.

There have been a number of Commonwealth and State inquiries into the events leading up to, and following from, the decision of the Queensland Cabinet in March 1990 to destroy the "Heiner documents".

The issues central to these inquiries are many and varied, but strike at the heart of good and honest government and the proper administration of criminal and child protection laws.

The Heiner inquiry was established by the then Queensland Government in 1989 to investigate issues relating to the treatment of children in the John Oxley Youth Centre. Shortly after that inquiry was established, there was a change of government (in December 1989), and soon thereafter the inquiry was finalised. The documents generated by that inquiry were subsequently shredded by a decision of the Queensland Cabinet.

The reasons for that decision being made, the legal ramifications that flowed from it, and the treatment of the central players, including Mr Lindeberg, have been matters of public controversy in Queensland for more than a decade.

Despite a number of inquiries, it is fair to say that many serious issues remain unresolved.

If that were all that was involved, serious though these issues are, there would, no doubt, be little to enliven the jurisdiction of the Senate. However, the Senate established two select committees into public interest whistleblowing, and serious allegations were made that the Queensland Criminal Justice Commission gave false and misleading evidence to the second of the inquiries (the Select Committee on Unresolved Whistleblower Cases). These allegations are set out in Chapters 2 and 3 of the Report.

The Senate Committee of Privileges subsequently dealt with those allegations in December 1996 and May 1998.

This Committee was set up to fully and finally deal with Mr Lindeberg's allegations. If the Senate had thought that there was nothing further in those allegations, and that they had been fully and properly investigated by previous inquiries, then it would not have agreed to establish this Committee.

Clearly one cogent reason for establishing this Committee was a desire to ensure that there was closure on these allegations.

If that was the fundamental purpose underpinning the establishment of this Committee, then this Committee has not achieved the objective set by the Senate.

Fundamentally, my concern is that this Committee has only partially carried out its work, and yet purports to make findings which could only be made at the conclusion of a full and proper inquiry. I am not in a position, on the basis of the limited evidence that has been submitted, to sign off on findings that could only be made when due process has been given to Mr Lindeberg and others, and after due and diligent inquiry is made of the evidence submitted.

My concerns are as follows:

- (a) The Committee only convened one public hearing, on 11 June 2004 in Brisbane. The Committee has only heard from three witnesses.
- (b) The Committee agreed to convene a further public hearing for 16 and 17 August 2004, but this hearing was deferred due to the pending federal election;
- (c) Mr Lindeberg, and other witnesses, who were due to appear before the Committee at its August hearings, were not given sufficient additional opportunity to present further material or to respond to questions that may be posed.

From the outset, members of the Committee were of the view that several days of hearings were required to fully explore the matters before the inquiry. At the Committee's public hearing on the 11 June 2004 Committee members indicated that they were keen for Mr Lindeberg to continue his testimony in order to further explore the issues raised.

These comments provide a clear indication that there were outstanding matters to pursue and that the process of evidence gathering was not complete.

Further, at the conclusion of his appearance at that hearing Mr Lindeberg indicated to the Committee that "There are other things I would like to say". Contrary to the claim in the majority report that Mr Lindeberg has had ample opportunity to make his case, he was not afforded the opportunity to state his case fully before this inquiry; and

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- (d) The Committee wrote to the Queensland Government on 11 August 2004 requesting a copy of the unedited version of Document 13, which is central to this inquiry, but, to date, the Queensland Government has not responded.

The committee undertook to receive Document 13 in camera to protect the identity of the children identified in the document (assuming they were named in it), and had suggested to the Queensland Premier that much of the speculation surrounding the document might be addressed if the committee were able to inspect the document in its entirety. That is, if Document 13 had been edited originally to protect the children named in it, providing the committee with the opportunity to verify this point and report on it would have laid to rest the "theories" that circulate about its content.

Central to the establishment of the Heiner inquiry were allegations of the mistreatment of children in detention. Much of the alleged "cover up" of material, or of misleading evidence, relates to how people in authority in Queensland dealt with children at risk and in government care.

This Committee was established to inquire into matters germane to a contempt of the Senate, but that of itself does not adequately express or highlight the human dimension of the Lindeberg grievance, and why this matter has not gone away, but has remained a matter of ongoing public debate and individual anguish (for many) in Queensland.

I am disappointed that this Committee has sought to rule off this matter having not completed its inquiry. I am disappointed because the findings of the Committee will not be the final word in the Heiner inquiry debate, and, in fact, this half completed inquiry will only fuel the debate that there has been an ongoing "cover up".

My dissent from the findings of this Committee should not be read as an endorsement of any of the allegations of Mr Lindeberg, or giving implicit support to a finding that there has been a contempt of the Senate.

However, I do not believe that Mr Lindeberg and other potential witnesses have been given procedural fairness by this committee, and I do not believe there is any proper basis for its findings.

I dissent, because in my view, this Committee has not followed proper process and its findings are founded on an inadequate base of evidence.

I would respectfully recommend that this Committee be reconstituted and complete its task, not just so that the Lindeberg Grievance is dealt with finally, but so that the important human and constitutional issues underpinning this Grievance are fully and fairly ventilated.

ATTACHMENT:

1. *Hansard Hearing transcript of where Committee members raised the prospect of calling Mr Lindeberg again to reappear before the Committee.*

SANTO SANTORO
Senator for Queensland
15 November 2004