PARLIAMENT of AUSTRALIA
THE SENATE

SENATE SELECT COMMITTEE
ON THE
LINDEBERG GRIEVANCE

Submission
By
Kevin Lindeberg
11 Riley Drive
CAPALABA QLD 4157
Phone: 07 3390 3912 0401 224 013 Email: kevlindy@tpg.com.au

28 May 2004

TERMS OF REFERENCE

That a select committee, to be known as the **Select Committee on the Lindeberg Grievance**, be appointed to inquire into and report by 5 October 2004 on the following matters:

(a) whether any false or misleading evidence was given to the Select Committee on Public Interest Whistleblowing, the Select Committee on Unresolved Whistleblower Cases or the Committee of Privileges in respect of the matters considered in its 63rd and 71st reports; and whether any contempt was committed in that regard, having regard to previous inquiries by Senate committees relating to the shredding of the Heiner documents, the fresh material that has subsequently been revealed by the Dutney Memorandum, and Exhibits 20 and 31 tabled at the Forde Commission of Inquiry into the Abuse of Children in Queensland Institutions, and any other relevant evidence; and

(b) the implications of this matter for measures which should be taken:

(i) to prevent the destruction and concealment by government of information which should be available in the public interest,

(ii) in relation to the protection of children from abuse, and

(iii) for the appropriate protection of whistleblowers.

(2) That the committee consist of 7 senators, 3 nominated by the Leader of the Government in the Senate, 2 nominated by the Leader of the Opposition in the Senate, 1 nominated by the Leader of the Australian Democrats, 1 nominated by the One Nation Party.

(3) That the committee may proceed to the dispatch of business notwithstanding that not all members have been duly nominated and appointed and notwithstanding any vacancy.

(4) That:

(a) the chair of the committee be elected by and from the members of the committee;

(b) in the absence of agreement on the selection of a chair, duly notified to the President, the allocation of the chair be determined by the Senate;

(c) the deputy chair of the committee be elected by and from the members of the committee immediately after the election of the chair;

(d) the deputy chair act as chair when there is no chair or the chair is not present at a meeting; and

(e) in the event of the votes on any question before the committee being equally divided, the chair, or deputy chair when acting as chair, have a casting vote.

(5) That the quorum of the committee be a majority of the members of the committee.

(6) That the committee and any subcommittee have power to send for and examine persons and documents, to move from place to place, to sit in public or in private, notwithstanding any prorogation of the Parliament or dissolution of the House of Representatives, and have leave to report from time to time its proceedings and the evidence taken, and such interim recommendations as it may deem fit.
(7) That the committee have power to appoint subcommittees consisting of 3 or more of its members and to refer to any such subcommittee any of the matters which the committee is empowered to consider, and that the quorum of the subcommittee be a majority of the members appointed to the subcommittee.
(8) That the committee be provided with all necessary staff, facilities and resources and be empowered to appoint investigative staff and persons, including senior counsel, with specialist knowledge for the purposes of the committee, with the approval of the President.
(9) That the committee have access to, and have power to make use of, the evidence and records of the Select Committee on Public Interest Whistleblowing, the Select Committee on Unresolved Whistleblower Cases and the Committee of Privileges in respect of its 63rd and 71st reports.
(10) That the committee be empowered to print from day to day such documents and evidence as may be ordered by it, and a daily *Hansard* be published of such proceedings as take place in public.

-oOo-

PUBLIC NOTICE

The Senate has established a Select Committee on the Lindeberg Grievance to examine whether false or misleading evidence was given to previous Senate committee inquiries on matters raised by Mr. Kevin Lindeberg. The Committee is also examining whether any contempt was committed in relation to evidence given on the shredding of the so-called Heiner documents, in light of material that has emerged in the Dutney Memorandum, the Forde Commission of Inquiry into Abuse of Children in Queensland Institutions and any other evidence. The Committee will also be considering the implications of this matter for measures to prevent the destruction and concealment by government of information of public interest, protect children from abuse and protect whistleblowers.

The closing date for submissions is 31 May 2004.

-oOo-

TABLE OF CONTENTS

THE MATTER FOR CONSIDERATION 5
The Core Elements of the Alleged Criminal Contempt Against the Australian Senate 5
INTRODUCTION 6
A Prophetic Statement 7
PART A - INSTANCES OF FALSE AND MISLEADING EVIDENCE 11
THE LEGAL AND PROBITY SIGNIFICANCE OF THE STATE OF QUEENSLAND VS DOUGLAS ROY ENSBEY JUDICIAL RULING 13
Queensland Attorney-General's Appeal Against Sentence to Queensland Court of Appeal 13
A Respectful Caution to All 14
POINT 1: Destroying evidence of suspected official misconduct and/or possible criminal conduct 15
POINT 2: Destroying evidence known to be required in evidence in a judicial proceeding 22
The Model Litigant *vs* A World Without Evidence 23
Not Even Arguable 29
The Doctrine of the Separation of Powers Under Threat 31
Compounding the Deception 32
Incompetence *vs* Improper Motives 33
Uniform Application of the Related Criminal Law Throughout The Commonwealth 35
POINT 3: Misrepresenting the role of the State Archivist 37
POINT 4: An instrument to cover-up crime conditional upon the payment of public moneys for silence 44
Conspicuous Nonsense 47
What Was The Defamatory Odium 49
POINT 5. Deliberately tampering with evidence provided to the Senate as in Document 13 50
POINT 6. Deliberately withholding from the Senate known relevant evidence in the possession and control of the Queensland Government at all relevant times revealing the crime of pack-rape and criminal paedophilia. 52
Major Deceit in March 1989 Over the Pack Rape Incident 52
The Make-up of the March 1989 Department of Families Executive Team 54
PART B - ADDITIONAL INSTANCES OF FALSE AND MISLEADING EVIDENCE 55
Point 7. Deliberately Misinterpreting *Public Service Management and Employment Regulation 65* and Withholding Certain Crown Law Advices 55
Improper Warehousing of Evidence 57
An Undisclosed Visit 60
The Role of Mr. Michael Allan Barnes 61
The Role of Mr. Noel Francis Nunan 62
Investigating Mates By Mates 64
The Role of the Queensland Police Service 65
Incompetence or Corruption 67
The Role of the Queensland Office of Crown Law 68
A Betrayal of Trust 69
The Role of the Queensland Director of Public Prosecutions 70
Simply Wrong 71
The Role of the Parliamentary Criminal Justice Committee 71
The Role of the Information Commissioner 72
Hiding Crime in Cabinet Records 74
The So-Called Inquiries into the Lindeberg Allegations 75
THE CHRONOLOGY OF EVENTS 77

THE MATTER FOR CONSIDERATION

The Core Elements of the Alleged Criminal Contempt Against the Australian Senate

Based on

- Mr. Robert F. Greenwood QC's 9 May 2001 submission;
- my subsequent open letter of 30 May 2003 to the Federal Parliament;
- significant new evidence unearthed by the University of Queensland's *The Justice Project*; and
- the relevant March 2004 judicial ruling in the Queensland District Court in the *State of Queensland vs. Douglas Roy Ensbey* case on section 129 of the *Criminal Code (Qld) 1899* and the significance of the appeal against sentence in the *State of Queensland vs. Douglas Roy Ensbey* to the Queensland Court of Appeal.

I submit that it is open to conclude, pursuant to section 4 of the *Parliamentary Privileges Act 1987*, that the Queensland Government wilfully conspired to:

- mislead, or with a tendency to mislead the Senate;
- improperly interfere in the discharge of the Senate's constitutional function from making full and proper findings and recommendations concerning the formulation of whistleblower protective legislation and related matters in order to cover up its own criminal conduct in the Heiner Affair and advantage itself; and
- the Criminal Justice Commission (CJC) aided and abetted in the cover-up by misleading the Senate in the same and/or associated matters, as well as advantaging itself and certain CJC officials or previously contracted CJC officials who improperly handled the Heiner Affair at a particular time.

I submit that this alleged criminal contempt, going to a possible conspiracy to defeat justice, took the material form in the following major incidents of alleged false and misleading evidence (which shall be addressed in Part A of this submission):

(a) providing to the Senate a contrived interpretation of section 129 of *Criminal Code (Qld) 1899* in particular, and of *Public Service Management and Employment Regulation 65* and *Libraries and Archives Act 1988;*
(b) deliberately tampering with evidence as in Document 13 by providing it to the Senate in an incomplete form in order to inflict a detriment on a witness and/or witnesses to a related Senate inquiry, and to improperly obstruct the Senate inquiry from making full and proper findings and recommendations;
(c) deliberately withholding known relevant evidence from the Senate which was in the possession and control of the Queensland Government at all relevant times revealing the crime of pack-rape and criminal paedophilia;
(d) failing to properly disclose to the Senate the true nature of the February 1991 Deed of Settlement between Mr. Peter Coyne and the State of Queensland concerning certain "events" at the John Oxley Youth Detention Centre, which both parties agreed to never publicly disclose in exchange for the payment of taxpayers' moneys after threats were made by certain persons against State public officials to take the matter to the CJC, in particular, to investigate.

The aforesaid incidents were clothed, coloured and accompanied by other related incidents (not exhaustively presented in number here because it is believed that sufficient compelling material will have been supplied to sustain my grievance), and therefore, I have taken the liberty of addressing them in Part B of this submission.

I respectfully submit that the Committee's main task in making or dismissing any contempt findings may fall predominantly on the evidence found in Part A, although evidence in Part B should not be seen as less probative of the general charge under consideration, because all go to the Committee's prime consideration, on behalf of the Senate, to save, protect and uphold its privileges and immunities.

INTRODUCTION

When the Senate established the Senate Select Committee on Public Interest Whistleblowing on 2 September 1993 I suggest that it unwittingly embarked on a course of action which, if abused by those providing evidence, would inevitably lead to this type of Select Committee. The Senate – as one of the three arms of government – invited into its constitutional function evidence of possible criminality that would normally fall within the constitutional jurisdiction of either the Executive or the Judiciary for resolution. In that environment, involving possible illegal conduct where liberty and reputation are at stake, it is not unknown for the human condition of hubris (or fear of being found out) to play a role which, in turn, can generate outright lies, untruths, half-truths or omissions in order to escape or minimise embarrassment or culpability.

The blurring of the lines of constitutional function occurred when the Senate Select Committee unconditionally accepted submissions involving incidents of public interest whistleblowing that originated from a State jurisdiction. Some cases, such as the Heiner affair, concerned alleged wrongdoing by a State Government and its law-enforcement authorities, but at the same time, contained elements pertinent to Commonwealth jurisdiction, not to mention vital information for the formulation of Commonwealth whistleblower protective legislation. They involved possible breaches of the *Income Tax Assessment Act 1936,* and conduct which appears to undermine the Federal Government's obligations to various United Nations conventions and treaties[1], as well as conduct inimical the Federal Government's commitment to the Commonwealth of Nation's Harare Declaration. Furthermore, it has since been discovered that an indigenous female Australian was a victim of this cover-up which could legitimately enliven the Federal Government's jurisdiction under section 51(XXVI) of the *Constitution.* It cannot therefore be argued by any party that either the Senate Select Committees on Public Interest Whistleblowing or Unresolved Whistleblower Cases were engaged in a legally flawed examination of this Affair beyond its Constitutional jurisdictional thereby rendering past and present considerations null and void.

The Heiner affair came into the Federal Government's jurisdiction in good faith to assist the Senate Select Committee on Public Interest Whistleblowing in its mission. Within the affair's elements, it carried - what might be called - the 'systemic corruption gene' not uncommon in governments throughout the world where perception is everything. It stems from the notion that "the King can do no wrong" which is supposed to instil public confidence in the organs of the

[1] See the Greenwood QC submission of May 2001 setting out the Lindeberg Grievance concerning (a) International Covenant of the Rights of the Child; (b) International Covenant on Civil and Political Rights; and (c) the Right to Organise and Collective Bargaining.

government, especially its law-enforcement authorities, with its functions designed to ensure peace, order and good government. However, its regressive form is "the King *cannot be seen to have done* anything wrong." Its most virulent form of expression, I suggest, is found in a unicameral system of government as Queensland[2] has, unique to all State Governments within the Commonwealth of Australia. That regressive gene drives the carrier towards an innate disposition to cover up, either through hubris or sheer abuse of office. As events have shown, Queensland was the tailor-made humid laboratory in which the systemic corruption gene came to life in the Heiner affair, divided and multiplied, with its highly infectious growth now threatening the privileges and immunities of the Senate.

A Prophetic Statement

In light of the weight of compelling evidence and the potential seriousness of the issues embodied in the Heiner affair, it is timely to reflect on the comments by Mr. Harry Evans, Clerk of the Senate, to the Australasian Study of Parliament Group in Parliament House Melbourne (11-12 October 2002) in respect of parliamentary inquiries:

> *"...This leads to a consideration of the practical barriers to the exercise of the parliamentary inquiry powers. The principal barrier is that already identified: governments are the most likely recalcitrant, and coercion of governments is much more difficult than coercion of private citizens. The law of parliamentary power, like other legal powers, in practice works very well against the ordinary citizen, where it is not needed, but is less effective against the great and powerful, where it is needed, and governments are the greatest and most powerful. What are parliamentary committees and their houses to do when governments flatly refuse to allow public servants to appear and give evidence, and refuse to produce documents?"*

Mr. Evans went on to make this prophetic statement:

> *"...In Australia, the system of government is waiting for a Watergate, that is, waiting for an issue of government malfeasance and concealment sufficiently serious to prompt the Senate to use its legal and/or political powers to their full extent. Such a case will probably sooner or later arise, given the hubris to which Australian governments and ministers are prone. It is hoped that such an occasion would result in a victory for parliamentary accountability and a lesson to all future ministries. Australian governments have not obliged by producing a full-scale Watergate, only a series of small-to-medium Watergates which do not sufficiently arouse the public (who are anyway not so easily aroused)..."*

I submit that moment has arrived.

The Senate, like any arm of government, is entitled to hear and receive truthful and complete evidence in all matters under consideration at all relevant times. Without this requirement being obeyed and upheld, its findings may be rendered unsafe, unsatisfactory or nugatory. Its national and international standing and role as the nation's House of Review may be reduced to derision and antipathetic to democracy itself.

[2] Upper House was abolished in 1928.

In the same way as the Judiciary requires that "Justice not only be done but be seen to be manifestly and undoubtedly done" in order to maintain open justice and public confidence in its constitutional function, the Senate, as this nation's premier parliamentary institution and "grand inquisitor of the nation", must be seen to value and protect that same public confidence in its constitutional processes, and, conjointly, uphold the rule of law and the norms of human rights. This means that its privileges and immunities must be protected without fear or favour to the full extent the *Constitution* allows. It also follows that appropriate punishment should apply when parties deliberately treat them with contempt, even if the culprit is another government, law-enforcement authority or a judicial officer now enjoying an elevation to the bench, because they should all know better and would expect the same of others for themselves.

The fact that the Senate embarked on such a course in 1993 in the public policy area of whistleblower protection was neither surprising, inappropriate, nor open to challenge as acting outside its constitutional jurisdiction because the Committee's task was a proper one of fulfilling its duty pursuant to section 49[3] of the *Constitution.* The role of whistleblowers in modern society has been increasingly important in holding governments and large corporations to account, as we have seen in the Enron, Arthur Andersen and Worldcom scandals. Government accountability regulators and auditors have not been as diligent, capable, independent or assertive in doing their jobs as citizen and shareholder would hope. For its part, the Senate Committee was entitled to take evidence from any diverse source it felt was appropriate under the circumstances in order to assist in formulating comprehensive whistleblower protective legislation. Australians were invited by public notice to provide evidence under the protection of the Senate's immunities and privileges. Many did so in good faith just as I did. Some were whistleblowers. My submission[4] was based on the Heiner affair as I knew the facts to be at the time.

However, because of the nature of the evidence it took in the Heiner affair, and in the ensuing Senate Select Committee on Unresolved Whistleblower Cases, both Committees were confronted by a new level of legal obligations which I believe they did not fully appreciate at the time in respect of their Constitutional duty to make full and proper findings. Nevertheless, the Senate Select Committee on Public Interest Whistleblowing did unanimously recommend to the (Goss) Queensland Government that my case (and seven others) be reviewed by an independent inquiry such was its concern about its "unresolved" serious nature.[5] This is not to unjustly criticise those Senate Select Committees but to simply say that the task was much more formidable than they ever realised. It involved far greater consideration to rule of law requirements than it ever did to the political/policy process in their findings because they (as an arm of government) were dealing with allegations of serious unresolved criminality. Consequently, until full and proper findings were made, this matter remained unfinished business, and that business now, quite properly, attends this Committee's deliberations.

The Senate invited, and was subsequently presented with, credible evidence of possible serious unresolved criminality and official misconduct in the Heiner affair touching on several elements which underpin the administration of justice. The comity in this area of the law between all Federal/State and Territory jurisdictions within the Commonwealth of Australia under the

---

[3] *"The powers, privileges, and immunities of the Senate and of the House of Representatives, and of the members and the committees of each House, shall be such as are declared by the Parliament, and until declared shall be those of the Commons House of Parliament of the United Kingdom, and of its members and committees, at the establishment of the Commonwealth."*

[4] See Submission No. 74

[5] See pp 4-5 August 1994 Report of the Senate Select Committee on Public Interest Whistleblowing *"In the Public Interest."*

Constitution required – and requires – consistency and uniformity in interpretation and application if equality before the law is to be respected, but unfortunately this was overlooked by the Senate Select Committee on Unresolved Whistleblower Cases in 1995. A recognition of the need for comity by all Governments and Parliaments within the Commonwealth of Australia is seen in the existence, albeit without legislative force, of the Model Criminal Code used as a reference point for all Attorneys-General in the Commonwealth of Australia. Another area of comity is found in various Federal and State penal codes where the intent and wording in certain provisions are exactly the same or similar (in wording), such as in the offence against the administration of justice dealing with the destruction of evidence.[6]

I submit that their interpretation by reasonable minds across all jurisdictions for Crown prosecuting and law enforcement authorities should not differ. Harmony should exist.

The alleged criminality in the Heiner affair impacted directly on certain parties and witnesses to the Senate hearings (i.e. the Queensland Government and the Criminal Justice Commission and others). Normally, this type of evidence comes before the Executive (i.e. police, prosecuting authorities) for impartial investigation. If those law enforcement authorities become satisfied that *prima facie* offences exist, a case is put before the courts if the public interest demands it and there is a reasonably prospect that a conviction can be achieved. Thereafter, such evidence would be normally adduced and adjudicated upon by the Judiciary as to its guilt or innocence with the defence and Crown prosecutor putting their respective cases (within the framework of the Judiciary's privileges and immunities) under the pain of contempt or perjury charges if anyone lied or mislead the court while under oath. At the earlier stage, when the Executive is considering such a matter, any deliberate obstruction is open to punishment under the relevant provisions of offences against the administration of justice, which, in Queensland, for example, includes section 129 of the *Criminal Code (Qld)* – destruction of evidence – and section 132 of the *Criminal Code (Qld)* – conspiracy to obstruct justice.

In the Federal sphere, obstruction of any "judicial proceeding" under Commonwealth law is proscribed under the *Crimes Act (Cwlth) 1914*[7]. It appears not to be applicable here because Article 9[8] of *Bill of Rights 1688* (UK) prohibits any proceeding of the Parliament from being reviewed in another forum. It therefore appears that the Senate itself must decide whether or not to punish any finding of criminal contempt under the *Parliamentary Privileges Act 1987*, or, as *Odgers* advises, because the Senate possesses flexibility under section 47 of the *Constitution* in this area of punishing contempt, it may refer the matter elsewhere when it is open to conclude that a criminal offence like interfering with a witness exists. Such a referral would permit the Executive authorities to handle it through to resolution by the Judiciary according to law.

I respectfully submit that a contempt finding of providing false and misleading evidence here, which would inevitably involve obstruction of justice to cover up serious crime, would properly warrant an appropriate punishment under section 7(1) of the *Parliamentary Privileges Act 1987*

---

[6] ACT: *Crimes Act 1900* (ACT); Cwth: *Crimes Act 1914* section 39; NSW: *Crimes Act 1900* (NSW) section 317; NT: *Criminal Code Act* (NT) section 102; SA: *Criminal Law Consolidation Act 1935* (SA) section 243; TAS: *Criminal Code 1924* (Tas) section 99; WA: *Criminal Code 1913* (WA) section 132.

[7] Section 39 of the *Crimes Act 1914* ***(Cwlth)*** 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, intentionally destroys it or renders it illegible or undecipherable or incapable of identification, with intent thereby to prevent it from being used in evidence, shall be guilty of an offence. Penalty: Imprisonment for 5 years."*

[8] Article 9 states: *'the freedome of speech and debates or proceedings in Parlyament ought not to be impeached or questioned in any court or place out of Parlyament."*

in order to act as a deterrent and reparation in restoring public confidence in our nation's Parliamentary committee system[9] and democracy itself.

I believe that false or misleading evidence, put before the Senate (i.e. the Legislature), to cover up crime is entitled to be treated, under *sui generis,* in the same manner as it would be by the Executive up to *prima facie* findings, thereafter allowing the Judiciary to make definite findings of guilt or otherwise. This would be necessary so that respect for the law is consistently applied throughout Australia under the *Constitution.* Appropriate punishment would demonstrate, in the clearest possible way, that the fundamental democratic principle of the criminal law being applied equally and consistently in materially similar circumstances is embraced by the Senate just as it is by our nation's courts.

Gaudron J. pointed to the perils of permitting *prima facie* unlawful conduct by law enforcement agents affecting the administration of justice (which I suggest should no less concern the Senate about its processes) to go unchecked in *John Anthony Ridgeway v The Queen* F.C. No. 95/016 (1995) 129 ALR 41 (1995) 69 ALJR 484 at 39, that is:

> *"....So far as public confidence in the administration of justice is concerned, the position is even worse if, as is usually the case, the law enforcement agents or those acting on their behalf are not brought to account for their criminal acts. In cases of that kind, the courts are brought into greater disrepute because they give the appearance of sanctioning illegality. And that appearance is given even if criticism is made of the police conduct involved. Indeed, criticism may well appear to be mere humbug and, itself, lead to a further erosion of confidence in the courts. "*

It is assumed, of course, that when parties provide evidence to the Senate, even without taking their Oath or affirmation, that they are aware that it must be truthful otherwise they may be found in contempt and open to appropriate punishment. It could hardly be a defence for any witness to claim that he did not know that he had to tell the truth when appearing before a Senate inquiry just because he did not provide it under Oath or affirmation.

This Committee may face considerable legal challenges before it reaches full and proper findings. Those challenges may come from certain witnesses (including judicial officers) who may seek to claim immunity under State law or jurisdictional restraints under the *Constitution* from attending and providing sworn evidence. They may involve legal challenges in respect of the Committee's call for relevant documents (e.g. revealing knowledge of wrongdoing in this matter) which certain parties may seek to withhold for sectional interests to avoid further embarrassment or criminal culpability. In fact, the doctrine of the Separation of Powers itself and how far the powers of the Senate (as the Legislature) may reach under the *Constitution* when its privileges and immunities are abused revealing possible criminal conduct may be tested in this grievance. In short, I submit that this Committee may have to tackle the unprecedented challenges Mr. Evans foretold in October 2002.

---

[9] In 1821 *Anderson v. Dunn,* 6 Wheat. (19 U.S.) 204, 228 (1821). the US Supreme Court recognized that without this power (to punish) the legislative branch would be *"exposed to every indignity and interruption that rudeness, caprice, or even conspiracy, may mediate against it."*

In summary, if Committee members can be satisfied, beyond a reasonable doubt, that contempt[10] has been committed here, then it is respectfully open to suggest that the Senate, by reference from this Senate Select Committee, under its special jurisdiction may be obliged to seek appropriate penalties under the full force and reach of the law to punish such wrongdoing in order to send a loud and clear message throughout Australia and to a troubled world where democracy itself is under threat from global terrorism, that in Australia no one is above the criminal law, nor can any one bring our premier democratic institution into contempt with impunity.

Under these circumstances where a possible conspiracy to commit criminal contempt against the Senate and its committee system may exist in order to cover up criminal conduct by the possible contemptor, it may be that precedent in summonsing witnesses and securing documents, and punishing a found contempt should not limit the Senate because earlier contempt cases giving rise to such precedent may not have been as serious as this. Assuming the Senate is not lacking in political will, it should not place hitherto untested limitations on itself but seek to establish new precedent in order to protect its function, authority and jurisdiction set out in the *Constitution* for the 21st century ahead.

I am prepared to appear before the Committee and provide evidence under Oath.

28 May 2004

PART A - INSTANCES OF FALSE AND MISLEADING EVIDENCE

When the late Mr. Greenwood QC[11] settled my grievance on 9 May 2001, he highlighted 4 major points which he believed, on available evidence at the time, proved that the Senate had been seriously misled giving rise to possible criminal contempt. It must be said that he was also aware at the time of the fresh discovery by Mr. Grundy of an alleged pack-rape of a female inmate at the John Oxley Youth Detention Centre[12] which, according to a source, had been covered up by the Queensland Government at the time. He could not advance it in his submission until it had been further verified and made public.

Mr. Grundy and I learnt of this new information on 17 April 2001 from a source which put Mr. Grundy on a fresh course of investigation. He ultimately found the victim. Later, he accessed her

[10] Under the *Criminal Code (Qld) 1899*, the offence of providing false evidence to the Legislature is addressed in the following terms: Section 57 **False evidence before Parliament: (1)** Any person who in the course of an examination before the Legislative Assembly, or before a committee of the Legislative Assembly, knowingly gives a false answer to any lawful and relevant question put to the person in the course of the examination is guilty of a crime, and is liable to imprisonment for 7 years, and **(3)** A person cannot be convicted of the offence defined in this section upon the uncorroborated testimony of 1 witness.

[11] Mr. Greenwood QC died in October 2001.

[12] It was opened on 17 February 1987. It was originally established as an open plan facility, and housed both male and female adolescents aged 10-15 and 10-17 years respectively, who had been committed to the care and control of the Families Department Director-General or who were on remand for offences.

hitherto concealed Families Department file. The Grundy publication did not occur until 3 November 2001 in *The Courier-Mail*, after having been delayed for several weeks following the "9/11 attacks" on the World Trade Centre in New York City and the Pentagon in Washington DC by international terrorists.

As it happened, the Grundy article was not accurate inasmuch as it recounted the site of a second pack-rape incident at Mount French on another bush outing in early 1990 which the victim had confused with Mt Barney after having repressed the trauma of the assaults for years as commonly happens. The departmental file which Mr. Grundy later obtained under freedom of information via the victim's application revealed the first pack-rape details. It had occurred at the Lower Portals of Mt Barney on 24 May 1988. It revealed that the assault had been systemically covered up afterwards.

Mr. Greenwood QC decided to cover this important new matter concerning the alleged child sexual assault in his May 2001 submission by purposely using the catch-all phrase of *"...other incidents of child abuse may exist and remain unaddressed."* In framing Point 1, he used the information about the child abuse revealed in Document 13 concerning the excessive use of handcuffing which the Queensland Government knew about when it ordered the destruction of the probative Heiner Inquiry evidence so that it could not be used in evidence against the careers of the staff at the Centre, including Mr. Coyne, or in judicial proceedings.

For easier examination purposes, as said earlier, I have decided to present the instances of false and misleading evidence into two Parts: A and B. This is not to suggest that one Part is more serious than the other even though it might be argued that the 6 examples in Part A are core to my grievance. However, in light of the serious ramifications of Document 13 (concerning the excessive use of handcuffs) being provided in evidence by the Queensland Government to the Senate in its 'constructed tampered form', arguably in order to inflict a detriment on a Senate witness and/or witnesses and to deflect or obstruct the Senate from making full and proper findings, we also now know that the Queensland Government, by act of omission, withheld the relevant departmental file on the May 1988 pack-rape from the Senate Select Committee on Unresolved Whistleblowers Cases. It is open to conclude that the Queensland Government must have known that it came under investigation by the Heiner Inquiry too. In other words, if the Queensland Government was prepared to provide Document 13 because of its relevance to the terms of reference of the Senate Select Committee on Unresolved Whistleblower Cases having been part of the Heiner Inquiry's investigation, then the uncensored May 1988 departmental file should have been provided with it.

This act of omission concerning the withholding of the pack-rape file carries a serious sting if the Senate holds that under the *Parliamentary Privileges Act 1987* and the *Constitution* it has a right not just to receive truthful evidence, but complete evidence when carrying out its functions.

In respect of the CJC's role in this matter, the Committee should be mindful of section 22 of the *Criminal Justice Act 1989* which obliged the CJC, in its conduct and evidence before and submissions to the Senate at all relevant times, to comply as follows:

> *"The commission must at all times act independently, impartially, fairly and in the public interest."*

Other examples in Part B shall reveal the contrived nature of the CJC's investigation into this matter, which, when combined with the now completely discredited interpretation of section 129

of the *Criminal Code (Qld)* put to the Senate by the Queensland Government and CJC, reveals a pattern of false and misleading evidence too compelling to ignore.

THE LEGAL AND PROBITY SIGNIFICANCE OF THE STATE OF QUEENSLAND VS DOUGLAS ROY ENSBEY JUDICIAL RULING

On 27 April 2004 Queensland's Chief Justice the Hon. Paul de Jersey in the Supreme Court of Queensland during the admissions ceremony for new solicitors and barristers made the following observations[13]. I suggest his words are highly relevant for all Crown and CJC/CMC legal officers, including contracted counsel, who may be ordered to respond to the contents of this submission, particularly concerning section 129 of the *Criminal Code (Qld),* and the interpretation placed on the provision by the Queensland Government and Criminal Justice Commission and other Crown authorities when relevant Senate Committees were seeking accurate information on it some years ago:

> *"...We congratulate you on your admission to the legal profession. You have become what we term "officers of the court". That terminology reflects your predominant duty, to the court and the administration of the law, a duty which predominates over the duty to the client and is important to the court's discharge of its role – the delivery of justice according to law. That designation also reflects the reality that you owe your professional legitimacy to the court: it is the court which admits you, and it is the court which will as necessary imposes sanctions for ethical dereliction. I fear the lawyer's dependence on the court is often these days regrettably overshadowed by the commercial demands of competitive practice. I hope that for you, it remains an enduring consideration."*

On 8 March 2004 *State of Queensland vs. Douglas Roy Ensbey* case (i.e. the *Ensbey* case) a judicial ruling on section 129 of the *Criminal Code (Qld)* was handed down by Queensland District Court Judge Samios. He ruled that section 129 **did not require** a judicial proceeding to be on foot to trigger it, and that it was open to advance argument to the jury on the elements in the *Ensbey* case wherein the accused had destroyed relevant evidence for a judicial proceeding some 5 years ***before*** the relevant judicial proceedings commenced. He also ruled that the form of the indictment in the Schedule to the Criminal Practice Rules, being subordinate legislation, could not override the plain meaning of section 129. Pastor Ensbey was subsequently found guilty on 11 March 2004 by the jury in respect of breaching section 129.

Queensland Attorney-General's Appeal Against Sentence to Queensland Court of Appeal

On 25 March 2004, Queensland's Attorney-General and Minister for Justice the Hon. Rod Welford lodged an appeal against sentence to the Queensland Court of Appeal (C.A. No 79 of 2004). It was received by the Registrar of the Supreme Court of Queensland on 31 March 2004.

The grounds of appeal are as follows:

> *"The sentenced imposed is manifestly inadequate for the following reasons:*

[13] http://www.courts.qld.gov.au/publications/articles/speeches/2004/dj270404.pdf

a) *It fails to reflect the gravity of the offence generally and in this case in particular;*
b) *It failed to take sufficiently into account the aspect of general deterrence; and*
c) *The sentencing judge gave too much weight to factors going to mitigation."*

The legal effect of the Queensland Attorney-General's appeal is that the State of Queensland/the Crown accepts that Judge Samios' interpretation was reached properly and with regularity. Now, on the instruction of Queensland's first law officer, senior counsel shall be arguing the Samios ruling on section 129 (which accords with my long-held view) before Queensland's highest court which contradicts with the interpretation previously put in evidence by both the Queensland Government and CJC to the Senate even when similar incriminating elements are found in the both *Ensbey* and the Heiner Affair. I submit that this demonstrates the double standards employed by the Queensland Government (and CJC) in a most compelling manner.

In summary, section 129 of the *Criminal Code (Qld)* has been ruled on. **It has been judicially declared what it is and always was**. It was so in 1990 at the time of the Heiner shredding just as it was at the time Pastor Ensbey guillotined the girl's diary in 1996, and at all relevant times when the Senate took evidence on the affair because the section has not changed since becoming law in 1899. The same applies with the definition of "judicial proceeding" found in section 119 of the *Criminal Code (Qld).*

A Respectful Caution to All

Accordingly, by way of respectful caution to all, I submit that State legal officials or contracted counsel who may be asked by the Queensland Government or Crime and Misconduct Commission (CMC)[14] respectively to consider this submission and defend evidence previously put to the Senate, in particular regarding section 129 and the Deed of Settlement, should be very mindful of their prime obligations to the courts and to obey the law as stated above by His Honour Chief Justice de Jersey. All Crown legal officers must act with the utmost probity remaining ever mindful of their duty to the courts and acting as "the model litigant". They must not aid in the covering up of crime.

The leeway opposing counsel would be normally allowed in presenting argument 'to distinguish' between *Ensbey* and the Heiner affair should be welcomed by the Committee. However, it does not offer solace because the triggering elements of section 129 in the Heiner affair are far clearer than in *Ensbey.* Consequently, I suspect that the main task for representatives of the Queensland Government, the CJC/CMC, and probable witnesses like Messrs Barnes, Nunan, Le Grand, Bevan, O'Regan, Clair, Pointing, Albietz, Sorensen and Thomas shall be to credibly explain how is it that they and so many other lawyers working for the Crown and the CJC could have got such a provision, so fundamental to the administration of justice like the protection of known evidence for a pending and/or imminent judicial proceeding, so wrong for so long so often as to encourage a 'world without evidence' and yet, at the same time, seek to claim to be acting in good faith and still want to be seen as competent, honest lawyers.

[14] The CMC is the amalgamation of the CJC and Queensland Crime Commission which occurred on 1 January 2002 and now functions under the *Crime and Misconduct Act 2002* as an independent law-enforcement authority capable of taking evidence on oath.

POINT 1: Destroying evidence of suspected official misconduct and/or possible criminal conduct

> **"...knowingly order the destruction of public records containing evidence of the alleged abuse of children while in the care of the State or Commonwealth so that the evidence cannot be used, for whatever reason, in particular, holding public officials who were or may have engaged in such alleged misconduct to account (including their superiors who may have been aware of such conduct).**
>
> **In this regard, there is evidence (yet to be fully explored by an appropriate body) suggesting that the Goss Government acted in an unconscionable and illegal manner when it knowingly destroyed relevant evidence for the purpose of affording protection to certain accountable Youth Workers and Mr Coyne over alleged offences of criminal assault against children (by whomsoever) placed in the John Oxley Youth Detention Centre by order of the courts or by statute. The law required that their known alleged misconduct be properly and impartially addressed."**

Although Points 1 and 2 are inextricably linked through the definition of "judicial proceeding" as defined in section 119 of the *Criminal Code (Qld) 1899*, Point 1 carries a far more serious sting. Its evidence always existed revealing that the Queensland Government knew that the material gathered by Mr. Heiner concerned serious allegations of child abuse which, by law, should have been preserved and referred to either the police or CJC for proper examination when he returned these public records into the Government's direct possession and control. Instead, the Queensland Government wilfully ordered its destruction so that the material could not be used in evidence against the careers of the staff at the Centre, including Mr. Coyne himself.

This claim finds its background in other known facts. On 1 October 1989, in *The Sunday-Sun* (p18), Opposition Families spokesperson Ms. Anne Warner stated that children were being handcuffed and fed tranquillisers. She called for the Centre to be reviewed. This call found form almost immediately in the Heiner Inquiry established on 23 October 1989 by Families Minister the Hon. Beryce Nelson pursuant to section 12 of the *Public Service Management and Employment Act 1988.*

The particular handcuffing incident of 26 September 1989 mentioned by Ms. Warner would later come before the Senate in July 1995 in the tampered form of Document 13 (i.e. 3 pages written by Mr. Coyne about the handcuffing) with his 2 introductory pages missing. It is known that he was writing to his immediate supervisor, Director Ian Peers. However, on 10 October 1989 Queensland State Service Union (QSSU) official Ms. Janine Walker provided to then Departmental Director-General Mr. Alan Pettigrew written complaints on behalf of various Youth Workers in which they set out their concerns over Mr. Coyne's management practices, one of which was "unsigned" but (in summary) stated:

> *"report of use of handcuffs as restraints - 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."*

It appears that the QSSU complaints were never circulated beyond Mr. Pettigrew, Mr. Heiner (and presumably his Inquiry staff) and certain of his senior executive staff such as then Deputy Director-General Mr. George Nix, Director Ian Peers, and later, in January 1990, when Ms. Ruth Matchett, as the new Director-General inspected them, along with Mr. Don Smith and legal officers in Crown Law in March 1990 when deciding their fate. The copies of the original complaints were returned to the Department on 18 April 1990, and were unlawfully destroyed on 23 May 1990.

It is therefore neither open to suggest that a state of ignorance existed within the department about allegations of serious child abuse at the Centre regarding the excessive use of handcuffs, nor is it sustainable for Mr. Heiner[15] or Ms. Warner to claim that allegations touching on the abuse of children were not part and parcel of the 'management practices' which concerned the staff and into which Mr. Heiner was lawfully commissioned to inquire.

However, within this mix of the responsible government involving the Families Minister and Departmental Director-General, a line of argument was run before the Senate by the Queensland Government that neither the Minister Warner nor Ms. Matchett ever looked at the contents of the gathered evidence (concerning the management of a youth detention centre) as if it absolved them of destroying evidence concerning suspected misconduct. It is a deeply flawed argument and antipathetic to good responsible government. For example at page 16 of the Ministerial State on Senate Select Committee on Unresolved Whistleblower Cases[16], it says this:

> *"...Ms Matchett asked Mr. Heiner to send the records to the Department. The documents were sealed in the presence of Mr. Heiner prior to the Department taking possession of them. At no stage were these sealed documents accessed by Ms. Matchett or departmental staff. She did not read them prior to their being sealed. This was a deliberate action as the Director-General regarded it as entirely inappropriate to access improperly obtained information. The Director-General was aware of the need to address the continuing problems at the John Oxley Youth Centre in a fair and just manner, and wished to reassure all staff, including Mr. Coyne, that she would not be taking into account the evidence presented to Mr. Heiner in her future dealings with them. In actual fact the Director-General was totally unaware of the contents of this information."*

Despite unequivocal proof that Ms. Warner knew about the alleged child abuse at the Centre by her *The Sunday-Sun* of 1 October 1989 comments, she also toed the line that she knew nothing about the contents of Mr. Heiner's inquiry into the management of the Centre when she became the responsible Families Minister for the welfare of children in care in December 1989.

This is the relevant extract from *Sunday's* February 1999 story "*Queensland's Secret Shame*":

> **REPORTER (Paul Ransley):** The cabinet documents don't mention that the evidence contained allegations of child abuse, but the question still arises, were the minister's told and did they ignore that serious information. Surprisingly, the minister responsible says she didn't know.
>
> **WARNER:** At that time I did not have that knowledge.

[15] See *The Courier-Mail* 20 May 2004 "Ex-minister may face inquiry into abuse claim" by journalist Mr. Chris Griffith.
[16] See Volume 1 – Queensland Government – Submissions etc Senate Select Committee on Unresolved Whistleblower Cases.

REPORTER: How could you not have the knowledge, you were the minister?

WARNER: Well, because those matters had been happening before our time in government and you may know public servants do not tell you everything and anything,....

REPORTER: But you were considering killing an inquiry and shredding the documents it contained but you're saying you didn't know the full detail of what was in them?

WARNER: No, I didn't know the full detail and deliberately didn't know the full detail. (Underlining added)

REPORTER: How is it that you didn't know but other ministers did know?

WARNER: Well, I find that difficult to believe that other ministers would have that information.

REPORTER: Well, we're told by a former Minister that the whole of cabinet knew, that in a general sense there were allegations involving the mistreatment of children.

WARNER: Well, I'm sorry I don't believe you would have heard that from a previous minister

REPORTER: Pat Comben was environment minister in the Goss government. At the time. He has an entirely different recollection.

COMBEN: In broad terms we were all made aware there was material about child abuse. That there was material which was said to be highly defamatory and it was accepted on face value that if this matter was of such concern that it got to a level of cabinet decision then those allegations must have had considerable merit and substance.

REPORTER: Why would a former Minister tell us he was aware and cabinet was aware that the Heiner Inquiry had taken evidence of mistreatment of children.

WARNER: He was aware of that. I find that impossible to believe.

REPORTER: Why would he tell us that then?

WARNER: I have no idea why any cabinet minister would tell you that. And I would be very interested to see that particular piece of footage.

COMBEN: Certainly individual members of cabinet were increasingly concerned about whether or not the right decision had been taken.

REPORTER: Comben says he was unaware any legal action was being planned by Coyne's solicitors.

COMBEN: I think now you look back and say well we made the best decision on the information we had at the time, we should have first of all said lets have a look and do it properly and secondly with some of the material that has come out since you wonder about the totality of the information that was in front of you as you made a decision.

REPORTER: It is possible cabinet might have been misled in some quarters?

COMBEN: I think it is possible looking back and listening to a lot more material these day's after many years there was perhaps a selective presentation in some areas about the situation.

The attitude appears to have been one of "get rid of the body but don't tell me what you are doing." It is simply not credible to believe that some miasmic state of ignorance existed at that level of government against the overwhelming evidence that it was known in those circles that the management of the Centre in which children were held in care was in crisis and their lives at risk (as the Dutney memorandum of 1 March 1990 set out), and so long as government declined to examine lawfully gathered evidence in its possession and control about that abuse, no culpability could reach those who decided to destroy the records even when one of reasons given was to prevent the material being used against the staff at the Centre who owed the children a duty of care.

In a DFSAIA memorandum, dated 1 November 1990, reporting on a confidential meeting between Ms. Matchett, Mr. Coyne and Mr. Leigh Carpenter, the following is recorded on page 2. Interestingly, Mr. Coyne's admission of possible child abuse being in the Heiner Inquiry evidence does not seem to concern her even though (if the Queensland Government's claim to the Senate is to be believed) she was ignorant of such matters. It is recorded thus:

> *"...Mr Coyne raised the issue of John Oxley. He expressed the view that because he wasn't reappointed to John Oxley he assumed he had done something wrong. His own view was that he hadn't done anything wrong. Ms. Matchett stated that no one had suggested he had done anything wrong. Mr. Coyne stated that certain staff at John Oxley had put that view before the Inquiry. He cited the handcuffing of children as an example of this and stated he felt he had been "badly done by.""*
> (Underlining added)

In a much earlier signal that potential wrongdoing was occurring at the Centre, an undated report headed "John Oxley Youth Centre Inquiry" obtained under freedom of information, Mr. Ian Peers addresses 'a process' for handling the Heiner Inquiry's expected finding to acting DFSAIA Director-General Ms. Ruth Matchett under various headings. Of interest, he mentions the potential of police involvement. It appears to have been written in January 1990 and therefore giving the Queensland Government adequate pre-shredding-warning about the important status of the records as probative evidence of wrongdoing. Mr. Peers wrote:

> *"Part A should be a written document able to be released publicly. It should do no more than answer specific issues in line with the Terms of Reference, for example:*
>
> *- Is there any evidence which should warrant a police investigation?*
> *- Is there evidence upon which disciplinary action by this Department might be based?*

- As a result of the Inquiry, are there any procedural guidelines that he would recommend?
- As a result of the Inquiry, did he form any opinions about the design and adequacy of the building?

If he wishes than to list any "evidence" upon which police investigations or disciplinary action should be based, this could be included in a confidential Part B report to the Director-General. There could be reference to such a confidential report in Part A document but it should protect any individuals involved.

The third part of the report should be a verbal report to the Director-General, and possibly to the Minister should she anticipate political issues as a result of the Inquiry. Recommendations by Mr. Heiner that may fall into the realm of personal opinion can be presented in this way but also discussed and examined. Any response or any action arising out of this interview would be left with you."

After almost a decade of concealment from the public, in a signed statement dated 15 May 1998, witnessed by former Queensland Police Commissioner Noel Newnham, and tabled in State Parliament on Tuesday 25 August 1998 (See State *Hansard* p1872), Mrs. Nelson publicly confirmed that, after taking Crown Law advice in respect of establishing an inquiry, she anticipated the following known and/or suspected concerns would be investigated by Mr. Heiner:

"...that some boys and girls were being forced into sexual activity against their wishes, for the benefit of others; that illicit drugs and prescribed medications were being brought into the Centre, sometimes by staff and sometimes by detainees who had simply walked out and returned apparently without any permission; that some staff were physically and sexually abusing children in their care..."

It was around this time when I recalled the existence of Document 13 in Volume 1 of the Exhibits provided by the Queensland Government to the Senate Select Committee on Unresolved Whistleblower Cases. I found it and provided a copy to *The Courier-Mail* journalist Mr. Michael Ware. It subsequently appeared on its front page. Its publication triggered, albeit in part[17], the establishment of the Forde Inquiry into the Abuse of Children in Queensland Institutions by the minority Beattie Government on 13 August 1998. Its terms of reference, drafted by the Beattie Government with 5 Ministers caught up in the shredding (according to counsel assisting the Forde Inquiry, Ms. Kate Holmes[18]) just happened to preclude any investigation into the Heiner Inquiry itself and whether or not the shredding of the evidence was unlawful. This allowed my detailed submissions on those matters to be rejected. While rejecting my submissions, the Forde Inquiry indicated that it could and would investigate the 26 September 1989 handcuffing incident itself despite knowing that the shredding of the Heiner Inquiry documents knowingly aided in covering up for 9 years.

Of relevance to any consideration as to whether or not my allegations have ever received proper consideration by the Forde Inquiry, as Queensland Premier the Hon. Peter Beattie often claims, I put to this fundamental concern to the Forde Inquiry in my submission of 18 September 1998 (p10):

[17] Also see Mr Grundy's publication Inside Queensland which highlighted horrendous child abuse in Neerakol and other church and government institutions which cumulatively forced the establishment of the Forde Inquiry.
[18] Ms. Holmes was subsequently elevated to the bench of the Supreme Court of Queensland.

> *"...It is respectfully submitted that it would not be in the public interest or in the interest of truth if this Commission of Inquiry could only investigate and make recommendations on the substance or otherwise of* "shredded JOYC child abuse allegations" *and not concern itself with the far greater offence that such evidence in the possession of the Crown at the time was deliberately destroyed by order of the Goss Cabinet (in the name of the Crown) to obstruct justice and to cover up unacceptable suspected child abuse against children in the care and protection of the Crown."*

In February 1999, the Forde Inquiry investigated the contents of Document 13. Mr. Coyne and others were put in the witness box. It was found that the excessive use of handcuffs by Mr. Coyne was unlawful but charges could not be brought because of the statute of limitations applicable under the *Children's Services Act 1965*. His supervisor Mr Ian Peers[19] was also called. Curiously, the Forde Inquiry failed to consider whether Mr. Coyne's illegal conduct was captured under section 245 of the *Criminal Code (Qld)* – assault – where no statute of limitation applied:

> ***(1)*** *A person who strikes, touches, or moves, or otherwise applies force of any kind to, the person of another, either directly or indirectly, without the other person's consent, or with the other person's consent if the consent is obtained by fraud, or who by any bodily act or gesture attempts or threatens to apply force of any kind to the person of another without the other person's consent, under such circumstances that the person making the attempt or threat has actually or apparently a present ability to effect the person's purpose, is said to assault that other person, and the act is called an* ***"assault."***

Now, in 2004, in light of new sworn evidence put to the House of Representatives Legal and Constitutional Affairs Committee on 16 March 2004 by a witness to the Heiner Inquiry showing that Mr. Heiner also took evidence about a child sexual assault (confirmed to me in writing by the Queensland Crime Commission on 19 December 2001 as *"criminal paedophilia"* under section 6 of the [now repealed] *Queensland Crime Commission Act 1997*) for which no one had been held to account or charged, then the destruction of such probative evidence of known and/or suspected criminal conduct or official misconduct for the reasons stated by the Goss Cabinet (that is, to prevent the documentation being used in evidence against the careers of the staff at the Centre) introduces another potential layer of criminal code to that found in Point 2.

This additional layer suggests that it is open to conclude that a conspiracy to pervert the course of justice may have been entered into by the Goss Cabinet and others. As knowledge of evidence of child abuse in the records was present, they should have referred it to the police or CJC for impartial examination. It was undoubtedly beyond the Executive's discretion or authority to decide whether or not any public servant's career should be protected from scrutiny by the police or CJC. By destroying potentially probative evidence which could have led to either disciplinary or criminal charges being laid flowing out of wrongdoing surrounding the abuse of children in State care to whom those public servants owed a duty of care, the Queensland Cabinet may have obstructed justice.

While it remains unknown when the CJC first became aware of the nature of the material gathered by Mr. Heiner, it is reasonable to suggest that once the CJC did, its awareness should have triggered concerns of suspected official misconduct or criminal conduct in respect of the

[19] Mr. Peers left the public service after the change of government, and is now a Minister of the Uniting Church Brisbane.

shredding itself against of the reason why the documents were ordered destroyed in the first place by the Goss Cabinet. The shredding impinged on the CJC's jurisdiction, and yet the so-called impartial CJC condoned this blatant, irreversible obstruction.

In other words, the same scenario, which saw Pastor Ensbey charged and put before the court by Queensland's law enforcement authorities [and ultimately found guilty for a breach of section 129 of the *Criminal Code (Qld)*], existed at any time the CJC (or police) discovered that the Heiner Inquiry documents concerned suspected wrongdoing. Under such circumstances, the shredding either enlivened sections 129, 132 or 140 of the *Criminal Code (Qld)*, and other relevant provisions pertaining to official misconduct under the *Criminal Justice Act 1989* because the improper conduct was carried out by public officials of a unit of public administration.

It is therefore open to conclude that once Document 13 in particular became a public in July 1995 revealing the real nature of the Heiner Inquiry evidence as involving abuse of children at the Centre (at various times described otherwise as merely *"...a spat between public servants"* by Messrs. Goss and Beattie), it introduced this fresh layer of possible unlawful conduct. In my opinion, this aspect of the shredding was too significant for an impartial CJC to ignore. But it did, and continues to do so. This indifference continued in spite of the CJC having undertaken its own investigation on 25 May 1998 into the handcuffing incidents after the contents of Document 13 were published in *The Courier-Mail,* up until the Forde Commission of Inquiry into the Abuse of Children in Queensland Institutions took over the investigation around August 1998, and held public hearings in mid-February 1999. The Forde Inquiry report declared the major handcuffing incident to be unlawful.

It is open to suggest that Mr. Greenwood QC's May 2001 view could have been reached as early as July 1995.[20]

The elements present in this fresh layer of shredding activity appear to be covered in *R v. Rogerson and Ors (1992) 66 ALJR 500* where Mason CJ at p.502 says:

> *"...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..."*

Also see Brennan and Toohey JJ at p.503 in *Rogerson:*

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

The possible offence triggered by this layer of the shredding conduct may be captured under section **132** *of the Criminal Code (Qld)* - Conspiring to defeat justice - which provides for

[20] Also see section dealing with the late1994/early 1995 visit by Mr. Barnes to DFSAIA when he inspected certain files, and examined, in particular *"...memoranda between Minister Warner and Ms. Matchett"* which strongly inculpated all members of the Goss Cabinet in respect of the illegal shredding order which breached section 129 of the *Criminal Code (Qld)*, and during this visit he appears to have discovered material on abuse of children at the Centre (See *The Courier-Mail* 18 August 1999 p12 *"CJC failed to act on child abuse allegation"*) and failed either investigate it or make the logical legal linkage Mr. Greenwood QC did when the nature of the shredded evidence was known.

> *"Any person who conspires with another to obstruct, prevent, pervert, or defeat the course of justice is guilty of a crime, and liable to imprisonment for 7 years."*

On the weight of the compelling evidence provided, I respectfully submit that it is open to conclude that the charge by Mr. Greenwood QC in respect of Point 1 has been made out and a finding of contempt may be safely made.

POINT 2: Destroying evidence known to be required in evidence in a judicial proceeding.

> **"...knowingly order the destruction of public records in its possession and known to be required as evidence for foreshadowed court proceedings for the purpose of preventing those records being used in those proceedings."**

The substantive alleged offence in the Heiner Affair has always been section 129 of the *Criminal Code (Qld)* – destruction of evidence – which provides for:

> *"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 three years."*

For the Committee's benefit, the triggering elements of section 129 are as follows at section 129.10 in *Carters, Chapter 16 - Offences Relating to the Administration of Justice - The Criminal Code.*

> The Accused:
> - Knowing any book, document or other thing is or may be needed in evidence;
> - Wilfully destroys it or renders it illegible, or indecipherable, or incapable of identification;
> - With intent to prevent it being used in evidence;

The offences, in the alternate, have always been either section **132** - Conspiring to defeat justice - which provides for

> *"Any person who conspires with another to obstruct, prevent, pervert, or defeat the course of justice is guilty of a crime, and liable to imprisonment for 7 years."*

Or, section **140** - Attempting to pervert justice – which provides for:

> *"Any person who attempts, in any way not specifically defined in this code, to obstruct, prevent, pervert, or defeat, the course of justice is guilty of a misdemeanour, and is liable to imprisonment for two years."*

At this juncture, the Committee might be mindful of the wording of the charge relating to the "Coyne case" used by QPOA General Secretary Mr. Don Martindale as one of the alleged contrived charges to dismiss me on 30 May 1990. In handling the case, I had met with Ms.

Matchett on 23 February 1990 and placed the Queensland Government on notice. The Department was told that both my union and Queensland Teachers Union (QTU) would be joining Mr. Coyne and Mrs. Dutney in their already-foreshadowed judicial proceeding to gain access to the Heiner Inquiry documents and original complaints if access were not to be granted to us out of court pursuant to *Public Service Management and Employment Regulation 65*. Mr. Martindale was well aware of these matters. He approved of them. Both the QPOA and QTU) had placed a legal claim on the records in writing. I was immediately removed from the case on or about 8 March 1990 after I inadvertently learnt about the secret plans to destroy the evidence from Minister Warner's Private Secretary, Ms. Norma Jones, during a phone call, and challenged her extraordinary admission. I was immediately removed from the case on the Minister's insistence, and Mr. Martindale took over carriage of it up to and beyond the time of the shredding.

This is the wording of "the Coyne case" instrument used as a device to sack me on 30 May 1990:

> *"...Some time ago I made you aware of a complaint I received from the Hon A. Warner and the fact that she believed your attitude to negotiations with respect to the "Coyne case" was inappropriate and over-confrontationalist. She claimed that your method of operation showed a lack of understanding for how such negotiations should be conducted. When I raised the issue with you the day that I received the complaint you totally denied the allegation indicating that there was no real problem. I do not believe that to be the case."*

If Sir Samuel Griffith, with his wealth of legal wisdom and experience, was suggesting that section 129 could only be triggered when a judicial proceeding was pending (even when a party was on notice as in the Heiner affair), then he was positively undermining the other (supporting) provisions of section 132 – conspiracy to pervert the course of justice, and section 140 – attempting to obstruct justice set out in the Chapter outlining offences against the administration of justice because it could not be held that the destruction of evidence known to be required in anticipated judicial proceedings could trigger either sections (i.e. ss.132 and 140) because section 129 positively permitted it. It is simply insupportable to have one criminal provision in conflict with another, particularly in an area so fundamental as offences against the administration of justice.

The Model Litigant *vs* A World Without Evidence

Such a notion of lawfully permitting known evidence to be destroyed up to the moment of a writ being filed and served is patently absurd. It invites a world without evidence. It would become a spectacle of absurd, farcical proportions wherein the very civilised act of placing another party "on notice" would become a signal to that party to shred all relevant evidence immediately, even the Crown, our so-called "model litigant." It would destablise society, just as it would render the courts impotent to do justice. It would mean that disputes between parties would demand that writs be filed and served as a first priority, inexorably and unavoidably as a "surprise", just so all relevant evidence would not only be preserved, but so that the criminal law protecting the administration of justice could ever be triggered.

Put simply, *R v Rogerson* (the leading authority in this area of law), it could be said, finds its authority in the "wide" definition of "judicial proceeding" set out by Sir Samuel Griffith in sections 119 (using the word "includes" instead of "means") and 129 of the *Criminal Code (Qld)* (using the word "knowing" and "*...is or **may be** required in evidence*") otherwise a conspiracy to

pervert the course of justice which *Rogerson* says can occur ***before*** curial proceedings commence could not have been found by the High Court of Australia.

Solicitors acting for the would-be known plaintiff (Mr. Peter Coyne) informed the Queensland Government by phone (14 February 1990) and follow-up letter (15 February 1990) in these unequivocal terms that a judicial proceeding would commence. In the relevant Department of Family Services and Aboriginal and Islander Affairs (DFSAIA) memorandum dated 14 February 1990 to the Departmental acting Director-General[21], which records the phone conversation between the solicitor and the acting Director-General's Executive Officer Mr. Terry Walsh, it says this:

> *"...Mr. Berry[22] is seeking assurances from you that the documents relating to the Heiner Inquiry will not be destroyed..."*

and

> *"...Mr. Berry made it quite clear that there is still an intention to proceed to attempt to gain access to the Heiner documents and any departmental documents relating to the allegations against Mr. Coyne and that they have every intention to pursue the matter through the courts."*

As stated above, this action was reinforced on 23 February 1990 when I met with Ms. Matchett, in the presence of DFSAIA's senior industrial officer Ms. Sue Crook, and indicated that both the QPOA and the QTU would be joining Mr. Coyne (and Mrs. Dutney) in the foreshadowed judicial proceeding to gain access to relevant provisions of the Heiner Inquiry documents and copies of the original complaints pursuant to *Public Service Management and Employment Regulation 65.*

It is beyond dispute concerning what the Goss Cabinet knew at the time it ordered the shredding because the Cabinet submission[23] of 5 March 1990 relevantly records the following at page 2:

> "***URGENCY***
>
> *Speedy resolution of the matter will benefit all concerned and avert possible industrial action.*
>
> *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."* (Underlining added)

In his oral submission to the Murphy Select Committee 23 February 1995 in Brisbane, my senior counsel, Mr. Ian Callinan QC said this on the point of destroying known evidence which is or may be required in judicial proceedings:

> *"...The real point about the matter is that it does not matter when, in technical terms, justice begins to run. What is critical is that a party in possession of documents knows*

[21] Ms Ruth L. Matchett
[22] Solicitor representing Mr. Coyne
[23] Tabled in the Queensland Parliament on 30 July 1998 by the Queensland Premier the Hon. Peter Beattie MLA

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 conduct of the greatest seriousness - and much more serious, might I suggest, if done by a government."[24]

At page 3 of the CJC's submission dated 24 June 1994 to the Senate Select Committee on Public Interest Whistleblowing when dealing with "the Lindeberg Complaint", the CJC makes the following claim in respect of section 129 of the *Criminal Code (Qld) 1899*:

"(a) The Destruction was in breach of the *Criminal Code* section 129 – "Destruction of Evidence".

As no judicial proceeding was under way, the elements of this offence could not be made out."

At page 27 of the February 1995 submission to the Senate Select Committee on Unresolved Whistleblower cases, the CJC made the following claim:

"...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 section refers to proceedings on foot at the time of the destruction. This view is consistent with the definition of judicial proceeding contained in section 119 of the Queensland Criminal Code which states that:

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

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."

Mr. Barnes made this inculpatory admission in Parliament House Canberra on 25 May 1995. In light of a comment he wrote in a "highly protected internal memorandum" on 11 November 1996 when addressing the findings of the Morris/Howard Report of October 1996, wherein he confirmed that he saw memoranda between Minister Warner and Ms. Matchett during a visit to the Families Department late 1994/early 1995 in which evidence existed strongly inculpating all members of the Goss Cabinet in the illegality associated with the order to shred the Heiner Inquiry documents, it explains why he was so emphatic what Cabinet knew at the time the order was taken on 5 March 1990:

"...There is no doubt that the documents were destroyed at a time when the Cabinet well knew that Coyne wanted access to them. There is no doubt about that at all."

[24] Senate *Hansard* 23 February 1995 p3 – Senate Select Committee on Unresolved Whistleblower Cases.

The following exchange over motivation took place at the same Canberra meeting:

> ***Senator Abetz:*** *I am trying to get a handle on this. What seems to have occurred is that, with the potential threat of a defamation suit, Cabinet decided to shred the documents because they were of no historical value, knowing full well that it may be the material evidence on which a potential litigant would rely to pursue or prosecute his case."*
>
> ***Mr. Barnes:*** *I think that probably is a fair summary. As a result of the actions, the correspondence and the communications, I think they believed that Coyne was considering suing the people who gave evidence before Heiner for defamation. As you say, the Crown Solicitor's advice seems quite clear that that was a potential and, consistent with that advice, cabinet decided that they would prevent that from happening."*

This critical exchange took place between Senator Christabel Chamarette and Mr. Barnes on this area of "anticipated/pending" court proceedings and what he claimed the law permitted in terms of the treatment of documents in the possession and control of parties to anticipated court proceedings up to the moment of a writ being filed and/or served. At Senate *Hansard* 23 February 1995 pp104-105, this was said:

> ***Senator Chamarette:*** *I have a question that flows from that. You earlier implied, and perhaps you should clarify it, that if there had been definite knowledge of litigation being on foot, then it would have been possibly appropriate to consider that destruction official misconduct. Is that correct?*
>
> ***Mr. Barnes:*** *I believe that then the acting director-general would have acted inconsistently with advice she had received from the Crown Solicitor; and then the matters which Mr. Callinan referred would come into play. I think it's probably clear that if you destroy documents once litigation is on foot, you are in contempt of court in which the action has been commenced.*
>
> ***Senator Chamarette:*** *Is it not possible then to consider that if the reason for the destruction of the documents is to prevent litigation going to court, you are doing exactly the same thing as interfering with litigation on foot? The very reason for the destruction of the documents is to prevent litigation being prepared, for whatever motive, and therefore the same rationale should apply.*
>
> ***Mr. Barnes:*** *You may well be right; but my opinion on that point - and, with respect, Mr. Callinan's opinion - is irrelevant. The opinion that is relevant is the one received by the acting director-general from the Crown Solicitor. She acted in accordance with that advice. Your question, I suggest, gets back to the point Senator Abetz was raising about the inappropriateness of that action. I can understand that reasonable minds might well differ on that, whatever the motivation for the destruction of the documents.*
>
> ***Senator Chamarette:*** *I am seeking your advice. It is not as though I am asking you to make a judgment, I am just asking you to clarify this for me. You believe that there was no case of official misconduct because technically the documents were being destroyed without any litigation being on foot. Is that correct?*

***Mr. Barnes*:** *Yes, that is right.*

***Senator Chamarette*:** *And I am trying to establish whether if there had been litigation of foot, they would have been in error to have destroyed the documents. That is just a legal -*

***Mr. Barnes*:** *Certainly, I think it is quite clear that it would be consistent with crown law advice that they should not be destroyed if litigation was on foot. As that was not the case, their destruction was consistent with crown law advice.*

***Senator Chamarette*:** *I am then saying that to me, from a lay point of view, to actually destroy the documents to prevent litigation being on foot seems very similar. Are you now saying that to actually use as a rationale for the destruction to prevent litigation on foot is somehow different from litigation already being on foot?*

***Mr. Barnes*: *Yes. With respect, I say it is a lot different. What you do with your own property before litigation is commenced, I suggest, is quite different from what you do with it after it is commenced.*"** (my underlining)

It is reasonable to accept that Mr. Barnes' view was endorsed by the CJC at its senior levels before its February 1995 submission went to the Senate, and when he argued the proposition during his appearances. Similarly, when Point 2 came before the Senate Select Committee on Public Interest Whistleblowing. It was never Mr. Barnes' view alone. Its origin, on available evidence, came from CJC-contracted barrister Mr. Noel Nunan who reviewed my case in mid-1992. His findings in January 1993 were subsequently endorsed by Messrs. Barnes and Le Grand. They were put in writing to me on 23 January 1993 under Mr. Barnes' signature. Of course, Mr. Nunan could have reached is view of the law conjointly with Mr. Barnes (a fellow Labor Lawyer who engaged Mr. Nunan himself and coincidentally happened to be a fellow Labor Lawyer and known ALP member and activist and former work colleague with Mr. Goss at the Caxton Street Legal Centre some years before Mr. Goss entered Parliament), but whatever happened prior to Mr. Nunan making his flawed findings, once he made them, the CJC became as one mind concerning their correctness afterwards – and is yet to disown them, particularly concerning section 129 of the *Criminal Code (Qld).*

Let no one think that Mr. Nunan was oblivious to the possible serious criminal ramifications of the evidence put to him on 11 and 12 August 1992 conduct when he interviewed Mr. Coyne and me respectively. During the course of my interview with him on 12 August 1992 when I pressed the point that the Heiner Inquiry documents were required for the purposes of litigation, he said:

> *"What do you want me to do, charge the entire Cabinet with criminal conspiracy to pervert the course of justice?"*

Of relevance to Point 2, in its supplementary submission (No 106A of 24 June 1994) at page 5 when addressing elements of my complaint touching on the role and findings of Mr. Nunan, this is said by the CJC:

> *"...Nunan was engaged because he was considered to be competent counsel with experience in administrative law and was willing to undertake an urgent review of the material. Soon after Nunan was briefed in the matter it was drawn to the*

attention of then Chairman, Sir Max Bingham QC, that he had been or was a member of the Labor Party. Sir Max considered that this did not prevent Nunan from impartially considering the matter. The Chief Officer[25] *and the Director*[26] *reviewed Nunan's opinion at the conclusion of his review of the material. They were satisfied that Nunan had efficiently and impartially considered all of the complaints that had been raised."*

Subsequent examination of Mr. Nunan's findings showed that all aspects were open to serious challenge. They were wrong in fact, quotation of law provision, even to the extent that the CJC later conceded to the Connolly/Ryan Judicial Review into the Effectiveness of the CJC in July 1999 that it could have done a better investigation and, if it had done so, it may have reached a different view. That said however, at no stage has the CJC publicly recanted its interpretation of section 129 even in the face of the *Ensbey* ruling and subsequent sentencing appeal by the Crown to the Queensland Court of Appeal on *Ensbey* seeking to have the sentence increased because of the gravity of the offence.

Hence, one limb of the charge pertaining to the CJC and its officials suggests that it is open to conclude that section 129 of the *Criminal Code (Qld) 1899* has been deliberately misinterpreted not only to unlawfully benefit another (i.e. the Goss Cabinet, senior bureaucrats, Crown Law legal officers and others) from facing possible criminal charges in respect of the shredding of the Heiner Inquiry documents (and disposal of the original complaints which *prima facie* falls on Ms. Matchett, certain senior public officials and certain Crown Law legal officers), but, by putting its known false and misleading interpretation, the Senate may have been wilfully obstructed from making full and proper findings and recommendations and treated with criminal contempt in order to cover up crime and advantaged the contemptor.

On available evidence, it is therefore open to suggest that the following CJC officials (contracted or permanent at relevant times) may be parties to the alleged conspiracy:

- Mr. Michael Allan Barnes – CJC Chief Complaints Officer insofar as his involvement in Senate submission 106A of 24 June 1994, the February 1995 Senate submission and/or evidence and subsequent submissions and/or evidence to the Senate Committee of Privileges concerning his role in the legal contents and/or assertions in respect of the Heiner affair;
- Mr. Mark Le Grand – CJC Director of the Official Misconduct Division insofar as his involvement in Senate submission 106A of 24 June 1994, the February 1995 Senate submission and/or evidence and subsequent submissions and/or evidence to the Senate Committee of Privileges concerning his role in the legal contents and/or assertions in respect of the Heiner affair;
- Mr. David Bevan[27] – CJC Deputy Director of the Official Misconduct Division insofar as his involvement in Senate submission 106A of 24 June 1994, the February 1995 Senate submission and/or evidence and subsequent submissions and/or evidence to the Senate Committee of Privileges concerning his role in the legal contents and/or assertions in respect of the Heiner affair;

[25] Mr. Michael Barnes, and now the Queensland State Coroner
[26] Mr. Mark Le Grand
[27] Currently the Queensland Ombudsman/Information Commissioner

- Mr. Noel Francis Nunan[28] – as a former CJC-contracted official insofar as his involvement in the Heiner affair and supporting evidence used and/or obtained by the CJC used before the Senate in respect of the Heiner affair;
- Mr. Robin S. O'Regan QC - CJC Chairman insofar as his involvement and/or endorsement to Senate submission 106A of 24 June 1994 and the February 1995 Senate submission concerning relevant legal contents and/or assertions in respect of the Heiner affair;
- Mr. Frank Clair – CJC Chairman insofar as his endorsement to Senate submission 106A of 24 June 1994, the February 1995 Senate submission and involvement in subsequent submissions to the Senate Committee of Privileges concerning relevant legal contents and/or assertions in respect of the Heiner affair;
- Mr. Marshall Irwin[29] – CJC General Counsel in early 1994 and early 1995 insofar as his involvement in Senate submission 106A of 24 June 1994, the February 1995 Senate submission and/or evidence concerning his role in the legal contents and/or assertions in respect of the Heiner affair;
- Mr. Barry J. Thomas[30] – CJC legal officer in 1995 with the Official Misconduct Division (and who provided some of the critical 1990 legal advice to DFSAIA on the Heiner matter - and who gave evidence to the Senate Select Committee on Unresolved Whistleblower Cases on the Leggate matter) insofar as his involvement in Senate submission 106A of 24 June 1994, the February 1995 Senate submission and/or evidence and any subsequent submissions and/or evidence to the Senate Committee of Privileges concerning his role in the legal contents and/or assertions in respect of the Heiner affair;

Before the Samios ruling in *Ensbey* and the Queensland Attorney-General the Hon. Rod Welford appealing the sentence in *Ensbey* to the Queensland Court of Appeal on 25 March 2004, recently retired Queensland Supreme and Appeal Court Justice the Hon. James Thomas QC AM was interviewed as one of Queensland's most eminent and highly respected jurists for the April/May 2003 edition of *The Queensland Independent*[31]. He was asked for his interpretation of section 129. He was shown an earlier interpretation given by former DPP, Mr. Royce Miller QC in November 1995 after Mr. Miller QC was informed by then Queensland Shadow Attorney-General the Hon Denver Beanland of what Mr. Callinan QC advised the Senate in his 7 August 1995 special supplementary submission.

Not Even Arguable

Mr. Thomas QC rejected Mr. Miller QC's opinion that section 129 required a judicial proceeding to be on foot to trigger it. He advised that a person could be charged even though, at the time he or she destroyed documents, no court action relating to those documents was actually under way. Furthermore, he advised that it was still open for those involved in the action to be charged. Of additional significance, he advised that the provision was never open to the (Miller QC) interpretation that a judicial proceeding had to be on foot to trigger it and added:

> *"I can't see how it is even arguable that a legal proceeding be on foot.*

[28] Now a Queensland Stipendiary Magistrate on the Brisbane bench
[29] Now Queensland's Chief Stipendiary Magistrate
[30] Now at the Queensland Bar
[31] Addendum A

"The section itself contemplates that legal proceedings might not be on foot," he said.

"There were some things in the law that were open to different interpretations, but due to the wording of the section, this clearly isn't one,"

In their October 1996 report into "the Lindeberg allegations" barristers Messrs. Morris QC and Howard examined the section in detail and said the following (at pp 90-91):

"10. The language of Section 129 does not lend support to the view that proceedings must be "pending" at the relevant time for an offence to be committed. The use of the words "or may be" – referring to "any book, document, or other thing of any kind, [which] is or may be required in evidence in a judicial proceeding" – is significant in two respects. On the one hand, it indicates that it is sufficient to constitute an offence if the book, document or thing will probably (or possibly) be required in evidence, and excludes the necessity to prove as a matter of certainty that the book, document or thing was or would be required in evidence. But, on the other hand, the use of the words "or may be" introduces an element of futurity: the requirement need not be one which exists (or which is capable of existing) at the time when the book, document or thing is destroyed; it is sufficient if such a requirement is one which "may" arise at a future time.

11. Had s.129 been intended to apply only in the limited circumstances suggested by the Crown Solicitor, it would have been a very easy matter to draft the Section in such a way as to make that intention perfectly clear. Rather than referring to "a judicial proceeding", the section could have been drafted to refer to "a judicial proceeding then pending." It is not a legitimate process of statutory construction to assume that a provision is subject to an unstated limitation or qualification, especially where it would have been a very simple matter for that limitation or qualification to be expressed clearly and succinctly.

12. There is nothing in the language of s.129 to support the Crown Solicitor's contention that it should be "read down" as applying only to judicial proceedings pending at the relevant time, it is appropriate to ask whether such a construction can be supported having regard to the objects of the Section and the mischief which it was intended to remedy. In our view, it is entirely artificial to read the Section as applying only in respect of proceedings which are currently on foot. The actual date of commencement of proceedings may, in many cases, be a matter of pure coincidence. If the proceedings in question are civil proceedings, it is difficult to see why the operation of s.129 should depend on the fact that a Writ has been issued, or that a Plaint has been filed, so that conduct which would constitute a serious criminal offence on the day after the issuing of a Writ or the filing of a Plaint – whether or not the defendant is aware that a Writ has been issued, or that a Plaint has been filed – would not attract criminal consequences if the same act was committed 48 hours earlier. In the case of criminal proceedings, if the police or other law enforcement authorities are investigating the commission of an offence – if, for example, a search warrant has been executed, or a suspect has been taken into custody – it is difficult to see whey criminal liability under s.129 should depend upon whether an information or complaint has been laid before a court.

13. It may be argued that a "wide" construction of s.129 would create a very onerous situation for persons in the possession of books, document and other things in respect of which there is a remote possibility that such items may be "required in evidence in a judicial proceeding" at some future time. But the language of the Section itself affords ample protection to those innocently involved in the destruction of books, documents and other things. To be criminally liable, the person must know that the books, documents and other thing "is or may be required in evidence", and must also have an "intent...to prevent it from being used in evidence". Actual knowledge – rather than, for example, mere suspicion – is an ingredient of the offence; so, also, an actual intention to prevent the item being used in evidence – rather than, for example, a consciousness of the possibility that destruction of the item will prevent its being used in evidence – is essential to sustain a conviction. It would be extraordinarily difficult to suggest that a person has knowledge that a book, document or other thing "is or may be required in evidence in a judicial proceeding", or that the person has an intention to prevent its being used in evidence, unless something has occurred to put that person on notice of the possibility that a requirement for the item to be adduced in evidence may arise at a future time. Where the proceedings are of a civil nature, the fact that the person has received a letter of demand threatening the institution of proceedings could, in our view, suffice to show that the person knew that a book, document or thing "is or may be required in evidence in a judicial proceeding"; and in the case of criminal proceedings, the fact that the police or other law enforcement authorities have (for example) executed a search warrant or taken a suspect into custody might well suffice to show that a person, aware of those facts, had knowledge that a particular book, document or thing "is or may be required in evidence in a judicial proceeding". Similarly, if a person is shown to have had knowledge that proceedings are about to be instituted, and to have destroyed material which may be relevant as evidence in those proceedings with that knowledge, those circumstances may support an inference that the person's intention was to prevent the material being used in evidence. Plainly, a person could not be convicted of an offence under s.129 merely because the person was aware of circumstances which might conceivably give rise to the institution of some form of judicial proceeding, if nothing had occurred to put that person on notice of a real likelihood that a judicial proceeding may subsequently be instituted."

The Doctrine of the Separation of Powers Under Threat

The Committee should also understand that the Heiner-related interpretation of section 129 adopted by the Queensland Government, former DPP, and CJC seriously breaches the doctrine of the Separation of Powers. It says that when the Executive has public records in its possession or control, and known to be evidence in anticipated judicial proceedings, it will and may wilfully destroy them to prevent the Judiciary using them in those proceedings up to the moment of a writ or plaint being filed and/or served. I submit that it is a rogue interpretation which is so highly injurious to and contemptuous of the rules of the Supreme Court of Queensland and the administration of justice that it must be overturned otherwise, by accepting and not rejecting such a notion as put to the Senate, it gives the perception, if not the reality, that the Senate, unhappily, may be party to such a serious breach of the doctrine of the Separation of Powers.

For its part the Queensland Government put forward another extraordinary defence as to why the shredding was legal. In its Ministerial Statement on the Senate Select Committee on the Unresolved Whistleblower Cases put to the Senate, it says this at page 17:[32]

> *"...Much has been made about the destruction of the documents. In particular, there has been the suggestion that the documents were destroyed because of pending legal action. This is not the case. It is true on a few occasions Mr. Coyne and his legal representatives had threatened legal action. The first time this occurred was on 17 January 1990, more than two months prior to the destruction of the documents. However, over two months later no legal proceedings had been initiated. There was no pending legal action at the time of the destruction of the documents.*
>
> *On 5 March 1990, prior to giving approval for destruction of the material, Cabinet was informed that representations had been received from a solicitor representing certain staff at the Centre. However, while these representations had sought production of the material, Cabinet was advised that no legal action had actually been instituted (nor was any legal action subsequently instituted).*

While it is true that Mr. Coyne did threaten a Writ of Prohibition on 17 January 1990, it lapsed once the Inquiry was closed. In short, circumstances changed. On instructions, his solicitors placed the Queensland Government on notice on 8, 14 and 15 February 1990 in respect of wishing to exercise his legal access rights under *Public Service Management Employment Regulation 65* to the Heiner Inquiry documents (relating to him) and the original complaints. The Queensland Government was told not to destroy anything and that access, if necessary, would be settled in judicial proceedings. This is beyond dispute.

What is missing in the Queensland Government's 1995 submission (and later condemned at points 5.40-5.41 in "*The Public Interest Revisited*") is the critical reason why the threatened litigation never advanced. Simply put, Mr. Coyne, his solicitors and the unions were falsely given to believe that the sought-after evidence was secure, and the "interim" position of the Queensland Government regarding non-access to the records, was still the subject of "on-going" legal advice which would be forthcoming to us once received from the Crown Solicitor. We were lied to. Secretly, behind the scenes, the Queensland Government had destroyed the known evidence for anticipated judicial proceedings on 23 March 1990 while the aforesaid parties marked time on the basis of serious deceptive conduct.

Compounding the Deception

By way of compounding the deceptiveness of the Queensland Government's position of suggesting that it acted on legal advice (which in legal terms provides no defence from criminal charges being brought), both the Queensland Government and CJC point to the Crown Solicitor's advice of 23 January 1990 as proof that the Queensland Government merely followed advice. However, they fail to point out that it became redundant almost as soon as it was given to the Department, let alone being based on the false premises that the ownership of the Heiner Inquiry rested in Mr. Heiner when in fact, they were always in the ownership of the Crown. The sting in this false line of argument out by the Queensland Government and CJC is that at a time when the

[32] See Volume 1 – Queensland Government – Submissions etc to Senate Select Committee on Unresolved Whistleblower Cases

Queensland Government was telling the parties on 16 February, 19 March and 8 May 1990 that its position was "interim" and it was still waiting for final advice, by its own explanation, it had the "final" advice in the form of 23 January 1990 but never revealed it. In short, the alleged shield from criminal charges supposedly afforded by the 23 January 1990 Crown Solicitor's advice is a deceptive construction to hide the true legal position. It merely addressed the circumstances at that time. After the inquiry was closed, and Mr. Heiner's evidence returned to the Department, Mr. Coyne and others then sought afresh to access them pursuant to *Public Service Management and Employment Regulation 65.*

In respect of the other claim that no legal proceedings ever commenced, the answer is simple but, importantly, left unstated by the Queensland Government. There was no point in seeking a judicial review concerning access to the public records pursuant to *Public Service Management and Employment Regulation 65* after the shredding because the object of the access litigation – i.e. the public records - no longer existed. In my opinion, the absurdity of the Queensland Government's position cannot be allowed to stand. It means that when a party to foreshadowed judicial proceedings has evidence in his possession or control upon which a judicial proceeding is wholly based, the party may engage in the wholesale destruction of all evidence to render any access legal action nugatory. In short, shred everything to bring an absolute halt to everything. Then, having wilfully destroyed every document and thing known to required in an anticipated judicial proceedings to prevent its use in those proceedings, and providing no nonsensical legal action subsequently commenced by the lodging or a writ/plaint to gain access to the evidence which no longer existed, no wrongdoing occurs.

I simply say this: The administration of justice relies on civility and honest dealings between the parties. It cannot survive uncivilised roguish conduct which the Queensland Government and others are attempting to shelter behind.

Given the gravity of the matter under consideration, I submit that the Committee should be mindful of the common and/or uniform interpretation across all Australian criminal law jurisdictions of section 129 and its sister provisions in other penal codes. Taken together, this provides compelling evidence to suggest, in Heiner alone, its interpretation was aberrant, false and misleading in nature and intent.

In short, it is not open to suggest that any reasonable lawyer, properly briefed and respectful of obeying the law, could have ever advised such an interpretation because, as former Queensland Supreme and Appeal Justice the Hon. Jim Thomas QC told *The Justice Project* in 2003, it was not even arguable, and yet, the Queensland Government and CJC claimed otherwise before the Senate. They may yet attempt to argue before this Committee that it was a reasonable view to hold and not a corrupt one, although now accepting that their opinion was misconceived.

It therefore appears that both the Queensland Government and CJC will have to argue in 2004 that an unarguable interpretation put in 1993 onwards (which unquestionably undermines the administration of justice, the right to a fair trial by creating a world without evidence etc.) was arguable and not in contempt of their prime duty, as Crown officers, to obey the law, and to respect their sworn duties as "officers of the court", which includes protecting known evidence required for pending/impending judicial proceedings and upholding the discovery/disclosure rules of the Supreme Court of Queensland.

Incompetence *vs* Improper Motives

The Committee may be asked to believe that such experienced Crown (and private practice) lawyers, barristers and QC's just happened, together, to get the law wrong as, unfortunately, sometimes happens without conspiratorial motives capable of being reasonably imputed; and, the fact that it happened to advantage the entire Goss Cabinet and senior bureaucrats while totally undermining the administration of justice, was purely coincidental, and should be overlooked.

It appears that they will have to argue that their ignorance of the law, as experienced legal practitioners, should carry exculpatory weight when it carried none for Pastor Ensbey. They will have to argue that with all the elements of the Heiner affair before them insofar as their client was "on notice" by a fellow solicitor (and two trade unions), and told not to shred the evidence in the client's possession and control because it would be the central item of evidence in the judicial proceedings, they would happily advise any client (including the Crown) to get rid of the evidence before the anticipated writ/plaint was filed or served so that the evidence could not be used in the anticipated judicial proceeding, while, at the same time, also knowing that the discovery/disclosure rules of the Supreme Court would apply once the writ/plaint was filed and/or served. They will have to argue that such advice would not offend the rule of law, democratic values or their professional standards.

The democratic principle of equality before the law speaks loudly here I suggest. The following criminal codes stand as witnesses, in some cases for nearly 100 years, to the existence of a state of knowledge across Australia concerning the offence of destroying evidence which coincidentally flows out the progenitor legislation of the *Queensland Criminal Code* (1899) drafted by eminent jurist the Hon. Sir Samuel W. Griffith GCMG, Chief Justice of Queensland's Supreme Court, Queensland Premier and Attorney-General and Australia's first Chief Justice of the High Court:

- ACT: *Crimes Act 1900* (ACT)
- Cwth: *Crimes Act 1914* section 39
- NSW: *Crimes Act 1900* (NSW) section 317
- NT: *Criminal Code Act* (NT) section 102
- SA: *Criminal Law Consolidation Act 1935* (SA) section 243
- TAS: *Criminal Code 1924* (Tas) section 99
- WA: *Criminal Code 1913* (WA) section 132.

As the Model Criminal Code of the Commonwealth (MCCOC) confirms, all Australian criminal codes proscribe, as an offence against the administration of justice, the conduct of any person, knowing that any book, document or other thing of any kind is or may be required in evidence in judicial proceedings, wilfully destroys it or renders it illegible or indecipherable or incapable of identification with intent thereby to prevent it from being used in evidence. The offence is captured either by the specific offence of destroying evidence, or, as in Victoria and the ACT, by the common law offence of attempting to pervert the course of justice. This attempt for uniformity in construction and application of the criminal law has been done for the common good by all governments in the Commonwealth of Australia. In my opinion, this good work in the interests of justice has been torpedoed by the aberrant view of section 129 in Heiner put to the Senate by the Queensland Government and CJC for their own sectional interests.

The leading authority is *R v Rogerson* (1992) 174 CLR 268 building on *R v Selvage* [1982] QB 372 where it was held that the offence of perverting the course of justice was committed when proceedings of some kind were in being or imminent or investigations which might bring proceedings about were in progress. The 1990 Gibbs Committee – in its 4th Interim Report para.

7.13 – recommended that an offence be created of fabricating, altering, concealing or destroying evidence with intent to influence the decision by any person whether or not a judicial proceeding should be brought or to influence the outcome of a current or future judicial proceeding.

Uniform Application of the Related Criminal Law Throughout The Commonwealth

As a Committee of our Federal Parliament, uniformity in the application of the law must always be a high consideration, especially the criminal law. In terms of uniformity within the criminal law relating to this plank in the administration of justice, section 132 of the *Criminal Code* (WA) 1913, section 102 of the *Criminal Code Act* (NT) and section 317 of the *Crimes Act* (NSW) 1900 mirror precisely section 129 of the *Criminal Code* (Qld) 1899 while section 39 of the *Crimes Act* (Cwth) 1914 has a minor word-variation of no interpretative consequence, and the other jurisdictions of South Australia and Tasmania have broadened the provision's scope to include concealment, alteration and falsification of evidence which is or may be required in a judicial proceeding.

For example, section 243 of the *Criminal Law Consolidation Act 1935* (SA) - **Fabricating, altering or concealing evidence** – provides for:

> *"A person who—*
>
> *(a) fabricates evidence or alters, conceals or destroys anything that may be required in evidence at judicial proceedings; or*
> *(b) uses any evidence or thing knowing it to have been fabricated or altered,*
> *with the intention of—*
> *(c) influencing a decision by a person whether or not to institute judicial proceedings; or*
> *(d) influencing the outcome of judicial proceedings (whether proceedings that are in progress or proceedings that are to be or may be instituted at a later time),*
> *is guilty of an offence. Penalty: Imprisonment for 7 years.*

Section 39 of the *Crimes Act 1914* (Cmwlth) Destroying evidence describes the offence thus, obviously findings its origins in the Griffith Queensland Criminal Code of 1899:-

> *"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, intentionally destroys it or renders it illegible or undecipherable or incapable of identification, with intent thereby to prevent it from being used in evidence, shall be guilty of an offence. Penalty: Imprisonment for 5 years.*

Most recently, the issue of destruction of evidence before court proceedings commence was addressed on 6 December 2002, in *British American Tobacco Australia Services Limited v Cowell (as representing the estate of Rolah Ann McCabe, deceased)* [2002] VSCA 197 (6 December 2002) at 173, and the court unanimously said:

> "... it seems to us that there must be some balance struck between the right of any company to manage its own documents, whether by retaining them or destroying them, and the right of the litigant to have resort to the documents of the other side. The balance can be struck, we think, if it be accepted that the

> destruction of documents, before the commencement of litigation, may attract a sanction (other than the drawing of adverse inferences) if that conduct amounts to an attempt to pervert the course of justice or (if open) contempt of court, meaning criminal contempt (inasmuch as civil contempt comprises wilful disobedience of a court order and will ordinarily be irrelevant prior to the commencement of proceedings). Such a test seems to sit well with what has been said in the United States as well as what has been said in England. Whether contempt, even criminal contempt, is possible before any proceeding has been instituted need not be examined on this occasion. (For instance, in *James v. Robinson,* which did not involve disobedience of a court order, it was said that that there can be no contempt of court before there is any litigation actually on foot, but, as the majority in the High Court pointed out, that case concerned only the narrower type of contempt, namely interference with the fair trial of a particular cause. Certainly, there can be an attempt to pervert the course of justice before a proceeding is on foot, as *R. v. Rogerson* demonstrates, and that, we think, provides a satisfactory criterion in the present instance."

Again, as recently as 3 March 2004, the Victoria Government was wishing to make the offence of destruction of evidence for current or future litigation more secure in law in the wake of *McCabe.* It is actively considering amending the *Crimes Act 1958* (Vic) so as to include a specific statutory criminal offence prohibiting the destruction of evidence, and modeling its amendment on section 39 of the *Crimes Act 1914* (Cwth) as stated above, and the definition of "judicial proceeding" reflecting section 119 of the *Criminal Code (Qld),* which is mirrored in the *Crimes Act 1914* (Cwth) too.

The overwhelming weight of evidence suggests that the interpretation of section 129, and its sister provision in other jurisdictions throughout the Commonwealth of Australia, together with the understanding of section 119 regarding the definition of "judicial proceeding" as being "open" and inclusive of anticipated/future judicial proceedings, could never have been advised differently by any reasonable lawyer when addressing the elements in the Heiner affair, and, with respect, the Committee should feel secure in that conclusion.

To repeat, at the time the CJC put forward its first view on section 129 in the Heiner affair, *R v Rogerson* stood, as did *R v Murphy*, therefore any suggestion that the legal meaning of section 129 was not settled or unclear when the Queensland Government and CJC gave its incorrect interpretation to the Senate has neither force nor credibility. The conclusion that a fraud has been perpetrated in the Heiner affair appears inescapable, consequently I respectfully remind the Committee of *Lazarus Estate Ltd Vs Beasley*, (1956) 1 QB. 702 at 712, in which Denning LJ famously ruled:

> *"... No Judgement of a court, no Order of a Minister, can be allowed to stand if it has been obtained by Fraud. Fraud unravels everything."*

It is also important for the Committee to understand that the term "judicial proceeding" does not just refer to court proceedings but is wide enough to include:

a. The Criminal Justice Commission/Crime and Misconduct Commission;
b. Police;
c. Australian Crime Commission;
d. State Industrial Relations Commission;

e. Queensland Audit Office;
f. Office of the Ombudsman;
g. Office of the Information Commissioner;
h. Office of the State Coroner;

In summary, when Mr. Barnes and others argued that a judicial proceeding was only activated once a proceeding was on foot, they were suggesting that evidence in the possession of a party (including the Crown) known to be required for a CJC/CMC, police investigation or coronial inquest may be lawfully destroyed up to the moment of the anticipated proceeding commencing, and done for the specific purpose of preventing such evidence being used in those proceedings.

In short, it would invite a world without evidence, and should be rejected.

On the weight of the compelling evidence provided, I respectfully suggest that it is open to conclude that the charge by Mr. Greenwood QC in respect of Point 2 has been made out and a finding of contempt may be safely made.

POINT 3: Misrepresenting the role of the State Archivist

> **"...deliberately withhold or conceal relevant information concerning the real status of public records during an appraisal process from its State or Federal Archivist in order to achieve its desire to have such records destroyed by using the archivist's deceptively obtained approval to destroy such records when knowing that access to them is being sought by a citizen pursuant to law."**

Of relevance, Section 52 of the *Libraries and Archives Act 1988* obliges public authorities to:

> (a) cause complete and accurate records of the activities of the public authority to be made and preserved; and
> (b) take all reasonable steps to implement recommendations of the State Archivist applicable to the public authority concerning the making and preservation of public records. (underline added).

Together with that obligation, Ms. Matchett, as CEO of a public authority (i.e. the Department of Family Services and Aboriginal and Islander Affairs) was obliged under section 12(3)(r) of the *Public Service Management and Employment Act 1988* to *'...maintain proper records.'* This obligation and respect for them by others was underpinned at all relevant times by sections 31 and 32 of the *Criminal Justice Act 1989* which relevantly state:

> Section **31** of *the Criminal Justice Act 1989* - Official misconduct - describes same:
>
> "**31.(1)** For the purposes of this Act, official misconduct is -
>
> (a) conduct that is in the general nature of official misconduct prescribed by section 32;
>
> (b) a conspiracy or attempt to engage in conduct referred to in paragraph (a).

(2) Conduct may be official misconduct for the purposes of this Act notwithstanding that -

(a) it occurred before the commencement of this Act; or

(b) some or all of the effects or ingredients necessary to constitute official misconduct occurred before the commencement of this Act; or

(c) a person involved in the conduct is no longer the holder of an appointment in a unit of public administration.

(3) Conduct engaged in by, or in relation to, a person at a time when the person is not the holder of an appointment in a unit of public administration may be official misconduct, if the person becomes a holder of such an appointment.

(4) Conduct may be official misconduct for the purposes of this Act regardless of -

(a) where the conduct is engaged in;

(b) whether the law relevant to the conduct is a law of Queensland or another jurisdiction.

Section **32** of the *Criminal Justice Act 1989* - General nature of official misconduct - describes same:

"**32.(1)** Official misconduct is -

(a) conduct of a person, whether or not the person hold an appointment in a unit of public administration, that adversely affects, or could adversely affect, directly or indirectly, the honest and impartial discharge of functions or exercise of powers or authority of a unit of public administration or of any person holding an appointment in a unit of public administration; or

(b) conduct of a person while the person holds or held an appointment in a unit of public administration -

(i) that constitutes or involves the discharge of the person's functions or exercise of his or her powers or authority, as the holder of the appointment, in a manner that is not honest or is not impartial; or

(ii) that constitutes or involves a breach of trust placed in the person by reason of his or her holding the appointment in a unit of public administration; or

(c) conduct that involves the misuse by any person of information or material that the person has acquired in or in connection with the discharge of his or her functions or exercise of his or her powers or authority as the holder of an appointment in a unit of public

administration, whether the misuse is for the benefit of the person or another person;

and in any such case, constitutes or could constitute -

(d) in the case of conduct of a person who is the holder of an appointment in a unit of public administration - a criminal offence, or a disciplinary breach that provides reasonable grounds for termination of the person's services in the unit of public administration; or

(e) in the case of any other person - a criminal offence.

(2) It is irrelevant that proceedings or action of an offence to which the conduct is relevant can no longer be brought or continued that action for termination of services on account of the conduct can no longer be taken.

(3) A conspiracy or an attempt to engage in conduct, such as is referred to in subsection (1) is not excluded by that subsection from being official misconduct, if, had the conspiracy or attempt been brought to fruition in further conduct, the further conduct could constitute or involve an offence or grounds referred to in subsection (1)."

At page 3 of the CJC's submission dated 24 June 1994 to the Senate Select Committee on Public Interest Whistleblowing when dealing with "the Lindeberg Complaint", the CJC makes the following claim in respect of Point 3 above:

"(b) The Destruction was in breach of the *Libraries and Archives Act*

As referred to above, the Archivist examined the documents and made the decision not to order their preservation. She was, of course, free to make any enquiries as to any interests that other parties may have had in the documents. There is no suggestion that the Archivist was actively misled by the Cabinet Secretary or any other person with knowledge of the documents. There is therefore no apparent breach of that act."

The CJC's 1991 submission to EARC on "Archives Legislation" says this:

"...it is essential to establish firmly in the minds of all public servants the importance of complying with the requirements of archive legislation, and therefore any steps that can be taken to strengthen the remedies for failure to do so should be taken.

Undoubtedly there will be occasions when it is more appropriate to deal with a failure to comply on the basis of it being a criminal offence, whilst at other times the incident would be more appropriately dealt with as a disciplinary matter. The two should be alternatives."

The CJC's official letter of 20 January 1993 to Mr. Lindeberg, and the Parliamentary Criminal Justice Committee, signed by CJC Chief Complaints Officer Mr. Michael Barnes said the following:

> *"...When interviewed you (i.e. Mr. Lindeberg) could not point to any specific section of the Libraries and Archives Act 1988 which had been breached but you thought that the State Archivist had been misled because she was not informed that the documents were required for the purposes of litigation. There is no offence of misleading the State Archivist and under the Act he or she would appear to have an almost unfettered (sic) discretion to decide which public records should be preserved and which records can be destroyed. Therefore I can see no breaches of this Act..."*[33]

In the CJC's February 1995 (p30), it says this:

> *"...Contrary to Lindeberg's assertion, there is no statutory duty cast on anybody to provide any specific information to the Archivist about the documents.*
>
> *In these circumstances, it is the Commission's view that no criminal offence or disciplinary offence of official misconduct was committed by those who communicated with the State Archivist."*

While the *Libraries and Archives Act 1988* may have been silent about the (prospective/appropriate) offence of misleading the State Archivist, the over-arcing *Criminal Justice Act 1989* was not. Oddly, both Messrs. Nunan and Barnes failed to mention this despite it properly applying. It is sheer nonsense to suggest that known relevant information (such as being served with notice of anticipated court proceedings in which the records will or may be evidence) concerning public records under appraisal may be deliberately yet lawfully withheld which may otherwise cause the State Archivist to retain rather than shred records.

On 23 February 1995, Mr. Barnes gave the following evidence to the Murphy Select Committee concerning the so-called proper role of the State Archivist pursuant to the *Libraries and Archives Act 1988* by limiting it thus:

> *"...We have to look at the archivist, because Mr. Lindeberg is concerned that her actions in authorizing the destruction were inappropriate. You are aware that the advice of the archivist was sought because the Crown Solicitor said that these documents could be public records. 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 to which Coyne and other public servants may be entitled to access pursuant to regulations made under the Public Service Management and Employment Act.*
>
> *In my submission, the fact that people may have been wanting to see these documents - and there is no doubt 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*

[33] Lindeberg's Exhibit 36 p2 Senate Select Committee on Unresolved Whistleblower Cases **"The Shredding"** 25 January 1995.

> *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 that 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."*[34]

The suggestion here is that the State Archivist, while being fully aware of legal claims on public records under appraisal may authorise their destruction just so long as they have no "historical" value. Presumably, either that approval only permits the "historical" values/aspects of the records to be destroyed, while the "legal" aspects/values somehow remain in tact to be sorted out by parties in conflict or by the courts, or, the "legal" aspects/values of such records must either suffer by their subsequent disposal. It reduces the State/Federal Archivist's function to an impossible farce whereas its internationally accepted function in civilised societies recognises absolutely that the "legal/evidentiary" value of records must be taken into account under appraisal processes, therefore recognising that any State/Federal archivist/recordkeeper *"...must be the gatekeeper for the rule of law, not its marauder."*[35]

In another segment of evidence to the Murphy Select Committee, Mr. Barnes spoke of the archivist's role:

> *"...Mr Lindeberg has a view about the obligation of the archivist. The commission does not share that view. Its view is based on legal advice it obtained from the barrister it retained to do the job"*[36]

The inescapable conclusion is that the CJC has adopted three positions over time about the proper role of the State Archivist, but, in respect of the Heiner shredding, the Nunan opinion contradicts the Barnes opinion concerning the appraisal discretion. The Nunan view is *"...an almost unfettered"* discretion, while the Barnes view, put to the Senate, is a strictly "limited" one to only considering a record's "historical" value, while, at the same time, he falsely presented it as being Mr. Nunan's.

The Committee might note how the CJC compounded this deception in its submission to the Senate Committee of Privileges in its 71st Report in respect of this area of contention. Then CJC Chairman, Mr Frank Clair wrote:

> *"...The allegation is based upon differences of opinion about the legal interpretation of the statutory role of the State Archivist. Even if Mr. Barnes were completely mistaken in his view about the role of the State Archivist, his expression of an opinion on the topic could never amount to false and misleading evidence. This is especially so when Mr. Barnes made it clear in his evidence before the Committee that the Commission's view was based on legal advice received from an independent barrister...."*

And concluded:

---

[34] Murphy Select Committee Senate *Hansard* 23 February 1995 p108

[35] See *Archives and Manuscripts* – The Journal of the Australian Society of Archivists - Volume 31 Number 1 May 2003 p103 - In The Agora – *"The Rule of Law: Model Archival Legislation in the Wake of the Heiner Affair"* author Kevin Lindeberg (in co-operation with Dr. Terry Cook, Archival Studies Programme - University of Manitoba Canada.

[36] Ibid p137

> *"...In the Commission's respectful submission, the expression of a genuinely-held legal opinion about the statutory role of the State Archivist, even if wrong, could never amount to providing false and misleading evidence."*[37]

Adding weight to Point 3, the Committee may wish to consider what Messrs. Morris QC and Howard in October 1996 said about this area. The opined that the *Libraries and Archives Act 1988* does not override other legal considerations in respect of preservation of public records (e.g. Section 129 of the *Criminal Code (Qld).* Of direct relevance to Point 3, they had this to say at page 97:

> *"The fact that a document is the Government's "own property" certainly affords no defence to a charge under s.132 or s.140 (or, for that matter, s.129) of the Criminal Code; the gravamen of the offence does not consist in a wrongful interference with another person's property rights (which may constitute, for example, stealing under s.391 of the Criminal Code, or wilful destruction of property under s.469 of the Criminal Code), but in the fact that the destruction of property (whether it belongs to the person who destroys it, or to anyone else) may interfere with the due administration of justice.*
>
> *Nor is the fact that the destruction occurred "in accordance with a Statutory regime which permitted ....destruction" of any relevance. The State Archivist's authorization for the disposal of a public record under s.55 of the Libraries and Archives Act 1988 does not over-ride ss.129, 132 or 140 of the Criminal Code; it merely over-rides the general prohibition which Section 55 contains against disposing of public records without such authorization. Section 55 does not confer on the State Archivist the power to confer a plenary indulgence, authorizing the destruction of any document even if its destruction is prohibited by s.129 of the Criminal Code or would have the effect of obstructing, preventing, perverting or defeating the course of justice within the meaning of ss.132 or 140 of the Criminal Code; it merely empowers the State Archivist to exempt a document from the general requirement of section 55 that "a person shall not dispose of public records other than by depositing them with the Queensland State Archives."*

A fresh aspect has arisen which the CJC appears to have overlooked in respect of the role of the State Archivist in this matter. It is open to conclude that the Office of Cabinet was acting beyond its authority, *ultra vires*, that is unlawfully, when seeking to have the Heiner Inquiry documents destroyed because the records were always in the ownership of Ms. Matchett pursuant section 12 (3) (r) of the *Public Service Management and Employment Act 1988.* All parties ignored this obligation (on her) to *"...maintain proper (departmental) records."* The Crown Solicitor advised the Queensland Cabinet on 16 February 1990 that the records could not be fairly described as "Cabinet documents" because they were not created for a Cabinet purpose. It was advised that any claim by the Crown for "Crown privilege" (now known as "public interest immunity") would fail in order to maintain the confidentiality of the records.

While the Office of Cabinet informed the State Archivist on 23 February (p2) about the documents not being "Cabinet documents" and not attracting "Crown privilege", it failed to

[37] See pp8-9 71st Report of the Senate Committee of Privileges.

inform her that a legal claim for access on them was known to exist at the time of seeking her (urgent) approval to have them destroyed. She was told that the material *"...was no longer required or pertinent to the public record."* This was plainly false and misleading, and known by the applicant to be so. It unravels the subsequent approval because it was obtained by means of deliberate deception against a public official. In short, a fraud was committed against her statutory office. This conduct alone causing a public official not to act honestly, impartially and in the public interest should have enlivened sections 31 and 32 of the *Criminal Justice Act 1989* covering official misconduct, however throughout this saga, the CJC never interviewed the State Archivist.

However, it appears that the State Archivist compounded the wrongdoing by failing to satisfy herself (at least on available written evidence) about the following:

- Was the ownership and control of the records under appraisal in the applicant;
- Was the applicant acting beyond its authority in seeking the disposal of the records;
- Was an *ad hoc* appraisal appropriate under the circumstances knowing that the material was created by an inquiry into a youth detention centre;
- As defamatory material was alleged to exist in the records pertaining to the management of a youth detention centre, did it concern possible allegations of abuse of children by public officials subject to the inquiry which would have meant that the records had a public interest value, as well as a police/CJC investigation value.

While the State Archivist's role has been the subject of examination because she gave approval on 23 February 1990 to destroy the records pursuant to section 55 of the *Libraries and Archives Act 1988* (albeit on the supply of known false and misleading information), her decision only pertains to the Heiner Inquiry documents in this matter, and consideration may not reasonably reach beyond that point. However, other serious related matters have surged beyond this point which appear to be relevant to this Committee's considerations, going to:

1. the disposal of the original complaints on 22 May 1990 without her prior approval revealing abuse of children in respect of improper handcuffing practices and sedating inmates;
2. the destruction of the photocopies of the original complaints on 23 May 1990 without her prior approval;
3. her failure to act independently after being informed by Mr. Coyne on 16 May 1990 that the Heiner Inquiry records she had approved on 23 February 1990 to be destroyed on a pretext that they were not required when they were known to be required in evidence in judicial proceedings;
4. the Heiner records now being were known to contained evidence about the abuse of children in a State-run institution, potentially concerning the pack rape of a female indigenous inmate;
5. remaining mute at all relevant times despite knowing that the CJC was misrepresenting her role before the Senate.

These matters may require Ms. McGregor being invited to appear and answer relevant questions under oath if the Committee is not satisfied already that the evidence provided by the CJC in respect of the role of the State Archivist was knowingly false and misleading.

However, on the weight of the compelling evidence provided, I respectfully submit that it is sufficiently open to conclude that the charge set out by Mr. Greenwood QC in Point 3 has been made out and a finding of contempt may be safely made.

POINT 4: An instrument to cover-up crime conditional upon the payment of public moneys for silence

> **"...buy the permanent silence of any public official from the public purse in a Termination State or Federal government Deed of Settlement about known alleged abuse of children in a State-run institution for the rest of his or her life.**
>
> **In this matter, the Deed of Settlement of 7 February 1991 used as the instrument to terminate Mr. Coyne's employment specifically made such demands.**
>
> **At the time this matter came before the Senate, it was not disclosed that the following form of words in the aforesaid Deed of Settlement *"...the events leading up to and surrounding his relocation from the John Oxley Youth Detention Centre"* was about or could be argued to cover incidents of alleged child abuse in the period before the Heiner Inquiry was established.**
>
> **Unquestionably the Goss Queensland Government knew that abuse of children was an issue of concern at the Centre. On 1 October 1989, the Hon. Ann Warner, when Opposition spokesperson for Family Services, cited specific incidents of alleged child abuse in *The Sunday Sun* (1 October 1989 p 19), calling for the incidents to be investigated.**
>
> **These incidents led directly to the establishment of the Heiner Inquiry, but it seems that other grievances of a similar kind going back to 1988 may have been aired at the Inquiry.**
>
> **The drafting and use of such an instrument, coming from any government with the assistance of the Office of Crown Law, in effect, indirectly or directly authorises, or, at the very least, condones the abuse of children in State-run institutions.**
>
> **We suggest that any Minister/officer or agent of the State/Crown, who possessed knowledge of the nature of these alleged unlawful events which they then specifically required not to be broadcast by inserting prohibiting clauses in a State/Crown Deed of Settlement, would be acting outside the law, and would be engaging in *prima facie* abuse of office, obstruction of justice and misappropriation of public monies for an illegal purpose if public monies were to change hands as part of such a termination of employment arrangement. The facts show that former Minister the Hon. Anne Warner and her then Director-General Ms. Ruth Matchett possessed such knowledge when executing the February 1991 Coyne/State of Queensland Deed of Settlement."**

It appears to be open to suggest that the conduct by certain public officials and others (who themselves ***always knew*** about that criminal/disciplinary nature of the evidence at relevant times) in reaching such a settlement involving the exchange of public monies on the proviso of silence concerning those child abuse events, may breach the following provisions of the *Criminal Code (Qld) etc:*

Section 87 – **Official corruption**

(1) Any person who—

(a) being employed in the public service, or being the holder of any public office, and being charged with the performance of any duty by virtue of such employment or office, not being a duty touching the administration of justice, corruptly asks for, receives, or obtains, or agrees or attempts to receive or obtain, any property or benefit of any kind for himself, herself or any other person on account of anything already done or omitted to be done, or to be afterwards done or omitted to be done, by the person in the discharge of the duties of the person's office; or

(b) corruptly gives, confers, or procures, or promises or offers to give or confer, or to procure or attempt to procure, to, upon, or for, any person employed in the public service, or being the holder of any public office, or to, upon, or for, any other person, any property or benefit of any kind on account of any such act or omission on the part of the person so employed or holding such office;

is guilty of a crime, and is liable to imprisonment for 7 years, and to be fined at the discretion of the court.

(1A) If the offence is committed by or in relation to a Minister of the Crown, as the holder of public office mentioned in subsection (1), the offender is liable to imprisonment for 14 years, and to be fined at the discretion of the court.

Section 88 - Extortion by public officers

Any person who, being employed in the public service, takes or accepts from any person, for the performance of the person's duty as such officer, any reward beyond the person's proper pay and emoluments, or any promise of such reward, is guilty of a misdemeanour, and is liable to imprisonment for 3 years.

Section 245 - Definition of "assault"

(2) A person who strikes, touches, or moves, or otherwise applies force of any kind to, the person of another, either directly or indirectly, without the other person's consent, or with the other person's consent if the consent is obtained by fraud, or who by any bodily act or gesture attempts or threatens to apply force of any kind to the person of another without the other person's consent, under such circumstances that the person making the attempt or threat has actually or apparently a present ability to effect the person's purpose, is said to assault that other person, and the act is called an **"assault."**

Section 132 – Conspiracy to pervert the course of justice

> "Any person who conspires with another to obstruct, prevent, pervert, or defeat the course of justice is guilty of a crime, and liable to imprisonment for 7 years."

At page 4 of the CJC's submission dated 24 June 1994 to the Senate Select Committee on Public Interest Whistleblowing when dealing with "the Lindeberg Complaint", the CJC made the following pertinent claim in respect of Mr. Coyne's severance payment:

> *"...Some of the parties with an interest in this complaint have suggested that the itemisation of the $27,190 paid to Coyne was inappropriate and unlawful. The Commission does not consider that the apportionment of the agreed severance settlement is a matter which enlivens its jurisdiction. It is clear that the Director-General and the Minister bona fide believed that they were entitled to settle Coyne's redundancy package in the manner that they did. The Commission considers the break-down or apportionment of that payment was no more than part of the negotiating tactics engaged in by the parties."*

The background activity of the so-called "negotiating tactics" leading up to the payment is illuminating. It is known that at a meeting of 10 January 1991, certain QPOA officials threatened departmental officials to take *"...the entire saga of the Centre"* to the CJC (and other bodies) unless certain moneys were paid. The contents of the meeting were set out in a memorandum dated 18 January 1991 by Director of Finance and Organisational Services Mr. Gary Clarke to DFSAIA Director-General Ms. Matchett. Given that such a threat was made to gain public money which should have reasonably given rise to a concern that *"...the entire saga of the Centre"* may have involved official misconduct because the CJC's jurisdiction concerned such matters, then, instead of caving into the threat and paying the public moneys which all the parties knew Mr. Coyne was not lawfully entitled to, she should have referred the matter to the CJC for independent examination. Ms. Matchett was obliged to refer all suspected official misconduct to the CJC pursuant to section 37(2) of the *Criminal Justice Act 1989*. But she did not. It is therefore open to suggest that as Ms. Matchett also knew about the handcuffing allegations at that time, and the alleged 'unresolved' pack rape incident[38], that she, like others, had a vested interest in "gagging" everything, and keeping past embarrassments in-house.

The relevant provisions of the 12 February 1991 Deed of Settlement[39] say this at Clauses 2, 3 and 5:

> *"2. The Claimant will not canvass the issues surrounding his relocation from John Oxley Youth Centre, Wacol to Brisbane or events leading up to and surrounding his relocation with any officer of the Department of Family Services and Aboriginal and Islander Affairs or in the press or otherwise in public and will forbear to take any action in any forum whatsoever which may have jurisdiction in respect of any of such issues or events.*
>
> *3. The terms of this Agreement will not be disclosed by either party without the written consent of the other first being obtained.*

[38] See *The Courier-Mail* March 1989 coverage of the pack rape incident at Point 6.
[39] See Volume 2 Criminal Justice Commission Submission to the Senate Select Committee on Unresolved Whistleblower Cases 1995.

> *5. Without limiting the generality of the foregoing provisions the Claimant shall not permit or allow the events leading up to and surrounding his relocation to Brisbane to be the subject of any autobiography, biography or any published article."* (Underlining added)

It is therefore open to suggest that using an awareness of this unaddressed wrongdoing as a lever, in the first instance, to extract public moneys may breach the *Criminal Code (Qld)* in respect of extortion and collusion because the "events" concerned abuse of children in State care which certain parties at the meeting conjointly knew about. In the second instance, ***any*** agreement by the same parties involved not to report such known unlawful/criminal offences (to the CJC or other proper authority), as they were obliged to do, in exchange for public moneys may be a breach of section 132 of the *Criminal Code (Qld)* – conspiracy to pervert the course of justice – at the very least.

Accordingly, the euphemistic use of the word "events" and what they were become key factors in understanding the seriousness of the Heiner Affair, and therefore, the Committee should explore this feature with vigour and in depth.

On the weight of compelling evidence, it is therefore open to conclude that public officials (and others) involved in the Deed of Settlement's wording knew that the word "events" was a necessary conspiratorial euphemism for "incidents concerning the abuse of children in care." It was seen to be an essential guarantee to attempt to legally bind all parties (particularly from the Crown's perspective after Mr. Coyne had threatened to go to the media about his treatment and sudden secondment) to silence in order to protect themselves so that the truth of what had happened at the Centre under Mr. Coyne's management and who knew about it was never publicly revealed.

Conspicuous Nonsense

The instrument was sealed by the payment of public moneys knowingly and deceptively coloured in its construction by the parties as so-called public service award entitlements (i.e. $14,110 [unpaid overtime] and $10,000 [travelling time]) which those parties knew did not apply at Mr. Coyne's classification level or to his new gazetted position[40]. It is a conspicuous nonsense in the area of industrial relations to have any employee being required to sign a "silencing" Deed of Settlement with his/her employer in order to be paid because payment, under the *Public Service Award (State)* as in keeping with any normal employer/employee relationship under the award system, is based on hours worked not for work done. This, in itself, should have alerted the CJC to the suspicious nature of the Deed right from the outset, over and above its other unlawful element of Minister Warner authorising the payment beyond her known ministerial spending limits under the *Financial Administration and Audit Act 1977.*

The Forde Inquiry Report tabled in the Queensland Parliament found this about the "events" – namely the abuse of children at the Centre - at page 172-173:

> *"That on the order of Mr. Peter Coyne, three residents of the John Oxley Youth Detention Centre were handcuffed on the evening of 26 September 1989. Those residents were X, Y and Z. Daniel Alderton was not one of these three residents.*
>
> *That both the act of handcuffing and then the length of time that X and Y were handcuffed constituted a possible breach by Mr. Coyne of section 69(1) of the*

[40] See Queensland Government Gazette No.55 3/3/90 p1088.

> *Children's Services Act 1965 in that such conduct may have amounted to ill-treatment, neglect or exposure of a child in a manner likely to cause unnecessary suffering or injury to the physical or mental health of the child involved.*
>
> ***That as more than 12 months have elapsed since the date of the commission of the offence, no prosecution for any such breach can now be made.***
>
> *In light of the evidence heard by the Inquiry, such handcuffing and more particularly the duration of it, could not be regarded as reasonable punishment, nor was it reasonably necessary in order to dissuade the residents from behaving in a recalcitrant or mutinous manner. As such, in the Inquiry's view, Mr. Coyne was not afforded the protection of section 69(5) of the Children's Services Act 1965, nor of Regulation 23(10) of the Children's Services Regulations 1966."* (my emphasis added)

I am advised by counsel that the elements of the handcuffing offence, in fact, may not be time barred because it may be in breach of section 245 of the *Criminal Code (Qld)* – assault – to which the Forde Inquiry curiously did not turn its mind.

Another admission revealing the character of the so-called JOYC "events" is that the Queensland Government ***knew*** that certain wrongdoing was occurring at the Centre because it described the Heiner Inquiry witnesses as whistleblowers. Throughout the Queensland Government's submission to the Senate in 1995, the term "whistleblowers" is used constantly concerning the witnesses who came before Mr. Heiner. As recently as 23 October 2003, a media release published by the Department of Premier and Cabinet addressing the Heiner Affair, stated:

> *"...This was about protecting the whistleblowers."*

The simple question to be asked is what were the so-called whistleblowers blowing the whistle about? It was left unstated until Document 13 emerged from the pack in July 1995. Plainly, the only reasonable conclusion one can reach is that they were blowing the whistle about child abuse, potentially going to child sexual abuse.[41]

In the Queensland Crown Law advice of 21 March 1995[42] addressing Mr. Callinan QC's bracket of evidence to the Senate Select Committee on Unresolved Whistleblower Cases on 23 February 1995 which the Queensland Government sent to the Committee, at page 12, the Crown Solicitor makes this disturbing comment:

> *"...Finally, whilst the 37 witnesses who gave evidence to Mr. Heiner (many of whom, as I said, would doubtless have seen themselves as Whistleblowers) would certainly have been protected by such retrospective legislation against Defamation proceedings, it would not have protected Mr. Coyne (for whom Mr. Lindeberg was acting) and others from the odium of whatever accusation were made against them, and these may have been quite defamatory."*

[41] See *The Courier-Mail* 17 and 18 March 1989 (discussed further on in this complaint).
[42] See Volume 1 Queensland Government Submission, Supplementary Submissions and Other Written Material Authorised to be Publish – Senate Select Committee on Unresolved Whistleblower Cases.

What Was The Defamatory Odium

Once again, no one ever asked what was "the odium?" This key question should have been asked by the CJC, if not even the Senate. It is clear from the Crown Solicitor's above advice, that there was a real concern that the public might see what "the odium" was when it was unquestionably known by government (including the Office of Crown Law having seen the original Heiner Inquiry complaints) that it concerned abuse of children in one of its youth detention centres. In addition to the original complaints, the Dutney memorandum of 1 March 1990, Document 13, and Forde Inquiry Exhibit 20 confirm its existence. The shredding ensured scrutiny never happened, and the "gagging" Deed of Settlement cemented it firmly in place.

Another *prima facie* inculpatory admission came from Ms. Warner herself (when Shadow Families Spokesperson) in *The Sunday-Sun* of 1 October 1989. In the article, she revealed that she was aware of the improper handcuffing of children, doping of children and called for an inquiry into the Centre's management practices. Another significant admission by Ms. Warner regarding her concern about Mr. Coyne's management of the Centre may be found in *The Queensland Times* 9 April 1990 (p5) in which this is said:

> *"...We've known of the problems at the centre for a long time and when we took over the ministry our first step was to appoint a new manager which we hoped would solve the problems. But problems to still exist,"* the spokesperson (for Minister Warner) said.

Yet another *prima facie* inculpatory admission came from former Goss Government Environment and Heritage Minister the Hon. Pat Comben in February 1999 on Channel 9's *Sunday* cover story entitled "Queensland's Secret Shame". On national television, he revealed that all members of the Goss Cabinet had been made aware that the Heiner Inquiry was investigating child abuse at the Centre and that it must have been serious if it reached Cabinet level. While he subsequently claimed to have been taken out of context, viewing of the film suggests that he knew precisely what he was saying, and it is recommended that the Committee view the programme so that it might make its own judgement.

On 9 February 2004 I lodged a fresh complaint with Mr. Len Scanlan, Queensland Auditor-General in respect of this payment suggesting that as the character of the "events" compellingly suggests that it is about known abuse of children in care, it introduced additional layers of possible criminality associated with the payment and the construction of the Deed of Settlement, notwithstanding the place of the unlawful shredding in this mix remained. On 13 May 2004, in response to my request that he address my complaint speedily, Mr. Scanlan declined to act, pursuant to his discretion under section 79(1) of the *Financial Administration and Audit Act 1977*, until the findings of this Committee and that of the House of Representatives Legal and Constitutional Affairs Committee are tabled. Of this Committee's deliberations, he said:

> *"...I have no reason to believe that the Committee's Inquiry will be other than considered, comprehensive and thorough and in discharging my responsibilities I do not wish to duplicate the work of other authorities."*

Mr. Scanlan is repeating history. Unfortunately, and, in my view inappropriately, it is open to suggest that he is abrogating and/or delaying his statutory duty to act under the *Financial Administration and Audit Act 1977* to the Senate Select Committee on the Lindeberg Grievance in the same manner the Queensland Police Service did concerning its duty to act under the *Police*

Service Administration Act 1990 to the Senate Select Committee on Unresolved Whistleblower Cases in January 1995. It is my respectful submission that Mr. Scanlan should be invited to appear and explain his position under oath.

Nevertheless, on the weight of the compelling evidence provided, I respectfully submit that it is open to conclude that the charge founded by Mr. Greenwood QC in Point 4 has been made out and a finding of contempt may be safely made.

POINT 5. Deliberately tampering with evidence provided to the Senate as in Document 13.

The sending and presentation of Document 13 was an act of significant hubris on the part of the Queensland Government. It revealed an attitude of untouchability within its own Constitutional jurisdiction and an indifference to (a) the Senate's commitment to procedural fairness; and (b) respect for due process by one State government against the Federal Parliament.

Document 13 warrants very close examination as the various legal consequences which flow from its mere existence all carry serious questions and potential contemptuous ramifications because that single act of hubris in July 1995 was obviously not thought through at the time, but now, in 2004, has come back to haunt those minds who decided to send it in its tampered form nearly 9 years ago.

The fact that the Senate may not have properly considered Document 13 at the time, or in its report "*The Public Interest Revisited*", is not the central issue here. The issue turns on what the Senate asked and why it was sent in its known incomplete/tampered state.

Document 13 was provided to the Forde Commission of Inquiry into the Abuse of Children in State Institutions and it is described in these terms at page 170 under the heading of "John Oxley Youth Detention Centre: Findings on Use of Handcuffs."

> *"In public hearings before the Inquiry, evidence was heard in relation to three handcuffing incidents said to have occurred at John Oxley in and around September 1989:*
>
> *(1) the handcuffing of three residents in the secure yard*
> *(2) the handcuffing of X in his room*
> *(3) the handcuffing of Theresa Hearn to the tennis court fence.*
>
> *These incidents warranted detailed and public examination, not only because they had been the subject of considerable controversy, but because they typify the consequences of the pressures caused by inadequate facilities and insufficiently trained staff in detention centres. Evidence was taken in public session because of longstanding controversy and speculation as to the circumstances and causes of the incidents alleged and the identity of the young people involved. Instead, in order to give protection to the witnesses who were former John Oxley residents, a suppression order was made to prevent publication of their names. The exception was Theresa Hearn, who did not wish such an order to be made.*
>
> *The occurrence of the first of the three instances of handcuffing is beyond dispute. In addition to oral evidence in relation to this episode, there is also documentary proof in the form of a report from the Centre Manager, Mr Peter Coyne, to the Executive*

Director, Department of Family Services dated 9 October 1989. This report refers to the handcuffing of three residents (two females and one male) at the Centre on the evening of 26 September 1989. The other two specific instances about which the Inquiry heard evidence involved the alleged handcuffing of two individual residents at the Centre on separate occasions. On one such occasion it was alleged that a male was handcuffed to the metal bars of the window in his room. The handcuffs on this occasion were said to be applied in such a fashion that the resident's hands were restrained above his head, with the result that the resident could neither sit nor lie down. The other occasion involved the alleged handcuffing of a female detainee to the tennis court fence at the Centre."

This so-called "documentary proof" mentioned above is Document 13. Plainly the Forde Inquiry received it into evidence in its complete form. Of critical relevance here is that when it was provided to the Senate, its first two pages of salutations and comment were missing. In short, its complete version would have demonstrated that Mr. Coyne was informing his immediate superior, Executive Director, Mr. Ian Peers, about his "management" of the Centre with his approval.

Notwithstanding Mr. Coyne was engaging in unlawful abusive conduct against children in care and should have been held to account, I nevertheless submit that it is wholly unacceptable for him to be scapegoated by the Queensland Government before the Senate when those above him knew of his actions and did nothing about it thereby indicating their approval. In my opinion, in withholding those two pages from the Senate in 1995, the Queensland Government obstructed the Senate Select Committee on Unresolved Whistleblower Cases from comprehensively considering the matter.

Accordingly, I submit that Document 13 gives rise to serious questions touching on two matters of possible contempt, which are:-

(a) tampering with evidence, and conspiracy to obstruct the Senate from making full and proper findings and recommendations because of its tampered state;
(b) conspiracy to attempt to inflict a detriment for an improper purpose on a witness and/or witnesses appearing before a Senate inquiry.

Document 13 surfaced amid a bundle of evidence sent by the Queensland Government on 31 July 1995. It came in response to a request for assistance by letter of 11 May 1995 from the chairman of the Senate Select Committee on Unresolved Whistleblower Cases, Senator Shayne Murphy. It came to Canberra under the signature of Dr. Glyn Davis, Director-General of the Office of Cabinet. I was unaware of its existence until I received a copy of the red bound submissions, supplementary submissions and other written material authorised to be published – Volume 1 Queensland Government – booklet which I recall happened some time after the Committee's report – *The Public Interest Revisited* – was tabled in late 1995.

The Committee may be obliged to trace whose decision it was in the Queensland Government to tamper with the exhibit and why. The incomplete form in which it was sent plainly was meant to cause Mr. Coyne maximum embarrassment, and to lessen his evidence and credibility in the eyes of the Senate as a witness. Its complete form, while not lessening the unacceptability of Mr. Coyne's handcuffing exploits against children, would have broadened the blame both in accepting the handcuffing or failing to curtail his illegal activities. Either way, the Senate was just as entitled to receive the complete uncensored Document 13 in July 1995 as the Forde Commission of Inquiry was in February 1999.

It is reasonably open to suggest that another motive in sending a tampered Document 13 undermining Mr. Coyne's standing in the eyes of the Senate may exist. It may have been, albeit by association, an attempt on the part of the Queensland Government to undermine my standing as a witness before the Senate because, as his former union advocate, all my industrial efforts, and subsequent effects since my dismissal, were going to protecting a *prima facie* child abuser.

On the weight of the compelling evidence provided, I respectfully submit that it is open to conclude that the charge founded in Point 5 has been made out and a finding of contempt may be safely made.

POINT 6. Deliberately withholding from the Senate known relevant evidence in the possession and control of the Queensland Government at all relevant times revealing the crime of pack-rape and criminal paedophilia.

The May 1988 pack-rape file provides a fresh insight into deception of the highest order, and given that sworn evidence exists that Mr. Heiner raised the matter during the interrogation of a witness[43], it gives rise to important questions concerning another layer of possible misconduct and/or criminal conduct in the Heiner affair.

It is suggested that the Committee must reasonably satisfy itself that Mr. Heiner did take evidence on this matter during the course of his inquiry, and if so, why was not the relevant department file provided to the Senate by the same reasoning that Document 13 was because it existed at all relevant times just as Document 13 did.

It should be noted that in sworn evidence before the House of Representatives Legal and Constitutional Affairs Committee on 18 May 2004, after being summonsed to appear, Mr. Heiner claimed that he did not take evidence about the pack rape incident. He acknowledged that his memory was not good, and did not recall interviewing Mr. Coyne when in fact he did for the whole of 11 January 1990.

There is, however, compelling evidence, gathered by Mr. Grundy, suggesting that Mr. Heiner did indeed look into the pack rape incident, and therefore, it is respectfully suggested that the Committee may wish to ask Mr. Grundy (and the aforesaid Heiner Inquiry witness) how he can reach such a conclusion, notwithstanding that Mr. Heiner could not recall the incident when questioned about it by the House of Representatives Legal and Constitutional Affairs Committee in Brisbane on 18 May 2004.

Major Deceit in March 1989 Over the Pack Rape Incident

However, to demonstrate that an awareness about the pack rape existed in the months leading up to the establishment of the Heiner Inquiry by senior departmental officials, a similar incident[44] was mentioned in *The Courier Mail* on 17 and 18 March 1989. It is assumed that the incident is

[43] Mr. Michael Roch appeared before the House of Representatives Legal and Constitutional Affairs on 16 March 2004 in Brisbane and provided evidence under oath about this matter and his view about the management of the Centre.
[44] *The Independent Monthly* (p3) "New twist in mysterious rape saga" by Bruce Grundy and Susann Kovacs http://www.justiceproject.net/justice/content/files/documents/Rape%20Twist.pdf

the same 24 May 1988 Lower Portals/Mount Barney incident and not another one elsewhere, and therefore, it is open to suggest that either:

- the Families Minister was seriously misled in his briefing document by his own bureaucracy potentially involving a conspiracy; or
- the Families Minister the Hon. Craig Sherrin himself was a partner in the conspiracy with his own departmental bureaucracy against *The Courier-Mail's* readership and the public interest in order to cover-up the State's culpability in the pack-rape incident.

The pack-rape incident first appeared in *The Courier-Mail*[45] on 17 March 1989 through the disclosure of a whistleblower at the Centre in the wake of a major riot[46]. The anonymous Youth Worker claimed that a 15-year-old girl had been pack-rape on an art outing. Then Families Minister the Hon. Craig Sherrin informed *The Courier-Mail* on 18 March 1989 that the victim was 17 years-of-age and that she had declined to lay charges despite being invited to do so. In fact, the victim (as the departmental file shows) was a 14-year-old minor not legally capable of consenting to sexual intercourse, and wanted the alleged rapists charged but, after being intimidated for 2 days, declined to proceed when the police first arrived some 4 days after the incident.

In March 1989, neither *The Courier-Mail* nor the public knew or were entitled to know who the victim was, her age, or what the departmental report actually said because disclosure was prevented under relevant juvenile justice legislation and freedom of information legislation had not been enacted. Obviously, those in authority in the Department had legal access to the girl's personal file, let alone the pack-rape file. The passage of years changed everything for those of us outside the system. In 2004, it can be said with authority what happened because the relevant Lower Portals file is held via a freedom of information application, and the victim found because Mr. Grundy holds her personal testimony of the incident and has met with her in many occasions. For the record, I have never met the victim. Her file was tabled before the House of Representatives Legal and Constitutional Affairs Committee on 16 March 2004.

The victim has now commenced an action in damages in the Supreme Court of Queensland against the State of Queensland over the incident.

However, in 1989, because neither the girl's identity nor her file was legally accessible, there was no way of showing that a serious deception had been perpetrated on the public (and *The Courier-Mail*) in the Minister's response. Consequently, 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.

It is simply implausible to believe that some of the following public officials did not know, at all relevant times, that the victim was a 14-year-old minor and not a 17-year-old when the assault occurred (assuming it is the same Lower Portals incident) because Mr. Coyne reported to this Executive team via his immediate supervisors, Messrs. Ian Peers and George Nix, and the Minister's briefing note must have traversed down and up this Executive team route at some stage.

---

[45] See *The Courier-Mail* 17 & 18 March 1989.
[46] *The Sun* 16 March 1989 Front page "Rampage at Teen Jail."

The Make-up of the March 1989 Department of Families Executive Team

Director-General:	Mr. Alan C. Pettigrew (deceased)
Deputy Director-General (Corporate Support)	Mr. Colin W. Thatcher
Deputy Director-General (Child Protection and Family Support)	Ms. Myolene Carrick
Deputy Director-General (Community and Youth Support)	Mr. George E. Nix
Executive Director (Child Protection and Family Support)	Mr. Barry McPhee
Executive Director (Youth Support)	Mr. Ian Peers
Executive Director (Community Support)	Ms. Ruth L. Matchett
Director and Principal Adviser, Intellectual Handicap Services	Ms. Robyn N. Shepherd
Executive Officer to Director-General	J. Hogan

* Taken from the Queensland Government Directory as at 3 March 1989

While it is speculative (against this extraordinary criminal deception against the public interest), it is reasonable to suggest that the anonymous whistleblower may have decided to bide his or her time until circumstances arose which allowed the matter to be raised again. That opportunity appears to have come in the shape of the Heiner Inquiry some 7 months later. It is therefore open to suggest that the unknown Youth Worker disclosed the pack rape concern to Mr. Heiner as a public interest disclosure, which, in turn, caused Mr. Heiner to interrogate Mr. Roch (and possibly others including Mr. Coyne) about the matter, to say nothing about possibly subpoenaing relevant departmental files. Also, given the serious misinformation provided to the former Minister in March 1989, Mr. Heiner may well have realised that those who commissioned him to conduct his inquiry into the Centre (i.e. Messrs. Pettigrew and Nix whose involvement in May 1988 in covering up the pack rape is well attested to in the departmental file) would themselves have to be questioned about their handling of the pack-rape incident at all relevant times, and may have to face quite adverse findings. Perhaps the inquiry and its prospective findings became exceedingly daunting for everyone, especially for Messrs. Peers and Nix who were on the same March 1989 Departmental Executive team when the Minister was lied to so a government bureaucracy, at its highest levels, could continue to cover up a serious criminal offence of child sexual assault. Ms. Matchett served on the same Executive team in March 1989.

If sufficient supporting evidence can be provided to material in this submission, I respectfully submit that it may be open to conclude that the charge founded in Point 6 has been made out and a finding of contempt may be safely made.

PART B - ADDITIONAL INSTANCES OF FALSE AND MISLEADING EVIDENCE

Point 7. Deliberately Misinterpreting *Public Service Management and Employment Regulation 65* and Withholding Certain Crown Law Advices

At page 3 of the CJC's submission dated 24 June 1994 to the Senate Select Committee on Public Interest Whistleblowing when dealing with "the Lindeberg Complaint", the CJC made the following claim in respect of the alleged breach of *Public Service Management and Employment Regulation 65.*

> "(c) Breach of Public Service Management and Employment Regulations 46 and 65.
>
> These regulations give certain rights to public servants when documents relating to an officer are placed on official files or are held on an officer's file. In this case none of the Heiner Inquiry documents were placed on any officer's file and the regulations therefore did not come into play."

Public Service Management and Employment Regulation 65 provides for:-

> "**Access to officer's file**: 65(1) At a time and place convenient to the department, an officer shall be permitted to peruse any departmental file or record held on the officer.
> (2) The officer shall not be entitled to remove from that file or record any papers contained in it but shall be entitled to obtain a copy of it."

Mr Coyne's solicitor, on 8 February 1990, made this legal claim on the Heiner Inquiry documents against the Families Department pursuant to rights embodied in *Public Service Management and Employment Regulation 65:*

> *"We specifically request copies of the following documents:*
>
> *(i) State of allegations made to the Department by employees appertaining to complaints against our clients and which may be the subject of Mr. Heiner's enquiry; and*
> *(ii) Transcripts of evidence taken either by Mr. Heiner or in respect of the complaints which specifically refer to allegations or complaints against our clients."*

Mr. Nunan, when interpreting *Public Service Management and Employment Regulation 65,* actually ***misquoted*** it which had the effect of severely limiting its application, contrary to regulation as written. He said in his review of 20 January 1993:-

> *"...You (i.e. Mr. Lindeberg) have also alleged breaches of regulations 46 and 65 of the Public Service Management and Employment Regulations. These*

> *regulations do not say that any adverse items of correspondence received about an officer have to be copied and given to him or her. That right only accrues when it is placed on "any files or records relating to that officer" or are "held on the officer's file."..."*

Of critical importance, the Crown Solicitor's advice of 18 April 1990 addressed the applicability of *Public Service Management and Employment Regulation 65* to the original complaints against Mr. Coyne, being held in the Department's possession and control on a file separate to Mr. Coyne's personal file at the time. Of relevance the advice states this:-

> *"...However, Mr. Coyne, through (sic) his solicitor's letter of 8 February has specifically sought to exercise his rights under Regulation 65. While it may be argued that the statements are not part of a Departmental file held on Mr. Coyne, it would appear artificial to say that they are not part of a Departmental record held on him as all but one of the statements specifically identify Mr. Coyne by name or by position. (The exception is the statement of 3 October 1989 signed "very concerned.")*
>
> *Therefore, if a decision is made not to destroy the statements Mr Coyne would appear to be entitled to read them and to obtain a copy of all but the one statement identified above..."*

In the CJC's October 1999 publication "*How To Blow The Whistle*", it advises would-be whistleblowers how to access departmental files "*...held on the officer* (i.e. the would-be whistleblower)" by doing the following:

> **"Protect yourself**
>
> Consider lawfully obtaining copies of your personnel records on your work performance (e.g. performance appraisal reports) and any evidence to show that your position or work area is not about to be "restructured". Regulation 16(2) of the *Public Service Regulations* (1997) authorizes a Queensland Government employee to peruse any departmental file or record held on the employee at a time and place convenient to the Department.
>
> Freedom of information legislation may also assist you to access documents relating to your personal affairs held by a public sector agency.
>
> Possession of these documents may help you should any attempt be made within the organization to disadvantage you for whistleblowing by attacking your competency and work performance, or by "restructuring" your position and work duties."

Regulation 16(2) mentioned above finds its origins in *Public Service Management and Employment Regulation 65*. Plainly, the CJC is advising would-be public sector employees to do precisely what Mr. Coyne was endeavouring to do in early 1990 but which the CJC summarily dismissed by using Mr. Nunan's "limiting" interpretation which neither exists in law or in practice throughout the Queensland Public Service nor in the CJC's own 1999 publication.

If Mr. Nunan's opinion held weight in the Heiner affair and was put to the Senate as being its proper interpretation, it begs the question of why it was rejected in its own publication some years later?

Instead of the CJC seeking Mr. Nunan's interpretation of *Public Service Management and Employment Regulation 65* in 1992/93, it merely had to ask the Families Department for a copy of Crown Law's interpretation. If provided, the CJC would have discovered, according to advice provided on 18 April 1990, that Mr. Coyne did have a right to access the original complaints even when they were held away from his personal file because they were about him. This recognised right was denied him by Ms. Matchett with the assistance of the Office of Crown Law.

Improper Warehousing of Evidence

It is open to suggest that Mr. Coyne's access claim of 8 February 1990 reached to the Heiner Inquiry documents even though they had been secretly "warehoused" in the Office of Cabinet. Throughout this whole period those public records legally remained Department of Families' records according to Crown Law advice of 16 February 1990 to the Queensland Cabinet. The known legal question of access to the Heiner Inquiry documents pursuant to *Public Service Management and Employment Regulation 65* was never addressed. Moreover, it was knowingly delayed by both Ms. Matchett and the Crown Solicitor until the Queensland Cabinet had decided their fate on 5 March 1990. Once the Queensland Cabinet ordered their destruction, neither Ms. Matchett nor the Office of Crown Law challenged it in respect of preserving Mr. Coyne's entitlement, nor was Mr. Coyne informed of the planned shredding decision. Both deferred to Cabinet's desires.

The real point in establishing whether or not official misconduct may have been engaged in by Ms. Matchett and others in respect of legal claims placed in the Heiner Inquiry documents and the original complaints pursuant to access under *Public Service Management and Employment Regulation 65* is that Mr. Nunan's interpretation was not necessary (save to become a corrupting diversion or shield) because it turns on whether or not Ms. Matchett and others complied with Crown Law advice. We now know they did not.

While the Queensland Government may have properly claimed legal professional privilege on the advice, it was always open to the CJC to ask for access because the legal professional privilege may have been waived by the Queensland Government in the public interest, or by its own discretion. The CJC never asked.

However, it is beyond dispute that Mr. Nunan's 1992/93 interpretation – as appears to be a common feature with him in all matters associated with the Heiner affair - was aberrant. It was not accepted anywhere else either by the CJC in its own later publication, expect when it pertains to this matter. It therefore gives rise to a reasonable view that the existence of so many incorrect interpretations of the law in the Heiner affair appears to be more than coincidental but takes on the shape of a disturbing web of deceit and corruption.

In the "*The Public Interest Revisited*" at pp60-61 (Points 5.40-5.41) an adverse finding against Ms. Matchett is made. It was, however, based incomplete misleading evidence provided to the Senate by the Queensland Government. If all the evidence had been provided, it is open to suggest that the Senate may have taken an even sterner view of her deceptive conduct, save that it would have swept up the Office of Crown Law in the deception too, including the subsequent conduct of the Office of the Information Commissioner in relation to my freedom of information applications.

It concerns the 'delaying tactics" used against Mr. Coyne and his solicitors. They were being told that the Queensland Government was still seeking "on-going legal advice" as late as 19 March 1990 when she would have known that the Goss Cabinet had already taken to decision on 5 March 1990 to destroy the Heiner Inquiry records (which unquestionably contained copies of the original complaints) to prevent their use in evidence in Mr. Coyne's anticipated judicial proceedings. While it is true that Ms. Matchett did seek further legal advice on 19 March 1990, the nature of the advice and what was going on behind the scenes was being kept from Mr. Coyne and his solicitors. They were being deceived into believing that all the records under issue were being preserved for court, when in fact that was not true.

Ms. Matchett sought advice about the original complaints and whether or not Mr. Coyne had an entitlement under *Public Service Management and Employment Regulation 65.* She enclosed with her brief to Crown Law, and copies of the original complaints which had been found on a file created by Mr. George Nix. It is simply not credible to suggest that she was unaware of the contents of the complaints, one of which concerned children being abused through the inappropriate use of handcuffs as restraints, moreover she was aware before the probative evidence was shredded 4 days beforehand at the very least.

On 23 March 1990 the Heiner Inquiry documents were secretly destroyed while the parties to the foreshadowed court proceedings were led to believe that the evidence was secure, and the legal position was "interim" awaiting final Crown Law advice.

On 18 April 1990 Crown Law advised Ms. Matchett that Mr. Coyne did enjoy a right to access the complaints pursuant to *Public Service Management and Employment Regulation 65.* It advised that it would be an artificial argument to suggest that just because they were not held on his personal file that they did not concern him.

It should be noted that this 1990 Crown Law interpretation contradicts Mr. Nunan's 1992/93 view in the Heiner affair, but accords with the CJC's advice in its 1999 publication for would-be whistleblowers.

Nevertheless, instead of permitting Mr. Coyne to enjoy his entitlement immediately, both he and his solicitors were kept in the dark. They were told nothing. In the meantime, on 8 May 1990, Ms. Matchett sought further advice from the Office of Crown Law not wanting to provide access to Mr. Coyne and wanting to dispose of the complaints back to the Queensland State Services Union from whence they came in late 1989. On 18 May 1990, in contravention of the law permitting Mr. Coyne, Ms. Dutney and others legal access to these public records, Crown Law aided Ms. Matchett in unlawfully disposing of them, and provided draft letters to be sent to the relevant parties.

Of relevance, the Crown Law advice, prepared by legal officer Mr. Barry J Thomas, uses these deferential terms when knowing that Mr. Coyne enjoyed a legal right of access to the records in question:

> *"...I refer to your letter of 8 May and note your instructions therein.*
>
> *I have prepared draft responses to the following people in line with your instructions:-*
>
> *Mr. S, Knudsen*

Ms. J. Walker
Messrs. Rose Berry and Jensen (2 letters)
Mr. D. Martindale

These letters are only of use if the material concerned has been destroyed or returned to the Union Officer in accordance with your expressed intention."

The draft letter was subsequently altered. It excluded this second paragraph which conceded that if the records were still held in the possession or control of the Department then *Public Service Management and Employment Regulation 65* would have apply. It reads:

"I advise that my Department does not have in its possession or control any documents of the type described in paragraphs (i) and (b) of your letter of 8 February 1990.

Therefore, I cannot comply with your request under Regulation 65 of the Public Service Management and Employment Regulations."

Ms. Matchett's letter of 22 May 1990 said this:

"I refer to your letters of 8th and 15th February 1990.

I advise that, apart from a copy of the document referred to in paragraph two of your letter of 17 January 1990, which was supplied to Mr. Coyne by Mr. Heiner's office, my Department does not have in its possession or control any documents of the type described in paragraphs (i) and (b) of your letter of 8th February, 1990. All material gathered by Mr. Heiner in the course of his investigation has been destroyed."

In fact, not everything had been destroyed. The photocopies of the original complaints sent back to the Department on 18 April 1990 by the Office of Crown Law remained in existence as public records within the Department's possession and control. They were secretly destroyed on 23 May 1990 by Mr. Donald A. C. Smith without prior approval from the State Archivist while knowing that they were being sought in evidence in an anticipated judicial proceeding.

These final letters of 22 May 1990 were presented to the Senate as if to believe that they were the same ones which were attached to the earlier Crown Law advice of 23 January 1990[47] and had not been used for 4 months. At all relevant times the Queensland Government knew that further advices in the system beyond 23 January, 16 and 26 February 1990 existed. It knew that they were highly relevant for the Senate to consider but were withheld, particularly in respect of the relevant interpretation of *Public Service Management and Employment Regulation 65* found in the advice of 18 April 1990.

Referring specifically to the additional Crown Law advices mentioned above, the 63rd Report of the Senate Committee of Privileges considered this in December 1996, and made the following conclusion:

[47] See Volume 1 – Queensland Government – Submissions etc to the Senate Select Committee on Unresolved Whistleblower Cases

"...As previously observed, the only question raised in the documents initially provided in support of the matter referred to the Committee, that is, whether any false and misleading evidence was given to the Select Committee on Unresolved Whistleblower Cases, was whether the Criminal Justice Commission had deliberately concealed Crown Solicitors' advices and other documents in respect of the Heiner matter. In the absence of any evidence to the contrary, and consonant with its own preliminary judgement before the CJC submission was received, the Committee of Privileges has no reason to conclude other than that the CJC was unaware of the extra communications within and between the Crown Solicitor's Office and the Department of Family Services and Aboriginal Affairs. The Committee is thus satisfied, on the evidence before it, that no deliberate concealment occurred."[48]

An Undisclosed Visit

Even though Mr. Sofronoff QC in his 16 August 1996 submission[49] to the Senate Committee of Privileges claimed (p2) that Crown Solicitor advices of 18 April and 18 May (in response the departmental briefs of 19 March and 8 May 1990) were *"...never seen by the Commission, have never been in the possession of the Commission, are not now in the possession of the Commission and the Commission has been unaware of their existence until their existence was revealed by your letter under reply*", the Committee should be very mindful that Mr. Barnes later revealed that he had paid an unknown visited the Department in late 1995/early 1995 to inspect its Heiner files. His purpose was to gather information before preparing his February 1995 submission to the Senate Select Committee on Unresolved Whistleblower Cases.

During his undisclosed visit as he later recorded in a "highly protected internal memorandum" dated 11 November 1996 to his CJC superiors (i.e. Messrs. Le Grand and Clair) in response to the findings of the Morris/Howard Report of October 1996, he revealed that he had examined memoranda between Minister Warner and Ms. Matchett which strongly inculpated all members of the Goss Cabinet in the shredding if Messrs. Morris QC and Howard's interpretation of section 129 was correct. Jumping from 1994 to 2004, Mr. Barnes' comments carry huge incriminating significance because of his Honour Judge Samios' ruling on section 129 in the *Ensbey* case. Oddly, Mr. Barnes failed to take copies of the memoranda, all of which are alleged to have now mysteriously vanished as my later freedom of information application for them discovered.

It was later revealed also in *The Courier-Mail* on 18 August 1999,[50] in a Grundy article, that when he visited the Department he became aware of child abuse allegations at the Centre but did nothing about it, claiming that the allegations were not investigated because they were two years old, and, in a later correction, claimed that the public servant concerned (i.e. Mr. Coyne) was no longer a public servant.

The logical paper-trail which Mr. Barnes should followed would have meant that he could not have carried out his inspection comprehensively, honestly and impartially without asking for the advices which he claimed he had never seen, or, because they must have been concealed from him by departmental officials.

---

[48] See Page 7 – 63rd Report Senate Committee of Privileges.
[49] See 63rd Report of the Senate Privileges Committee
[50] See *The Courier-Mail* 18 August 1999 page 12 *"CJC failed to act on child abuse allegations"*.

In short, while I do not question Mr. Sofronoff QC's integrity or assertions as a briefed counsel, I suggest that it is open to question as to whether or not the CJC, in respect of the conduct of Mr. Barnes regarding this matter, was ever as ignorant of these incriminating documents as it and Mr Barnes might have us, and even Mr. Sofronoff, believe.

On the weight of the compelling evidence provided, I respectfully submit that it is open to conclude that the charge in respect of Point 7 has been made out and a finding of contempt may be safely made.

The Role of Mr. Michael Allan Barnes

Mr. Michael Barnes is Queensland's State Coroner pursuant to the *State Coroners Act 2003*. It is an important judicial office in which the public must enjoy and have complete confidence because of its investigative role into suspicious deaths, accidental workplace deaths as well as deaths of persons in care and custody. As a Stipendiary Magistrate, he has the authority to bring charges against persons when and if necessary, secure documents, and to make recommendations to government. The probity of any State/Federal coroner must be beyond question. In my view, Mr. Barnes' probity is not.

His role, as CJC Chief Complaint Officer, must come under close scrutiny. His current position in the Queensland Judiciary should offer no immunity against being called in this matter. He should provide evidence on oath.

On the weight of available evidence set out in this submission, I submit that it is open to suggest that Mr. Barnes has acted corruptly to advantage another. I submit that it is open to suggest that he may have engaged in possible conspiratorial conduct with Mr. Noel Nunan, and others, to advantage another in order to cover up crime.

Of relevance, section 127 (2), (3) and (4) of the *Criminal Justice Act 1989* - Abuse of office in commission - which provides for :-

> "(2) Any commissioner or officer of the commission who uses or takes advantage of his or her office to improperly gain benefit or advantage for himself or herself or another, or to facilitate the commission of an offence is guilty of a crime.
>
> (3) A person convicted of a crime defined in subsection (1) or (2) is liable upon conviction on indictment to imprisonment for 7 years and to be fined.

Its current equivalent is found in section 208 of the *Crime and Misconduct Act 2002* - Abuse of office in commission – which provides for

> **(1)** A commission officer who corruptly asks for, receives or obtains, or agrees or attempts to receive or obtain, property or a benefit of any kind with a view to the officer neglecting his or her duty, or being influenced in the discharge of his or her duty commits a crime.
> Maximum penalty—595 penalty units or 7 years imprisonment.

> **(2)** A commission officer who uses or takes advantage of his or her office to improperly gain benefit or advantage for himself or herself or someone else or to facilitate the commission of an offence commits a crime.
> Maximum penalty—595 penalty units or 7 years imprisonment.

Should the Committee find contempt of the Senate in this matter in respect of the CJC's evidence, then it would to be open to conclude that the role of Mr. Barnes was central to the contempt, which may, in turn, go to *"proved misbehaviour, misconduct or conduct unbecoming a magistrate"*[51] and consequently requiring a suspension[52] and remedy by an appropriate Queensland authority in order that the integrity of and public confidence in the Queensland Judiciary is maintained and secured.

However, such may be the contempt, that the Senate may be obliged to seek its own remedy in order to protect its own privileges and immunities, irrespective of Mr. Barnes being a Queensland judicial officer, and bring appropriate punishment to bear for any found criminal contempt which he inflicted on the Senate when employed by the CJC and provided evidence on the Heiner affair.

The Role of Mr. Noel Francis Nunan

In its February 1995 submission at pages 38-39 under the heading of *"McCarthyism, Pluralism and the Democratic Process"* in its attempt to address the controversial appointment of Mr. Nunan to review the Lindeberg allegations, the CJC stated:

> *"...Purely by chance, the Lindeberg matter was assigned to Mr. Noel Nunan, who was one of the two barristers engaged as indicated above. This appointment has been criticised by Lindeberg and others on the basis of Nunan's alleged political allegiance. Such an allegation smacks of McCarthyism. In a democratic, pluralist society, the Commission finds such criticism abhorrent. The Commission is unconcerned with a person's political preferences; it is only concerned with his or her integrity and professional competence.*
>
> *Nunan formed the view that it would be useful for him to speak to Lindeberg and Coyne about the matter. He was not interviewing them as witnesses, as Lindeberg had already provided extensive written accounts of the incidents in question. Rather Nunan was interviewing them to ensure that he had properly understood the material supplied and to ensure that he fully gasped all of their concerns.*
>
> *Shortly after Nunan interviewed Lindeberg the Commission's media officer raised with the Chief Officer of the Complaints Section and the Chairman, Sir Max Bingham, "rumblings" she had heard about Nunan being involved in the Lindeberg matter. She said that questions were being asked by some people because of Nunan's alleged affiliations with the Labor Party.*
>
> *The Chairman discussed the matter with the Chief Officer. Both were of the view that Nunan's professional standing and integrity were beyond*

[51] See section 43 (4) (c) of the *Magistrates Act 1991*
[52] See Section 44 of the *Magistrates Act 1991*

reproach and that there was no basis to suspect that he would give inadequate or biased advice to the Commission because of any political interests he may have had. The Chairman therefore formed the view that there was no basis to warrant removing Nunan from the case...."

The CJC went on the state:

"To do so would:

- *substantially delay finalisation of the matter;*
- *demonstrate, without cause, a lack of confidence in Nunan's impartiality, integrity and professionalism;*
- *be grossly unfair to Nunan and contrary to the principles of natural justice; and*
- *be illegal as contrary to section 7(1)(j) of the Queensland Anti-Discrimination Act 1991.*

In respect of the last and clearly conclusive point, the Committee should be aware of the contents of the relevant statutory prohibition, namely:

Discrimination on the basis of certain attributes prohibited.

7(1) The Act prohibits discrimination on the basis of the following attributes -
(j) political belief or activity..."

The legal obligation on decision-makers when apprehended bias may feature is well settled at law. In *Vakauta v Kelly* (1989) 167 CLR 568 F.C. 89/040 Dawson J. said:

"...The relevant principle is that laid down in Reg. v. Watson; Ex parte Armstrong (1976) 136 CLR 248, at pp 258-263, and applied in Livesey v. New South Wales Bar Association (1983) 151 CLR 288, at pp 293-294, namely, that a judge should not sit to hear a case if in all the circumstances the parties or the public might entertain a reasonable apprehension that he might not bring an impartial and unprejudiced mind to the resolution of the question involved in it."

While it is true that Mr. Nunan was not acting a judicial officer, he was nevertheless a member of the Queensland Bar, and a decision-maker in this matter at a particular time.

The Queensland Bar has professional standards which must be respected. It requires that matters of conflict of interest and perceptions of bias should be avoided by lawyers and barristers in all their professional dealings. The excuse used by the CJC that, once Mr. Nunan was allocated my case *"...purely by chance"* and that to then remove him once appointed because of his known close ALP connections and earlier association with one of the key parties under review, Mr. Goss, (with whom he worked at the Caxton Street Legal Service), may have discriminated against him and denied him natural justice pursuant to the relevant provisions of the *Queensland Anti-Discrimination Act 1991* is spurious. Both Messrs. Barnes and Nunan had a first duty to the integrity of administration of justice and to ensure that their involvement in that process, as CJC decision-makers, did not give rise to a reasonable concern of apprehended or real bias being present.

The logic used by the CJC turned all considerations about the integrity of its own processes on its head. First priority was given to Mr. Nunan's rights, and not the complainant, or, perhaps more important to everything else, that all CJC findings are reached honestly and impartially without giving advantage to anyone. Afterall, the prime party under review in the Heiner affair, over suspected official misconduct going to criminal conduct, was the entire Goss ALP Cabinet. It was an unprecedented moment in the political history of Queensland criminal justice and political history. And, the reviewer who was allocated the case *"...purely by chance"* just happened to be an ALP activist and member, member of Queensland Labor Lawyers, recommended by a mate (i.e. Mr. Barnes), and a known former associate of Queensland Premier the Hon. Wayne Goss – and yet, I was not told of these things prior to or when interviewed by Mr. Nunan at the CJC. I learnt about these professional disqualifying elements of conflict of interest only after speaking with other Brisbane lawyers about Mr. Nunan's findings of no official misconduct or breach of section 129 of the *Criminal Code (Qld) 1899.*

Investigating Mates By Mates

He was a mate, recommended by a mate (i.e. Mr. Barnes) to investigate a mate.

There are other matters on the public record concerning my "Nunan" experiences (i.e. a tampered CJC tape of interview, and a subsequent unsolicited phone call threatening me with defamation proceedings if I continued to claim that he was not impartial) but nothing brings into question more his lack in applying the relevant law honestly, fully and impartially in the Heiner affair than his own findings. None stand scrutiny. However, it should not be overlooked that his findings were subsequently endorsed by Messrs. Le Grand and Barnes.

In calling Mr. Nunan before this Committee, should it so desire, it is suspected that he will be more than happy to concede that his findings were flawed, but vigorously assert that they were not reached corruptly to advantage another, even though "the another" happened to be his "ALP mates." In my opinion, on the weight of compelling evidence, I suggest that his findings were contrived, and therefore, it is open to conclude that Mr. Nunan may have been in breach of section 127 (2), (3) and (4) of the *Criminal Justice Act 1989* - Abuse of office in commission – which finds its current equivalent in section 208 of the *Crime and Misconduct Act 2002* - Abuse of office in commission – which provides for:

> **(1)** A commission officer who corruptly asks for, receives or obtains, or agrees or attempts to receive or obtain, property or a benefit of any kind with a view to the officer neglecting his or her duty, or being influenced in the discharge of his or her duty commits a crime. Maximum penalty—595 penalty units or 7 years imprisonment.
>
> **(2)** A commission officer who uses or takes advantage of his or her office to improperly gain benefit or advantage for himself or herself or someone else or to facilitate the commission of an offence commits a crime. Maximum penalty—595 penalty units or 7 years imprisonment.

Should the Committee find contempt of the Senate in this matter, which may not properly reach Mr. Nunan as he did not provide evidence to the Senate, it may be open to find that sufficient prior connection may exist in the contempt finding to suggest that a *prima facie* finding of *"...misbehaviour, misconduct or conduct unbecoming a magistrate"*[53] exists against Mr. Nunan

[53] Section 43(4) (c) of the *Magistrates Act 1991*

(SM) as a judicial officer requiring remedy by an appropriate Queensland authority in order that the integrity of and public confidence in the Queensland Judiciary is maintained and secured.

The Role of the Queensland Police Service

In the CJC's February 1995 submission (pp11-12) Mr. Barnes attempted to undermine my credibility over my dealings with Police Commissioner Jim O'Sullivan and the Queensland Police Service (QPS) by suggesting that I attempted "to induce" a police investigation into my allegations by citing what happened in the wake of the Office of the Information Commissioner releasing the Crown Solicitor's advice of 16 February 1990.

The relevant bracket of evidence is as follows:-

> *"...In the Commission's experience, Lindeberg is so consumed by his view of the issues involved in these matters that his evidence in relation to them is often unreliable and sometimes duplicitous.*
>
> *A recent example occurred in November 1994, when Lindeberg, in an effort to induce the Fraud Squad of the Queensland Police Service to investigate the shredding of the Heiner documents, wrote to Commissioner O'Sullivan falsely asserting that the Information Commissioner had released a Crown Law advice on the status of the Heiner documents to Lindeberg, and that the release of the documents was a result of Lindeberg's proving a prima facie case of conspiracy to pervert the course of justice on the part of various public servants.*
>
> *As Lindeberg well knew, he obtained the legal advice only because the Government voluntarily agreed to its release, on the basis that so much of its contents had already been published that it could arguably be said that any privilege attaching to the documents had been waived.*
>
> *On the same day that Lindeberg wrote to the Commissioner of Police, he also wrote in similar terms to the Deputy Information Commissioner, Mr. Sorensen. Upon the receipt of Lindeberg's letter, Sorensen immediately took the extraordinary step of writing to Lindeberg to warn him against misrepresenting the circumstances in which he came by the Crown Law advice, in the following terms:*
>
> *The opening words of the penultimate paragraph of your letter dated 22 November 1994 are not correct. The Information Commissioner has not accepted that you have provided sufficient "prima facie" evidence of the offence of obstructing justice. The Information Commissioner has not said or written anything to that effect, or indeed formed any opinion to that effect. I caution you against making any representation to that effect in your dealings with others."*

The facts to this release tell a different story than that painted by Mr. Barnes.

The police involvement in the Heiner affair came by a circuitous route coming out of the findings in 8th Report of the Senate Standing Committee on Superannuation (SSCS) chaired by Tasmanian Senator John Watson. This Committee recommended that then Queensland Attorney-General the Hon. Dean Wells investigate the odd circumstances surrounding the disappearance of 4

QPOASF/National Mutual Life Benefit Withdrawal documents used by Messrs. Don Martindale, Gordon Rutherford, Kerry Daly and Ms. Roslyn Kinder to access their funds from our staff superannuation fund when none fulfilled the (release) requirements under the Trust Deed. Evidence came before this Committee suggesting that they all falsely claimed to have "resigned their employment" in order to access their moneys. None had. Mr. Wells referred the file to the Queensland Police Services on 3 September 1993 which created Police File MS93/25262.

For the record, I informed 28 October 1993 Annual General Meeting of the Queensland Professional Credit Union that its General Manager Mr. Gordon Rutherford was the subject of a police investigation because of this referral. I believed that credit union members had a right to know in that forum. For my troubles, Mr. Rutherford subsequently sued me in 1994 for defamation over my broadcast. He claimed that *"...there was not then, and nor is there now, any Fraud Squad investigation into Mr. Rutherford, or the credit union or the payment."* His writ was defended at considerable personal expense, and still remains in existence but dormant since disclosure occurred between us.[54] I have reported his (stopper) writ to the police suggesting that it was an attempt to intimidate a witness assisting police inquiries in a related matter. The police merely noted my concern. I reported his conduct to the Queensland Office of Financial Supervision on 31 July 1995 suggesting that it was a breach of the relevant Code of Conduct. It was viewed as a private matter.

The Oxley CIB contacted me on 7 April 1994 seeking my assistance in respect of Recommendation 2 of 8th SSCS Report. I provided what evidence I could about the missing documents and possible misappropriation of moneys from our staff superannuation fund. At this meeting, I lodged my complaint with the police of alleged serious criminal conduct relating to the shredding of the Heiner Inquiry documents, including the CJC's alleged criminal conduct. I was subsequently interviewed for several hours on two separate occasions by detectives (i.e. 24 May and 24 September 1994) providing evidence on both matters on both occasions. The interviews were taped.

Since January 1993, I had been seeking access to all documents associated with the Heiner affair under the *Freedom of Information Act 1992* from various Queensland Government Departments (i.e. Administrative Services (for State Archives), Family Services and Aboriginal and Islander Affairs, and Justice and Attorney-General). Of relevance to Mr. Barnes' claim, the Crown Solicitor's advice of 16 February 1990 came under issue, however, it had been exempted under "*legal professional privilege.*" It was put to me, on 9 November 1993 by the Office of Information Commissioner, that the only legal way I could overturn the exemption and achieve access was to provide sufficient *prima facie* evidence of a crime pertaining to it.[55] Information Commissioner Fred Albeitz and Deputy Information Commissioner Greg Sorensen both knew that I was alleging that a conspiracy to obstruct justice involving the destruction of public records was present in the documents concerning evidence required for a judicial proceeding. In other words, they would have been aware that the triggering elements of sections 129 and 132 of the *Criminal Code (Qld)* were relevant characteristics in my freedom of information applications.

In a letter dated 19 November 1993 I believed that I had provided the Information Commissioner with sufficient *prima facie* evidence in "clear and definite terms" to sustain my claim. Again on 6 September 1994 I wrote to Commissioner Albeitz setting out new evidence following the unexpected tabling in State Parliament of the letter dated 23 February 1990 to the State Archivist. I asserted that he now knew that he held *prima facie* evidence of the offence of obstructing justice

[54] See Gordon Kent Rutherford vs Kevin Lindeberg (No 579 of 1994) Supreme Court of Queensland.
[55] Re Viscount Finlay in *O'Rourke v Darbshire* [1920] AC 581 at p604.

and destruction of evidence, and that he had been holding it for close on 10 months. I called for the advice to be released, as well referring the suspected official misconduct to the CJC pursuant to his obligation under the *Criminal Justice Act 1989.*

On 21 November 1994 the Crown Solicitor's advice of 16 February 1990 was suddenly released by the Office of the Information Commissioner. I genuinely believed that it had been released under the terms by which it could only be released, and because of the on-going police investigation I sent it to the Police Commissioner on 22 November 1994. On 24 November 1994 the police informed me that my Heiner complaint was more appropriately a matter for the CJC, and as the CJC was satisfied, the police investigation would discontinue. On 29 December 1994 I received another letter from the police in response to mine of 22 November 1994 indicating that my complaint had been referred back to the CJC, to the very people against whom I was making serious criminal complaints.

On 25 January 1995, then Assistant Police Commissioner Graham Williams, Head of State Crime Operations Command, informed me that the appropriate body to investigate my matter was the Australian Senate, i.e. the Senate Select Committee on Unresolved Whistleblower Cases, and that afterwards the police would be:

> *"...happy to address any matter which remains for investigation upon the report of the senate inquiry."*

On 26 January 1996 I wrote to Police Commissioner O'Sullivan again informing him that fresh admissions had been made to the Senate which had been addressed by senior counsel (i.e. Mr. Callinan QC), and asked him:

> *"...What do you now propose to do to resolve this matter affecting due process involving admitted deliberate destruction of known and foreseeable evidence to stop a citizen from accessing the material in foreshadowed litigation?"*

Incompetence or Corruption

On 15 February 1996, the police informed me that its investigation into the Heiner affair was closed. I was referred to a letter dated 31 August 1995 which had gone to an old address in the post given that our family had moved house. When I received a copy, I discovered that my "still-open police file" of serious criminal complaint against the Executive Government of Queensland and others (including certain CJC officials) had been closed down by use of the police's findings of no criminality into the alleged misappropriation of moneys in respect of the trade union/credit union (QPOASF) staff superannuation fund. In other words, my original complaint of 7 April 1994 about the Heiner affair has never been properly investigated or its file properly closed.

The police are duty bound to act on complaints of criminal conduct pursuant to the *Police Service Administration Act 1990,* and to act without fear, favour or ill will to none. In this matter where the inculpatory triggering elements of section 129 of the *Criminal Code (Qld)* are far clearer than in *Ensbey,* (and even present in the Crown Solicitor's advice of 16 February 1990), the police could not apply the law equally, or at all; and, either through sheer incompetence or corruption, found relief from potentially enormous political, constitutional and legal ramifications any finding of *prima facie* criminal conduct be bring (and which Messrs Morris QC and Howard easily found in October 1996) by writing it off using the findings for another investigation.

It is conceded that I lodged a complaint in respect of the Heiner affair with the QPS, but, in turn, it did not investigate anything at all relevant times on available evidence other than take evidence from me at 3 separate occasions. I was entitled to expect otherwise because the allegations concerned breaches of the *Criminal Code (Qld).*

Accordingly, when the Queensland Government or CJC[56] claim (or claimed) to the Senate that the police investigated my allegations (in respect of the Heiner affair), or that (the police) *"...failed to understand or adequately respond to my concerns"*, it is disingenuous at best, and false and misleading. In my opinion, the facts go to a finding of contempt against the Senate as such a claim and/or personal attack on my integrity by the Queensland Government and/or CJC may have caused, or had a tendency to cause, the Senate from making full and proper findings.

The Role of the Queensland Office of Crown Law

In this affair, the Queensland Office of Crown Law has played a pivotal role in providing both compliant, correct and incorrect advice at different times to suit different circumstances. In short, this Office has not acted with the utmost probity at all times in this matter. Its conduct should be of major concern not only to the Committee but the community at large.

In his response to Mr. Callinan QC's submission of 23 February 1995, the late Mr. Ken O'Shea, then Crown Solicitor, provided a detail submission of his own on 21 March 1995[57], or with the aid of other legal officials in the Office of Crown Law, and possibly, in co-operation with the Legal and Administrative Policy Unit[58] of the Department of Premier and Cabinet.

The other Crown Law legal officer who played a prominent role in this matter in the early 1990's was Mr. Barry J. Thomas. He left to join the CJC, and even attended hearings of the Murphy Select Committee when my matter came under scrutiny. Mr. Thomas is now at the Queensland Private Bar, and it is suggested that he should be called to explain his actions.

It is beyond doubt that Mr. O'Shea's interpretations of sections 129 and 119 of the *Criminal Code (Qld)* are incorrect. His opinion that the form of the Indictment (i.e. Form 83) in the Schedule to the Criminal Practice Rules of 1900 dictates the meaning of section 129 is wrong, and has been ruled to be so in *Ensbey* with the Samios ruling on section 129 soon to be advanced and argued by the Crown before the Queensland Court of Appeal where it shall seek to have the sentence imposed on Pastor Douglas Ensbey increased because of the gravity of his offence.

Mr. O'Shea clothed his incorrect view of section 129 that a judicial proceeding had to be on foot by making this comment:

> *"...Were the position otherwise, anyone could prevent anyone else from destroying their own personal papers, simply by threatening to issue a Writ against them."*

---

[56] See Page 11 CJC's February 1995 submission to the Senate Select Committee on Unresolved Whistleblower Cases

[57] See Volume 1 – Queensland Government – Submissions etc Senate Select Committee on Unresolved Whistleblower Cases.

[58] See Annual Report 1995/96 in which the following is said about this Unit: *"...The Unit also advised on several Commonwealth/State legal and administrative policy issues such as proposed reforms to the treaties process, the Senate Inquiry into Unresolved Whistleblower Cases, and the proposed referral of power over property disputes between de facto spouses to the Commonwealth."*

At first glance, his logic seems reasonable, but when one applies the Heiner facts to the related shredding, his opinion becomes untenable and unsustainable. This is because his Office, together with the Department, were actually considering legal questions which required the continuing existence of the evidence in question, and that "on-going" advice and promise of it being forthcoming, delayed the next step in the anticipated judicial process, namely the filing and serving of the Writ. In short, his defence had a glaring whole in it, and it is not credible to believe that he, or others, did not know that.

While there are other spurious claims made by the Office of Crown Law in this matter, and other actions (covered elsewhere in this submission) which might be highlighted showing that the Office actually assisted in breaking the law (i.e. providing compliant advice on 18 May 1990), its role has been one of unacceptable legal and professional deference to Executive Government's desire of wanting to get rid of known evidence required in evidence for a foreshadowed judicial proceeding.

This is best illustrated in its advice to Ms. Matchett on 26 February 1990, wherein Crown Law said:

> *"...It would appear that the matter cannot be advanced further from the Department's point of view until Cabinet makes a decision."*

A Betrayal of Trust

The matter referred to was an anticipated judicial proceeding by Mr. Coyne and two trade unions in which the Heiner Inquiry documents and original complaints were the central item of evidence, and yet, Crown Law was abrogating its prime duty and responsibility to the courts and its rules, and to obeying the law to a political desire of the Queensland Cabinet. This blatant assault on the doctrine of the Separation of Powers by the Executive against the Judiciary appears not to have dismayed the Office of Crown Law at all.

This state of knowledge of anticipated judicial proceedings resident in the mind of Crown Law is found in its advice to the Queensland Cabinet on 16 February 1990. In this advice, the Crown Solicitor acknowledges that once the expected writ is filed and served, the Heiner Inquiry documents will be discoverable pursuant to Order 35 Rule 28 of the Supreme Court. He was duty bound to protect those records until the known legal claims had been relieved or withdraw, notwithstanding other more enduring legal claims which attended the records because their contents were known or suspected to contain evidence about the abuse of children in a State-run institution.

To suggest that any lawyer, let alone the Office of Crown Law, would wish to, or properly could, remain oblivious the contents of evidence legally gathered by a departmental inquiry at the youth detention centre where it was known that abuse was going on and aid in their destruction is unacceptable conduct, and an indication of the inappropriate deference paid to "political decisions" which were wrong at law. There may have been many factors at work here, but, if nothing else, the affair demonstrates the fear and intimidation that a unicameral system of government can generate and inflict on its public service, even, apparently on the Office of Crown Law which owes its first duty to the courts and the law.

Our democratic system may be placed in grave jeopardy when and if legal advice coming to and/or sought by government from its legal advisers is compliant or aids in covering up criminal conduct or official misconduct in government. When government loses sight of its duty to obey

the law and to be "the model litigant", the administration of justice can crumble because standards are lost, or worse, as in the *Ensbey* case compared to Heiner, applied duplicitously.

In its handling of the anticipated judicial proceedings in the Heiner affair, and in light of the understanding Crown Law must have had concerning the relevance of the Heiner Inquiry documents to the discovery/disclosures rule of the Supreme Court of Queensland, it is open to suggest that as the Office of Crown Law did nothing to preserve the known evidence it may have placed itself in serious contempt of court. Arguments advanced in *McCabe* and *R v Rogerson* suggests that the courts do recognize that certain obstructionist conduct can occur before curial proceedings commence, and can offend laws pertaining to the administration of justice.

The Committee may feel disposed to make certain findings in this regard because the main repository for the provision of false and misleading evidence to the Senate, notwithstanding the submissions and preparation work emanating the Legal and Administrative Policy Unit in the Department of Premier and Cabinet, as well as the Department of Family Services and Aboriginal and Islander Affairs, was the Queensland Office of Crown Law, and, in so doing, it betrayed the great trust put in it by the courts and the people of Queensland.

The Role of the Queensland Director of Public Prosecutions

While the role of the former Queensland Director of Public Prosecutions, Mr. Royce Miller QC, may not be found in the Senate papers, it is impossible to avoid if the Committee wants to get to the truth of this whole affair.

In November 1995, in the wake of Mr. Callinan QC's advice in his special supplementary submission of 7 August 1995 to the Senate, Mr. Miller QC was asked to consider laying charges against the Executive Government of Queensland. In advice returned to Opposition Attorney-General the Hon. Denver Beanland, he advised that section 129 could only be triggered when a judicial proceeding was on foot. In that sense, Queensland's chief prosecutor undermined the correctness of Mr. Callinan QC's advice to the Senate.

When the Borbidge Government came to power in February 1996, it later appointed two Queensland barristers Messrs Anthony Morris QC and Edward Howard to investigate the substance of my allegations "on the papers" and to recommend to government whether or not a public inquiry should be held. In their October 1996, they found that numerous criminal offences may have been committed, including breaches of section 129 of the *Criminal Code (Qld)*. They recommended an immediate public inquiry as the Heiner issues far outweighed the issues earlier addressed by the Fitzgerald Inquiry. Instead of doing that, the Borbidge Government sent their report to Mr. Miller QC for examination asking whether or not section 129 was correctly interpreted and whether the recommended inquiry should be held. Mr. Miller QC's response, according to a June 1997 media release, suggested that nothing be done, and the matter put to rest because a great number of people and been pursuing the truth for a long period to no effect. The Borbidge Government accepted his advice. I was outraged. His interpretation of section 129 against the arguments presented by Messrs. Morris QC and Howard remained unknown. His advice remains hidden from public scrutiny.

By lawful means through the Office of the Queensland Opposition (in whom ownership of the advice resides), I have read Mr. Miller QC's 23-page advice of January 1997. As shown by the *Ensbey* ruling, it is wrong at law in its critical areas. He incorrectly interpreted sections 119 and 129 as well as incorrectly suggesting that the subordinate schedule could dictate what the law

says in the *Criminal Code (Qld)*. Furthermore, he declined to bring a criminal charge pursuant to section 92 of the *Criminal Code (Qld)* against Ms. Matchett – whose wording he sets out in the advice - over her obstructionist arbitrary conduct in the disposal of the original complaints on 22 May 1990. He argued that because she obtained legal advice from Crown Law beforehand, it was not an arbitrary act and therefore not in the public interest or just to act against her. He failed to address the fact that both the Office of Crown Law and Ms. Matchett knew what the law required, and then both wilfully broke it. In short, it is open to conclude that ***both*** conspired to break the law.

His advice also suggests that the relevant Cabinet February/March 1990 submissions could not be obtained so it would not be possible to know what the Goss Cabinet knew at the time it ordered the shredding on 5 March 1990. For the record, we now hold those Cabinet submissions, and the evidence contained in them, according to Mr. Greenwood QC, was sufficient to inculpate all members of Cabinet in respect of section 129 of the *Criminal Code (Qld)* at the very least.

Simply Wrong

It is my respectful view that the Committee should seek access from the Leader of the Queensland Opposition and Shadow Attorney-General and Minister for Justice the Hon. Lawrence Springborg MLA to this critical piece of advice provided to the Borbidge Government in January 1997. Public scrutiny must fall on it. It is essential. On advice I have subsequently received, the application of the relevant law by Mr. Miller QC is simply wrong. Consequently, it is reasonable to suggest that it may have been constructed for an improper purpose to knowingly cover up crime.

I accept that this is a serious accusation to make against anyone, let alone a former Public Prosecutor. However, I believe, on the weight of compelling evidence, it must be made in the public interest.

Our whole system of justice fails if public confidence in the Office of Public Prosecutions, anywhere in the Commonwealth of Australia, let alone Queensland, cannot be maintained or assured. It is a public Office of immense trust, power and critical to the rule of law. It can deny a citizen his or her liberty, let alone unacceptably encourage aggrieved citizens to take the law into their own hands when, and if, confidence is lost by the criminal law not being applied uniformly in materially similar circumstances. The probity of its function is central to respect for the law. If the criminal law is to be imposed by double standards to protect politicians and bureaucrats while ordinary citizens, like Pastor Ensbey, face its full rigor, then we have anarchy.

The Role of the Parliamentary Criminal Justice Committee

It is beyond dispute that this Committee has been misled by incorrect interpretations of the *Criminal Code (Qld)* in an almost similar way as is being suggested to the Senate in this submission. It is open for the current Parliamentary Crime and Misconduct Committee to revisit my file in the wake of the *Ensbey* ruling and the upcoming Crown appeal against sentence in *Ensbey* to the Queensland Court of Appeal. The proof is there.

The CJC was an independent statutory authority being held accountable to the Parliament – and the people – through the all-party Parliamentary Criminal Justice Committee. The CMC functions similarly, but, since 1997, the Committee has been assisted in its accountability task by a Parliamentary Crime and Misconduct Commissioner who is required to be a barrister-at-law.

In 1997/98 the PCJC, under the leadership of the Hon. Vince Lester, attempted to challenge the CJC claim that "two inquiries" by the PCJC had been held into my complaint without finding substance in them. The PCJC reasonably believed that the word "inquiries" meant more than asking a question or two while the CJC suggested to the Senate Committee of Privileges otherwise.[59]

In this matter, the CJC has engaged in so much hair-splitting of the plain meaning of words to justify the shredding and related Heiner matters as to make the ancient debate about how many angels can stand on the end of a pin at the same time seem reasonable. The claim put by former CJC Chairman, Mr. Rob O'Regan QC to the Murphy Select Committee is a case in point. He assured the Senate that my case, and the others, had been investigated to the "nth degree", and then, when challenged, we find the CJC denying that he was referring to any specific case before the Senate. He was allegedly talking about every case and no case in the same breath.

Over the years I have contested the CJC's findings, and made several submissions to the triennial review of the CJC conducted by the PCJC. It is my view that the both the PCJC and PCMC, even with the aid of the Parliamentary Commissioner, have failed to hold both the CJC and CMC to account according to law. Regrettably, I believe that the Members of Parliament are overawed, if not intimidated. In that sense, it is open to suggest that both the CJC and CMC have become laws unto themselves with those who have been aggrieved incapable of seeking judicial redress, save in the case of Mr. Len Ainsworth some years ago because he had the personal wealth to do so and won judicial relief from the Supreme Court of Queensland.

In my respectful submission, if criminal contempt were to be found against the CJC in this matter (in whatever form and against whom that may eventually manifest itself after considering this grievance), it would not be sufficient or just to refer any redress to the PCMC. In my view, any punishment must be settled within Commonwealth jurisdiction.

The Role of the Information Commissioner

The role of the Information Commissioner in the Heiner affair when put before the Senate is well documented, but given that one element of my dealings with the Office became a feature in the CJC's February 1995 submission concerning the release of the Crown Solicitor's advice of 16 February 1990 and its relevance to section 129 of the *Criminal Code (Qld),* the Committee is entitled to hear a submission on the relevant point.

Already a great deal on this piece of advice is found elsewhere in my submission concerning its relevance to section 129 and 132 of the *Criminal Code (Qld)* and contempt of court by the Executive (i.e. the Queensland Cabinet and Office of Crown Law) against the Judiciary.

The Office of the Information Commissioner failed to apply the terms for its release imposed on me when it is open to suggest that any reasonable legal mind could have not found any differently after properly examining the contents of the advice and the brief. In other words, it is open to conclude that the advice does indeed give rise to possible illegal conduct in terms of discussing plans to dispose of known evidence for a foreshadowed judicial proceeding, and in the possession and control of the Crown, when knowing that it was discoverable pursuant to the rules of the Supreme Court once the expected plaint/writ was filed and served.

[59] See Page 8 71st Report – Senate Committee of Privileges.

In releasing the document on 21 November 1994, the Deputy Information Commissioner Greg Sorensen said this:

> *"...I have authorised the Department to release to you the matter identified above. Would you please kindly contact Ms. S. E. C. Byrne of the Department, on telephone 224 4884, to make the relevant arrangements."*

Prior to its release, by letter of 6 September 1994[60] to the Information Commissioner, I had claimed that I had supplied sufficient *prima facie* evidence of criminality going to the offence of obstruction of justice involving the destruction of documents known to be required in evidence in judicial proceedings, called for the release of the documents, and suddenly I found the advice of 16 February 1990 being released on 21 November 1994.[61]

The Committee is reminded of what the CJC told the Senate in its February 1995 submission:

> *"...As Lindeberg well knew, he obtained the legal advice only because the Government voluntarily agreed to its release, on the basis that so much of its contents had already been published that it could arguably be said that any privilege attaching to the documents had been waived."*

There was nothing in the Deputy Information Commissioner's letter to dissuade me from my genuine belief that the advice, covered by "legal professional privilege", had been released under the only legal precedent available[62], apart from a waiver.

The simple point is that evidence of *prima facie* criminal conduct, including possible contempt to court, was always present "on the papers" but those public officials, who were duty bound to apply the law to the facts, like the Office of the Information Commissioner and his staff, failed to do so. Accordingly, it is respectfully suggested that the relevant Information Commissioners Fred Albeitz, David Bevan and Deputy Information Commissioner Greg Sorensen be called before the Senate to clear the air on this segment under oath.

In my long dealings with the Office of Information Commissioner it has engaged in dissembling, delay and conspicuous avoidance of applying the law, especially section 37(2) of the *Criminal Justice Act 1989*, when hard evidence was in front of it suggesting *prima facie* breaches of the *Criminal Code (Qld) 1899* in respect of the Crown Solicitors advices of 16 February, 18 April 1990 (i.e. the Smith notation) and 18 May 1990.

I am currently seeking access to the DPP's 7 January 1997 advice on the findings and recommendations of the Morris/Howard report to the Borbidge Government. On advice from senior counsel, I sought a meeting with Information Commissioner David Bevan to discuss serious matters of real or apprehended bias (concerning (a) his earlier involvement while working at the CJC in respect of his handling of the Heiner affair at all relevant times; and (b) the legal ramifications on his subordinates in considering the contents of the DPP's advice) but he has declined the meeting. The significant point being that the DPP's advice is unlawful advice as shown by of the *Ensbey* ruling, and therefore covers up serious crime (primarily centering on section 129 of the *Criminal Code (Qld) 1899* in Heiner), and that illegality directly impacts on the

[60] Exhibit 73 - Lindeberg exhibits the Senate Select Committee on Unresolved Whistleblower Cases.
[61] Exhibit 75 - Lindeberg exhibits the Senate Select Committee on Unresolved Whistleblower Cases.
[62] Ibid Exhibit 68.

role that Mr. Bevan may have had in misleading the Senate as Mr. Barnes' immediate supervisor at all relevant times at the CJC. Currently it is being claimed that the DPP's advice is exempt pursuant to section 36(1)(f) of the *Freedom of Information Act 1992* – Cabinet exemption.

The background to this exemption is that the Goss Government introduced an amendment to the *Freedom of Information Act 1992* in mid-March 1995 (just weeks after Mr. Callinan QC's appearance on my behalf before the Senate on the Heiner affair) making all Cabinet submissions and related documents exempt with a "no public interest" test applicable. On 31 May 1997 the Information Commissioner ruled on my earlier freedom of information application concerning the material which went to Executive Government and Governor-in-Counsel about Mr. Coyne's retrenchment payment. I claimed that it contained evidence of a "fraud or crime." He denied me access ruling that even if the submission did contain evidence of a "fraud or crime", the "no public interest" test would prevail.

I believe that such a law and/or its subsequent interpretation by the Office of the Information Commissioner to be unconstitutional. It can not be in the public interest to cover up crime.

Hiding Crime in Cabinet Records

This ruling is now being revisited on the Information Commissioner in 2004[63]. There appears to be little doubt that Mr. Miller QC January 1997 advice is unlawful and covers up crime. The anarchical cyclical conclusion of this affair has been reached. That is, our system of government has shut out openness and accountability involving serious crime. A cabinet submission, known to be covering up serious crime involving Executive Government which has many hands involved in its cover-up and is inimical to the administration of justice, the welfare of children in care, the Judiciary's function and democracy itself, is being withheld from public scrutiny because of an interpretation of an "access law" (i.e. section 36 of the *Freedom of Information Act 1992*) introduced by the Executive Government directly implicated in the (shredding/obstruction of justice) crime which prevents public scrutiny of relevant Cabinet submissions revealing a crime to cover up the initial crime.

While the Office of the Information Commissioner, like the Office of the Director of Public Prosecutions, never gave evidence to the Senate in this matter, former Information Commissioner Albeitz, current Information Commissioner Bevan (when working at the CJC) and Deputy Information Commissioner Greg Sorensen, like Mr. Miller QC, have helped colour and cloth the false and misleading evidence provided by the Queensland Government and CJC to the Senate in some form of respectability or acceptability. Their hands are far from clean.

It is my respectful submission that the Committee should invite Messrs. Albeitz, Bevan and Sorenson to appear before its Brisbane hearings and explain, under oath, how they, as Crown legal officers, could have ever ignored (or continue to ignore) the *prima facie* criminality present in evidence relevant to this grievance (i.e. Crown Solicitor's advices of 16 February, 18 April and 18 May 1990, and the January 1997 DPP's advice), as well as accept the correctness (or ignore its incorrectness) of the Queensland Government and CJC's interpretation of sections 129 and 119 of the *Criminal Code (Qld).*

[63] FOI Applications 493/03 Department of the Premier and Cabinet; 247/04 Department of Justice and Attorney-General

The So-Called Inquiries into the Lindeberg Allegations

The CJC, and subsequently the Beattie Queensland Government (in lesser number), over time, have listed the following bodies which have supposedly investigated my allegations, or who have "*...failed to understand or adequately respond*"[64] and whose findings I would not accept because they did not accord with mine. The 1995 list was (and is) profoundly misleading, mischievous and designed to denigrate me. This list includes the original bodies and some since:

- Two Senate Select Committees;
- Criminal Justice Commission;
- Queensland Police Service;
- Parliamentary Criminal Justice Committee;
- Electoral and Administrative Review Committee;
- Information Commissioner;
- State Archives;
- Public Sector Management Commission;
- Auditor-General;
- Connolly/Ryan Judicial Review into the Effectiveness of CJC; and
- Morris/Howard Report - and related DPP's advice to the Borbidge Queensland Government.

The following is the factual situation. It is reasonably suggested that the word "inquiries" - in this context - does not and cannot mean asking one or two questions.

• **Two Senate Inquiries:** They are not named, but it is suspected they mean: 1994 Senate Select Committee on Public Interest Whistleblowing (Chaired by Senator Jocelyn Newman). It found the Heiner affair so serious (and unresolved) that it called on Mr. Goss to revisit it. He refused and then the Senate established: 1995 Senate Select Committee on Unresolved Whistleblower Cases to look into the Heiner affair and described the shredding *"...an exercise in poor judgement*". It is alleged that the Queensland Government and CJC misled the Murphy Select Committee. Relevant evidence about the pack-rape was withheld *inter alia* (See the Greenwood QC submission of 9 May 2001) bringing this Committee into being to inquire into the substance of this allegation.

• **Criminal Justice Commission:** The CJC has consistently claimed that it carried out its investigation honestly, impartially and in the public interest at all times. The evidence suggests otherwise. It is open to conclude on available evidence that the CJC's conduct was biased and corrupt involving inappropriate engagement of Labor Lawyers and (an) ALP member, twisting and misquoting relevant administrative and criminal law, tampering with evidence, failure to interview key people etc which now makes its current manifestation, the CMC, a protagonist in this matter. On 23 February 1995 then CJC Chairman Mr. Rob O'Regan QC assured the Murphy Select Committee that my case and others before it had been investigated to the "nth degree" In making his opening statement on 23 February 1995 he said *"...However, if it appears that this inquiry is being conducted not to assist in the development of whistleblower legislation but to reinvestigate cases already investigated to the nth degree, to score political points or to publicise ancient grievances against the Commission, I assure you our cooperation will certainly be withdrawn."* When I later challenged this claim to the Senate Committee of Privileges, then CJC Chairman Mr. Frank Clair claimed that Mr. O'Regan QC was speaking generally and not

[64] See Pp 10-11 CJC's February 1995 Submission to the Senate Select Committee on Unresolved Whistleblower Cases.

specifically.[65] Let alone what has emerged since revealing the inadequacy of the CJC's investigation, it subsequently conceded to the Connolly/Ryan Judicial Review in July 1997 that my case could have been better investigated.

• **Parliamentary Criminal Justice Committee:** It has ***never*** held an independent inquiry into the Heiner affair or produced a PCJC/Heiner affair report to Parliament. However, the CJC centrally dismissed my complaints on its incorrect interpretation of section 129 of *the Criminal Code (Qld)*. Its replacement Committee, the Parliamentary Crime and Misconduct Committee, to my knowledge, has not revisited this matter despite this central finding being found to be incorrect in the *Ensbey* case.

• **Electoral and Administrative Review Commission:** EARC ***never*** investigated the Heiner affair. I presented submissions on its various issue papers (i.e. archives legislation, whistleblower legislation, codes of conduct, independence of the Attorney-General etc) but it never investigated my allegations. Former EARC Commissioner Brian Hunter has put that in writing. He repudiated Mr. Beattie's claim absolutely that EARC investigated my complaints.

. **Queensland Police Service:** The police were given my Heiner complaint in April 1994 following my being contacted by them in respect of the 1993 findings of the Senate Standing Committee on Superannuation[66] over 4 missing QPOASF/NML staff superannuation withdrawal forms. The QPS took the complaint and interviewed me on 2 subsequent occasions. They failed to investigate the complaint despite my allegations being serious *prima facie* breaching the *Criminal Code (Qld)* against Executive Government and certain CJC officials. Instead, my complaint was referred them back to the same officials at the CJC (i.e. Messrs. Barnes, Le Grand and Nunan[67]) against whom my allegations were being levelled concerning aiding in the cover up by twisting the law and failing to act honestly and impartially. When I objected, the police informed me that they would delay any investigation until the Senate Select Committee on Unresolved Whistleblower Cases had completed its investigation. Subsequently, the police dismissed my allegations in 1996 by referring to findings of no criminal conduct which related to its twin investigation of possible illegal conduct concerning possible misappropriation of trust moneys and fraud relating to the Queensland Professional Officers Staff Superannuation Fund.

• **Queensland Audit Office:** The QAO investigated my complaint in 1993. It found the payment of $27,190 to be "technically unauthorised". It repeated that finding in 1997 when I brought the *ex gratia* payment matter back to its attention in the wake of the October 1996 Morris/Howard Report's findings that the payment was unlawful because of the extraordinary condition upon which public monies were paid. That is, on the agreed condition by both parties (i.e. the Queensland Government and Mr. Coyne) would never speak about *"...the events leading up and surrounding Mr. Coyne relocation away from the Centre*" for the rest of their lives. In light of fresh evidence, it is now open to conclude that those "events" were *known* (by the parties to the February 1991 Deed of Settlement) to be about the abuse of children in State-care, possibly going the crime of pack-rape of a 14-year-old indigenous inmate by other inmates (i.e. criminal paedophilia) on 24 May 1988. The victim is now suing the State of Queensland for negligence and breach of duty of care in which the Heiner Inquiry evidence could have been probative evidence.

. **Public Sector Management Commission:** This Commission ***never*** investigated any of my allegations at any time contrary to Mr. Barnes evidence to the Senate. I never approached it.

. **State Archives:** This agency has ***never*** considered afresh whether the decision to shred the Heiner Inquiry documents was either lawful or properly sought in wake of what is now known.

---

[65] See pp4-5 71st Report - Senate Committee of Privileges – May 1998

[66] See Eight Report August 1993 p62 – Recommendation 2

[67] The context should be seen knowing that Mr. Noel Nunan was not a CJC official at the time of the lodging of the police complaint but was previously a *pro-tempore* CJC official when reviewing my allegation in 1992/93 as a contracted official.

Throughout the entire life of this affair, the State Archivist was never questioned by the CJC or others.

• **Morris/Howard Report 1996:** Barristers Messrs. Morris QC and Howard carried out a "limited" independent investigation based "on the papers" but, even at that level, found that Heiner's matters were far more serious than criminal conduct which came before the Fitzgerald Inquiry. They recommended the establishment of a public inquiry into my complaints suggesting, amongst other breaches, that section 129 of the *Criminal Code (Qld)* had been breached. (See related comment on the DPP's advice on this Report).

• **Connolly/Ryan Inquiry into the Effectiveness of the CJC (1997):** The Heiner affair came before this Inquiry in July 1997 but it made no findings because it was closed by order of the Supreme Court of Queensland 39 *R v Australian Broadcasting Tribunal; Ex parte Hardiman* (1980) 144 CLR 13 at 55 on the grounds of bias in August 1997. It is not known what Commissioners the Hon. Peter Connolly QC and the Hon. Kevin Ryan QC thought about the Heiner Affair and the evidence put. The CJC gave evidence on this matter suggesting that its investigation could have been better, and that it may have reached a different view.

THE CHRONOLOGY OF EVENTS

The following is a detailed chronology of events showing the beginnings of *Shreddergate* – Kevin Lindeberg's journey through the system seeking justice. This chronology maps the shredding of the Heiner Inquiry document, disposal of the original complaints and shredding of photocopies of the original complaints pertaining to it and (a) the establishment of the Heiner Inquiry; (b) its shutdown; (c) Mr. Peter Coyne's known course of justice to gain access to the material; and (d) Mr. Kevin Lindeberg's involvement leading up to his dismissal on 30 May 1990.

JOYC=John Oxley Youth Detention Centre DFS=Department of Family Services DFSAIA=Department of Family Services and Aboriginal and Islander Affairs QSSU=Queensland State Services Union QPOA=Queensland Professional Officers Association, Union of Employees QTU=Queensland Teachers Union

POINT:

1. **24 May 88. On a supervised bush outing to the Lower Portals at Mt. Barney, a 14-year-old Aboriginal female inmate of the JOYC is pack-raped by four male inmates. The detainees are under control of Messrs. Manisky, Cooper, O'Hanley and Ms. Karen Mersaides and Ms Sarah Moynihan from the Centre. Nothing is done to preserve any evidence relevant to a sexual assault. The known assailants are not charged despite the victim wishing it to happen for the first two days but after being threatened she declines when the police arrive on 28 May 1988;**

2. **25 May 88.** Youth Worker Mr. Mark Freemantle writes a memorandum to Mr. Coyne concerning the aftermath of the pack rape on other inmates, including the victim. The memorandum is blanked out under FOI provisions concealing important information about the rape and the subsequent treatment of the victim;

3. **27 May 1988.** The victim is examined by Paediatrician Dr. Maree Crawford and a report forwarded to Dr. Harold Forbes, JOYC contracted doctor;

4. **Saturday 28 May 1988.** Queensland Police Services detectives Janelle Podlick and Sue Tomsett from the Juvenile Aid Bureau interview 14-year-old rape victim for approximately 45 minutes. She declines to press charges against known accused (who are held in custody at the Centre) after enduring threats from others;

5. **30 May 1988.** DFS Deputy Director-General George Nix writes to Director-General Alan Pettigrew about the incident citing that one JOYC staff member was claiming a cover-up and whitewash. He states that Mr. Coyne says the girl will not fall pregnant because her period had commenced.

6. **15 Mar 89.** JOYC riots and is set alight by rampaging inmates on the loose. The lives of staff are threatened. Mr. Coyne quells the riot;

7. **17 Mar 89.** An anonymous Youth Worker whistleblower informs *The Courier-Mail* about the pack-rape incident stating that the alleged victim was a 15 year-old female inmate;

8. **18 Mar 89. DFS Minister the Hon. Craig Sherrin (incorrectly) informs *The Courier-Mail* that the rape victim was 17 and although her parents were consulted and, along with the victim, encouraged to press charges, the victim declined. (Assuming it is the same incident as Point 1, this is a known deception by key parties within the DFS bureaucracy, including its Executive team);**

9. **14 Sep 89.** Meeting between DFS and Ms. Janine Walker QSSU Director Industrial Relations on behalf of the concerned Youth Workers re. Mr. Coyne's management of the JOYC. Director-General Mr. Alan Pettigrew insists complaints must be put in writing before any investigation will be considered;

10. **26 Sep 89.** Incident occurs at JOYC that sees three children, 2 girls aged 12 and 16 and a boy aged 14, handcuffed to a tennis court fence all night on the orders of Mr. Coyne because of their alleged disruptive behaviour;

11. **28 Sep 89**. Mr. Pettigrew visits JOYC and tells staff that he intends to hold an independent investigation into any written complaints;

12. **1 Oct 89.** *The Sunday-Sun* records Shadow Families Minister Ms. Anne Warner complaining of children being inappropriately handcuffed and drugged, and calling for a review of JOYC. Mr. Coyne's superior, Mr. Ian Peers claims the handcuffing was for only a few hours.

13. **10 Oct 89.** Written complaints against Mr. Coyne handed to DFS. Documents immediately acquire status of "public record" and become "*a departmental record/file held on the officer (i.e. Mr. Coyne)*" thus subject to *Public Service Management and Employment (PSME) Regulation 65*. The original complaints *never* leave the DFS's possession and control until 22 May 1990, and therefore never lose their legal value status (See Points 16,18, 75, 77-80);

14. **18 Oct 89.** Union delegation meets with the Hon. Mrs. Beryce Nelson MLA Minister for Family Services in her office at Parliament House to discuss concerns about JOYC;

15. **23 Oct 89.** Hon. Mrs. Beryce Nelson MLA announces that there will be an investigation into the operations of the Centre;

16. **2 Nov 89** Mr. Heiner's appointment is approved of by the Hon. Mrs. Beryce Nelson MLA. She also expects to him investigate allegations of sexual abuse over and above physical abuse;

17. **6 Nov 89** Mr. Coyne becomes aware of criminal allegations in the complaints against him by a staff member concerned an alleged illegal entry into that staff member's home. The staff member later admits that she was mistaken in her complaint;

18. **13 Nov 89** DFS appoints retired Stipendiary Magistrate Mr. Noel O Heiner to carry out a Ministerial Inquiry ordered by the Hon. Beryce Nelson MLA Minister for Family Services (See The Nelson Statement of 15 May 1998 tabled in State Parliament on 25 August 1998). He is provided with specific terms of reference and required to investigate and report back on the specific written complaints against Mr. Coyne, and on other matters touching JOYC security and treatment of detainees. Original complaints remain in the possession of the department, and Mr. Heiner is given copies of same;

19. **22 Nov 89** Mr. Heiner takes evidence from JOYC staff on tapes and places evidence on computer discs, and transcribed to paper;

20. **27 Nov 89** Mr. Coyne approaches Mr. Pettigrew seeking (1) a copy of all the written complaints; (2) written advice on the process of how the complaints were going to be investigated; (3) the opportunity to organise and conduct a defence against the complaints laid. (These requests were later refused). He also indicated that it was impossible for him to defend himself without knowing what the specific complaints were;

21. **28 Nov 89**. Mr. Coyne approaches departmental staff assigned to assist Mr. Heiner and registers his concerns as put to Mr. Pettigrew;

22. **29 Nov 89** Mr. Coyne is given a brief one-page outline of written complaints. He is refused access to specific written complaints handed to the Department on 10 October 1989;

23. **2 Dec 89** The Queensland Government changes. The Australian Labor Party wins office for the first time in 32 years. Hon Wayne Keith Goss MLA, a qualified solicitor, becomes Premier and Minister responsible for State Archives. Hon Anne M. Warner MLA becomes the Minister for DFSAIA, having been Shadow Spokesperson and aware of child abuse activities inside JOYC. Ms. Ruth L. Matchett (formerly a member of the Department of Families Executive team *see Point 8) is shortly afterwards appointed as acting Director-General by the Minister replacing Mr. Pettigrew;

24. **14 & 18 Dec 89** Mr. Coyne officially requests of Ms. Matchett copies of the original complaints and transcript of evidence gathered by Mr. Heiner in order to defend himself. He questions the legal validity of the inquiry, and informs her that he will sue for defamation if his career suffers as a consequence of the inquiry;

25. **2 Jan 90 Ms. Matchett officially informed by Mr. Ian Peers, acting Deputy DFSAIA Director-General, in his memorandum that original complaints against Mr. Coyne are held on an official file in the department's possession created by Mr. George Nix. It is described as *"...a file compiled by Mr. Nix including the original letters of complaint."* Mr. Nix tells Mr. Peers where it can be found while he (Nix) is in Adelaide;**

26. **5 Jan 90** Mr. Coyne becomes aware that Mr. Heiner has evidence of possible criminal conduct concerning an alleged illegal entry by him into a JOYC worker's house;

27. **11 Jan 90** Mr. Heiner confirms to Mr. Coyne that allegations of criminal conduct have been made against him. Mr. Coyne gives evidence to Mr. Heiner for the entire day. He is also accused of having an extramarital affair with JOYC Deputy Manager Ms. Anne Dutney. He is told by Mr. Heiner that he (Heiner) only held copies of the original complaints, and that they (the original complaints) were in the department's possession;

28. **15 Jan 90 Mr. Coyne seeks access to original complaints in a memorandum to Ms. Matchett pursuant *to Public Service Management and Employment Regulation 65*;**

29. **17 Jan 90 Ms. Matchett asserts that no complaints are on Mr. Coyne's personal file. She officially advises him that #she is *not* aware of any other departmental file containing records of the investigation that he is seeking;**

    # See Point 25 The Peers Memorandum of 2 January 1990.

30. **17 Jan 90** Mr. Coyne instructs his solicitors (Rose Berry Jensen) to threaten a writ of prohibition on the Department regarding natural justice being afforded to Mr. Coyne in inquiry process. The Department is given 24 hours to respond;

31. **18 Jan 90** Ms. Matchett writes to the Crown Solicitor twice:(1) she seeks advice regarding Mr. Coyne's solicitors letter of 17 January 1990; (2) she expresses concern over the legality of Mr. Heiner's appointment and encloses Mr. Coyne's memorandum dated 15 January 1990;

32. The Crown Solicitor confirms the legality of Mr. Heiner's appointment pursuant to the Section 12 of the *Public Service Management and Employment Act and Regulations 1988* but alerts her to possible defamation ramifications as witnesses are not immune from writ;

33. **19 Jan 90 1.** Ms. Matchett sends two further memorandums from Mr. Coyne and Ms. Dutney to the Crown Solicitor to consider. The Crown Solicitor reaffirms the legality of Mr. Heiner's appointment, and he also considers the matter of natural justice. The Crown Solicitor notes that Ms. Matchett has arranged a meeting with two unions (QPOA and QSSU) to discuss the Heiner inquiry;

34. **19 Jan 90 2.** Ms. Matchett requests an "off-the-record" meeting with QPOA union organiser Mr. Lindeberg and QSSU Industrial Relations Director Ms. Janine Walker. She tells them that she has a major problem. She informs them that the Heiner inquiry has been closed, and that she has taken possession of all the Heiner documents in a sealed box. She puts forward the proposition that they have not been officially filed but remain "in limbo;"

    Mr. Lindeberg, on Mr. Coyne's instructions, indicates that his QPOA member still wishes to see the written complaints against him, and that there will be no more "off-the-record" meetings with the Department;

35. **23 Jan 90** The Crown Solicitor provides advice to Ms. Matchett. He (incorrectly) believes that the documents are Mr. Heiner's own property. He advises that the documents can be immediately destroyed but it is predicated on the basis that ***"...no legal action has been commenced which requires the production of those files...."***

A draft letter is attached to be sent to Mr. Coyne and Ms. Dutney indicating that everything has been shredded but **the documents are not shredded, nor *the letters sent;**

***Note later chronology dates 18 and 22 May 1990 regarding this letter. (see Points 80, 81-84)**

36. **29 Jan 90** QPOA lodges possible breach of *Public Service Management and Employment Regulation 63* regarding the Heiner inquiry and seeks access to original complaints. The letter is signed by QPOA General Secretary Mr. Don Martindale making him officially aware that the documents are required by statute before and after their destruction as this legal request not rescinded before or after the shredding occurs;

37. **8 Feb 90 Mr. Coyne instructs his solicitors to send a letter to DFSAIA seeking access to the Heiner inquiry documents where they relate to him and the original complaints pursuant to *PSME Regulation 65*. The Crown is given 7 days to respond;**

38. **9-15 Feb 90** Ms. Matchett seeks advice from Crown Solicitor re. Mr. Coyne's solicitors letter of 8 February 1990, and encloses a copy of the solicitor's letter;

39. **12 Feb 90** Cabinet meeting is held at which the Heiner inquiry is officially terminated. Mr. Heiner given indemnity for costs by Cabinet. The documents are secretly transferred to the Office of Cabinet from DFSAIA in an attempt to obtain "Cabinet privilege";

40. **13 Feb 90 1.** Mr. Stuart P. Tait, acting secretary to Cabinet, seeks Crown Solicitor's advice on what action might be taken should a writ be issued requiring access to the Heiner documents given that they may be considered to be part of the official records of Cabinet;

41. **13 Feb 90 2.** Ms. Matchett meets with JOYC staff and officially informs them that: (i) the Heiner inquiry has been terminated; (ii) no report will be made; (iii) the Crown ***"...will accept full responsibility for all [legal] claims arising out of a Crown employee's due performance of his/her duties..."*** (iv) Mr. Coyne will be immediately seconded to special duties in head office commencing in Brisbane on 14 February 1990;

42. **14 Feb 90** Mr. Coyne instructs his solicitors to serve notice on the department of his intention to commence court proceedings to gain access to the documents. Mr. Berry (Mr Coyne's solicitor) immediately phones Mr. Walsh and serves due notice on the Crown giving unequivocal notice of the evidential status of the material. Mr. Walsh confirms the serving of notice in Departmental memorandum dated 14 February 1990 to Ms. Matchett which she later initials as having read it on 21 February 1990;

43. **14. Feb 90** Meeting occurs at the QPOA Headquarters in South Brisbane. It is attended by Mr. Coyne, Mr. Jeffery Manitzky, Ms. Karen Mersiades, Mrs. Anne Dutney and QTU Industrial Officer Mr. Stuart Rose and is chaired by Mr. Lindeberg. It is agreed that Mr. Lindeberg, acting on behalf of both unions, will arrange a meeting with Ms. Matchett, to inform her of the claim on the Heiner Inquiry documents by both unions and their preparedness to join Mr. Coyne and Mrs. Dutney in their legal action to gain access to the documents pursuant to *Public Service Management and Employment Regulation 65.*

44. **15 Feb 90 1. Mr. Coyne's solicitor puts in writing his telephone conversation with Mr. Walsh of 14 February 1990 and reaffirms notice on the Crown of his client's intention to commence court proceedings;**

45. **15 Feb 90 2.** Mr. Walsh officially informs the content of the conversation with Mr. Coyne's solicitor to Ms. Matchett over the phone to Hobart Tasmania where she is on departmental business. He puts his conversation with Mr. Berry into a departmental memorandum;

46. **16 Feb 90 1.** Mr. Kenneth M. O'Shea, Crown Solicitor, provides advice to Cabinet in response to Cabinet's letter of 13 February 1990 regarding the Heiner documents. He advises that (i) the documents cannot attract "Cabinet privilege" as they were brought into being for a departmental purpose not a Cabinet one; (ii) should civil proceedings commence and a Writ issued, the documents could not be successfully withheld; (iii) he now takes the **"...better view..."** that the Heiner documents were, and were always, contrary to his original opinion of 23 January 1990, "public records" within the meaning of section 5(2) of the *Libraries and Archives Act 1988;* and (iv) permission to have them destroyed must be first obtained from the State Archivist;

47. **16 Feb 90 2.** Ms. Matchett officially responds to Mr. Coyne's solicitors and acknowledges receipt of his letter of 8 February 1990, and indicates that the Crown's position regarding access as per *Public Service Management and Employment Regulation 65* is "interim", and that she is ***still*** seeking legal advice, and that nothing sought is on Mr. Coyne's personal file;

48. **19 Feb 90 1.** State Cabinet meeting held. Cabinet decide to seek urgent approval from the State Archivist to have the documents destroyed and are informed in the relevant Cabinet Submission that solicitors are seeking access to the documents;

49. **19 Feb 90 2.** DFSAIA receives: (i) a copy of Crown Solicitor's advice of 16 February 1990 to Cabinet in which he acknowledges a **"... better view"** than the one expressed in his earlier advice of 23 January 1990 on the legal status of the Heiner documents; and (ii) Mr. Coyne's solicitors letter of 15 February 1990 putting the Crown on notice of impending court proceedings;

50. **20 Feb 90** Acting Cabinet Secretary Mr. Tait sends a copy of a draft letter (dated 19 February 1990) to Crown Solicitor for approval which the Cabinet wishes to send to the State Archivist seeking the urgent destruction of the Heiner documents but doesn't want to be seen to be applying pressure on her;

51. **21 Feb 90** Ms. Matchett initials Mr. Walsh's Department memorandum of 14 February 1990 as having read it in which it unequivocally confirms that access to the documents will be sought through the courts by Mr. Coyne if necessary, and that the material should not be destroyed;

52. 22 Feb 90 1. Crown Solicitor advises the acting Cabinet Secretary that he sees nothing ***"...which is objectionable.."*** in the draft letter to the State Archivist;

53. **22 Feb 90 2.** DFSAIA seek advice from Crown Solicitor regarding Mr. Coyne's solicitors letter of 15 February 1990 putting the Crown on notice enclosing a copy of the solicitor's letter to him;

54. **23 Feb 90 1. Acting Cabinet Secretary Mr. Tait writes to the State Archivist seeking her urgent approval to destroy the Heiner documents on Cabinet's view that they are *"...no longer required or pertinent to the public record."* No mention is made in it of Mr. Coyne's solicitors letters of 8 and 15 February 1990 (in the Crown's known possession) seeking access to the material by a legally enforceable statute and putting the Crown on**

notice of foreshadowed court proceedings in which the documents were critically relevant evidence;

55. **23 Feb 90 2.** The documents are delivered to State Archives at Dutton Park from the Office of Cabinet in the morning. Ms. Lee McGregor, the State Archivist, is aided in her appraisal by Ms. Kate McGuckin. In less than one working day, Ms. McGregor faxes to Cabinet her written approval to destroy the material despite having over 100 hours of taped evidence and other material to check to ensure that the material has no informational, administrative, data, historical or legal value in order to comply with standard archival appraisal principles and her statutory duty under the *Libraries and Archives Act 1988.* She recognises that the documents are defamatory in nature but does not specify what it is. The documents are returned to the Office of Cabinet later on the same day;

56. **23 Feb 90 3.** Mr. Lindeberg meets with Ms. Matchett in the afternoon and lodges further breaches of *Public Service Management and Employment Regulations 46* and *65*. They discuss Mr. Coyne's foreshadowed litigation and its possible outcome if Mr. Coyne gains access to the material and potential defamation action ensues. He indicates that the QPOA and QTU may join his legal action to seek access via a judicial review of the statute if the Department does not grant access pursuant to his and Mrs. Dutney's rights, and that of QTU member, Ms. Karen Mersaides. The conversation is witnessed by Department Chief Industrial Officer Ms. Sue Crook;

57. **23 Feb 90 4.** Ms. Matchett assures Mr. Lindeberg at the meeting that the documents are secure with Crown Law and that she is ***still*** waiting for final advice. She also assures him that Mr. Coyne's temporary secondment is genuine and coincidental, and has nothing to do with the Heiner Inquiry;

58. **26 Feb 90 Crown Solicitor advises Ms. Matchett that *"...the matter cannot advance further from the department's point of view until cabinet makes a decision."* The Crown Solicitor informs Ms. Matchett that Mr. Coyne's solicitors letter are *still* subject to ongoing consideration (re access by statute), and drafts a letter to be dispatched stating same;**

59. **27 Feb 90 1.** Queensland Teacher Union (QTU) writes letter to Ms. Matchett seeking access to Heiner documents in accordance with *Public Service Management and Employment Regulation 65* on behalf of its member;

60. **27 Feb 90 2.** Minister Warner signs Cabinet document recommending the destruction of the Heiner Inquiry documents while informing the Cabinet ***"...representations have been received from a solicitor representing certain staff members at the John Oxley Youth Centre. These representations have sought production of the material referred to in this Submission. However, to date, no formal legal action seeking the production of the material has been instigated."***

61. **1 Mar 90 1.** QPOA Assistant General Secretary Ms. Roslyn Kinder sends letter officially lodging breaches *Public Service Management and Employment Regulations 46* and *65* with Ms. Matchett which also confirms Mr. Lindeberg's meeting with Ms. Matchett on Friday 23 February 1990. Ms. Kinder becomes officially aware that the Heiner documents are required legally before the shredding occurs;

62. **1 Mar 90 2. Acting JOYC Manager Ms. Ann Dutney sends a memorandum to Mr. Gary Clarke setting out details of various matters including staff misconduct and *prima face* criminal assault by a Youth Worker against a youth, putting the lives of children at the Centre at risk;**

63. **5 Mar 90 THE GOSS CABINET, WITH FULL KNOWLEDGE THAT THE HEINER INQUIRY DOCUMENTS ARE REQUIRED BY MR. COYNE (AND THE QTU AND QPOA) AND WHILE IN POSSESSION OF MR. COYNE'S SOLICITORS NOTICE OF IMPENDING COURT PROCEEDINGS AGAINST THE CROWN IN WHICH THE DOCUMENTS ARE CRITICALLY RELEVANT EVIDENCE, ORDER THE DESTRUCTION OF THE MATERIAL TO STOP ITS USE IN LITIGATION. JUST PRIOR TO THE DECISION CABINET IS INFORMED THAT A SOLICITOR IS SEEKING PRODUCTION OF THE MATERIAL;**

64. **6 Mar 90.** Mr. Coyne prepares a statement for his court action in the presence of his solicitor;

65. **8 Mar 90.** Mr. Lindeberg when discussing related Heiner inquiry matters with Minister Warner's Private Secretary Ms. Norma Jones on the phone inadvertently learns of the secret plans to shred the documents. He challenges the private secretary's comments indicating that they are required. She ends the call abruptly;

66. **About 13 Mar 90** Mr. Lindeberg meets Minister's Private Secretary and is immediately told that Minister Warner refuses to deal with him on "the Coyne Case", and will only deal with the QPOA General Secretary Mr. Martindale or QPOA Assistant General Secretary Ms. Kinder. No reason is given. Mr. Lindeberg briefs Mr. Martindale before he meets with Minister Warner concerning legal demands seeking access to the Heiner Inquiry documents;

67. **About 15 Mar 90 1.** QPOA General Secretary Mr. Martindale meets with DFSAIA Minister Warner. After the meeting he tells Mr. Lindeberg that she has alleged that he has threatened her career and that of her senior Departmental officers and wants him removed from the case. Mr. Lindeberg denies threatening anyone, and says that he had not spoken with the Minister on the topic. He is removed from the case and its official carriage is taken over by Mr. Martindale and Ms. Kinder;

68. **About 15 Mar 90 2.** Mr. Martindale phones Mr. Coyne and offers him an equivalent position elsewhere in the Department, and requests an **urgent** response. Mr. Coyne does not respond;

69. **19 Mar 90 1.** QTU writes to Ms. Matchett indicating that no response has been received to their letter of 27 February 1990. The union informs the Crown that ***"...legal measures to gain access to the material in question may now have to be taken."***

70. **19 Mar 90 2. Ms. Matchett writes a memorandum to Mr. Coyne indicating that the Crown's current position is "interim" and states *"...I have provided interim responses to Mr. Berry (Mr. Coyne's solicitor) and have advised him that the matters he has raised are still the subject of ongoing advice. Such issues will be addressed through your solicitors when I have received final legal advice."***

71. **19 Mar 90 3.** Ms. Matchett writes to the QPOA indicating the access to the documents is *still* the subject of ***"...ongoing legal advice;"***

72. **19 Mar 90 4.** Ms. Matchett writes to Mr. Coyne's solicitors and questions whether Mr. Walsh did say that a discussion with Mr. Noel Heiner had occurred as referred to in his (Mr. Berry's) letter of 15 February 90. She confirms that she is ***still*** seeking ongoing legal advice as advised in her letter of 16 February 90 regarding access to the documents;

73. **19 Mar 90 5. Ms. Matchett seeks further advice from the Crown Solicitor and encloses Mr. Coyne's solicitors letters of 8 and 15 February 1990 and related documents, including the Walsh memorandum of 14 February 1990. She also encloses photocopies of the original complaints;**

74. **21 Mar 90**. Mr. Coyne's court action statement was typed and drafted by his solicitor;

75. **22 Mar 90 1.** Acting Cabinet Secretary Mr. Tait informs State Archivist of Cabinet's decision of 5 March 1990 to destroy the documents under the terms of section 55 of the *Libraries and Archives Act 1988* indicating that the material is being forwarded to her. The letter does **not** mention that Cabinet has ordered the shredding ***"...to reduce the risk of legal action"*** or what Mr. Coyne and others were doing legally and industrially to gain access to the material;

76. **22 Mar 90 2.** Mr. Coyne meets Mr. Walsh and discusses access et al to the Heiner documents. He tells Mr. Coyne that the Department is ***still*** waiting for Crown Solicitor's advice;

77. **23 Mar 90 SENIOR ARCHIVIST IS COLLECTED BY A CABINET OFFICIAL FROM DUTTON PARK ARCHIVES. THE HEINER DOCUMENTS ARE TAKEN FROM CABINET OFFICE IN THE EXECUTIVE BUILDING AND WALKED ACROSS TO FAMILY SERVICES BUILDING. MS. KATE McGUCKIN, THE SENIOR ARCHIVIST, IS JOINED BY MS. MATCHETT'S EXECUTIVE OFFICER MR. TREVOR WALSH, AND TOGETHER THEY SECRETLY DESTROY THE MATERIAL;**

78. **11 Apr 90** *The Sun* announces on front-page "**Labor Blocks Secret Probe**". Minister Warner indicates that the Heiner Inquiry evidence has been shredded;

79. **18 Apr 90 Crown Solicitor provides advice to Ms. Matchett re her letter of 19 March 1990. He confirms that Mr. Coyne has a legal entitlement to view and take copies of the original complaints pursuant to *PSME Regulation 65* which *must* be complied with as long as the documents are in the Department's possession. He advises that it is artificial to suggest that Mr. Coyne's entitlements can be avoided just because the material is not on his personal file. He advises that if she wishes to dispose of them *prior* approval must be obtained from the State Archivist pursuant to the *Libraries and Archives Act 1988*. The photocopies of original complaints are returned to the Department;**

80. **20 Apr 90** QTU writes another letter to Ms. Matchett inquiring after access to the documents and concern over a newspaper article that they may have been destroyed. They seek an urgent response;

81. **8 May 90 1.** Internal memorandum by Mr. Donald A C Smith, Ms. Matchett's Principal Liaison Officer, to her indicates *et al* that the original complaints are ***still*** in the department's possession on an official file and will have to be shown to Mr. Coyne if they are retained in

the possession of the Crown in accordance with the Crown Solicitor's advice of 18 April 1990;

82. **8 May 90 2. Ms. Matchett seeks advice from Crown Solicitor attaching the trade union letters (QPOA & QTU) seeking access to the Heiner inquiry documents and complaints by a legally enforceable statute: *Public Service Management and Employment Regulation 65*. She indicates that she does not want to approach Cabinet again, and wants to return the original complaints to the QSSU;**

83. 9 May 90 Ms. Matchett informs the QTU that she is ***still*** seeking Crown Solicitor's advice, and once the final advice is received regarding access, the parties will be informed;

84. 17 May 90 1. Mr. Coyne writes to Ms. Lee McGregor, the State Archivist, officially informing her that the Heiner inquiry documents are the subject of legal requests for access, which, if necessary, will be determined in a court. He indicates the Department is *still* seeking advice on the matter. He requests that the documents not be destroyed;

85. 17 May 90 2. State Archivist records in an internal memorandum (dated 30 May 1990) that Mr. Coyne had contacted her on 17 May 1990 to confirm whether the Heiner documents had been destroyed. Ms. McGregor records that, acting on advice from Mr. Trevor Walsh, she *"...declined to make any comment to Mr Coyne beyond suggesting that his lawyer should deal directly with the department or the Crown Solicitor's office;"*

86. 18 May 90 1. State Archivist speaks briefly on the phone with Mr. Walsh regarding Mr. Coyne's letter. She faxes him Mr. Coyne's letter. Mr. Walsh instructs her not to respond to Mr. Coyne, and he advises her that the matter is being handled by the Crown Solicitor;

87. **18 May 90 2. Crown Solicitor provides one page of advice to Ms. Matchett assisting her to return the original complaints to the QSSU in accordance with *her expressed intention* while both he and she are fully aware that they are the subject of a legally enforceable access statute. The Crown Solicitor encloses draft letters to be sent to parties seeking access to the documents indicating that the sought-after material is either shredded or not in the Department's possession or control;**

***88.* 22 May 90 1.** Ms. Matchett sends <u>altered</u> draft letters to: (i) Mr. Coyne's solicitors referring to his letters of 8 and 15 February 1990 and declaring that the Department does not have in its possession or control the original complaints sought, and that everything gathered by Mr. Heiner has been destroyed; (ii) the QTU declaring that everything has been destroyed;

89. **22 May 90 2.** Ms. Matchett sends the QPOA an <u>altered</u> draft letter declaring that everything has been destroyed, and that it appears to her that Mr. Coyne has not ***"...suffered any injustice or detriment ...;"***

90. 22 May 90 3. Ms. Matchett writes to Ms. Janine Walker, Industrial Relations Director of the QSSU, and assures her that all documents brought into existence during the Heiner inquiry have been destroyed, and returns to her the original complaints (officially defined as "public records") which brought the inquiry into existence *without prior* lawful approval from the State Archivist, and while known to be *still* the subject of a legally enforceable access statute;

91. **23 May 90 Mr. Donald A C Smith unlawfully shreds the photocopies of the original complaints *without prior* approval from the State Archivist and records his act with a**

personal handwritten notation on the Department's copy of the Crown Solicitor's advice of 18 April 1990;

92. **24 May 90** Mr. Coyne's solicitor phones Mr. Walsh and confirms receipt of Department's letter of 22 May 1990. He tells Mr. Walsh that ***"...the department is in a lot of trouble"*** and says he intends contacting Goss Minister the Hon. David Hamill. He wishes to be advised whether Cabinet took the decision to destroy the documents. Mr. Walsh records the conversation and says that his request should be put in writing;

93. **30 May 90** Mr. Lindeberg is suddenly dismissed after six years as senior organiser by the QPOA General Secretary Mr. Martindale. The QPOA Assistant General Secretary Ms. Kinder witnesses it. Both are aware that the Heiner documents were shredded when being sought by the union, the QTU and Mr. Coyne. Mr. Martindale cites, amongst four reasons, Mr. Lindeberg's handling of "the Coyne case" as a reason for his dismissal. It is alleged by Mr. Martindale that Minister Anne Warner had lodged a specific complaint against him indicating that he was "***...inappropriate and over-confrontationalist"*** in his handling of the case. Mr. Lindeberg flatly rejects the allegation. His search for justice - *Shreddergate* - begins.

-oOo-