QCPCI 3 (e)

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Queensland Child Protection Commission of Inquiry

Term of Reference 3 (e)
The Final Submission –
The Heiner Affair

Kevin Lindeberg

6 May 2013

TERM OF REFERENCE 3(e)

"reviewing the adequacy or appropriateness of (including whether any criminal conduct was associated with) any response of, or action taken by, the executive government between 1 January 1988 and 31 December 1990 in relation to:

(i) allegations of child sexual abuse; and/or

(ii) industrial disputes;

in youth detention centres, or like facilities."

CASE LAW

A v Hayden (1984) CLR 532

Davies v Eli Lilly & Co, [1987] 1 All ER 801

R v Ensbey; ex parte A-G (Qld) [2004] QCA 335

R v Rogerson (1992) 174 CLR 268

Ostrowski v Palmer [2004] HCA 30

Knight v The Queen (1992) 175 CLR 495

R v Fingleton [2003] QCA 266; CA No 177 of 2003, 26 June 2003

R v Selvage & Anor [1982] 1 All ER 96.

R v The Secretary of State for the Home Department; ex parte Fire Brigade Union [1995] 2AC 513

Wixted v The State of Queensland QSC 679 of 1982

R v Vreones [1891] 1 QB 360

The Queen v Murphy (1985) 158 C.L.R. 596

Sebel Product Ltd v Commissioner of Customs and Excise (1949) Ch 409

LAWS AND REGULATIONS

Criminal Code (Qld) 1899

Criminal Justice Act 1989

Children's Services Act 1965 and Regulations 1966

Libraries and Archives Act 1988

Public Service Management and Employment Act and Regulations 1988

Public Service Act and Regulations 1922

FORWARD

1. The factual and political circumstances associated with the shredding of the Heiner Inquiry documents and tapes always made a finding of *prima facie* illegality, open under the relevant provision/s of the ***Criminal Code (Qld)*** 1899 in respect of the decision to destroy these public records to prevent their known use as evidence in foreshadowed (and realistically possible future) judicial proceedings, capable of changing the course of the political history of Queensland. This is because the alleged wrongdoers were known to be all Ministers of the Crown in the State of Queensland in attendance at the 5 March 1990 meeting of the political Executive, and extending to certain senior bureaucrats associated with the decision-making process and outcome.

2. Such a finding has no precedent in the political or jurisprudential history of Queensland or (it is believed) any other Western democracy.

3. In short, this is a matter of uniqueness and importance. It presents an unprecedented litmus test for the rule of law principle of equality before the law for all and ignorance of the law not being an excuse available to anyone, but most particularly government. The alleged offence concerns a foundational administration of justice offence on which all justice systems rely – the preservation of known and foreseeable evidence so that courts may do justice according to law with all available relevant evidence at the time and so that any party may enjoy a fair trial, especially when facing the might of government as the defendant.

4. Evidence exists which unequivocally shows that the Criminal Justice Commission ("**CJC**") always knew that my complaint to it on 14 December 1990 had the potential to see the entire Goss Government ministry open to a charge pursuant to section 132 of the ***Criminal Code*** – **Conspiracy to defeat justice.** This material, however, is yet to be examined due to the timeline stipulated in the amended Term of Reference 3(e), namely from 1 January 1988 to 31 December 1990. (See **the Chronology of Events Attachment**)

5. It was argued from the very beginning that the shredding may have been a serious crime captured by section 129 of the ***Criminal Code*** – **destroying evidence**. Sections 132 and/or 140 of the ***Criminal Code***, being sister provisions to section 129 in Chapter 16 of the ***Criminal Code*** – **Offences Relating to the Administration of Justice** – were thus also potentially relevant in the alternative.

6. Now, when considering whether or not the shredding was an illegal act, it is submitted the fact that section 129 was erroneously interpreted by the CJC and other authorities (including Crown

Law) in the first instance and then for a prolonged period afterwards should not be ignored. This because the ramifications of an accurate interpretation were always so monumentally serious, politically and constitutionally, that the misinterpretation may have been done deliberately so as to advantage those in power in our unicameral system of government.

7. In August 2007, a raft of retired senior judges advised of this very concern in their Open Statement of Concern on the Heiner Affair to then Queensland Premier, the Hon Peter Beattie. They also advised that a Special Prosecutor ought to be appointed to investigate the **entire** Heiner Affair.

8. It is submitted that because section 129's purpose and wording were so unarguable and patently clear for the CJC and other authorities (i.e. Crown Law and the Office of the Director of Public Prosecutions at particular times) to have ever opined that it permitted all known evidence to be deliberately destroyed to prevent its use as evidence just so long as the relevant foreshadowed judicial proceeding had not commenced was not only untenable but an utter nonsense if the rule of law counted for anything. Everything in this matter is exacerbated because it involves the conduct of government (i.e. "the model litigant") either as "the political Executive" or "the whole of government" - affecting and undermining the administration of justice and public confidence in government.

9. The Heiner Affair should therefore be best and accurately described as a scandal involving 'systemic' corruption (as in 'whole of government'), not just one instance of alleged criminality pertaining the shredding act by the 'political Executive' on 5 March 1990.

10. In accordance with Term of Reference 3(e) and the 24 July 2012 definition of "government" ruled at the Recusal Hearing, it is submitted that the conduct at issue involved members of the 'political Executive' (i.e. the Queensland Cabinet Ministers in attendance on 5 March 1990 when they ordered the destruction of the Heiner Inquiry documents and tapes):

    (a) knowingly obstructed the administration of justice regarding foreshadowed and/or "realistically possible" future judicial proceedings involving known and prospective parties which relied on the **continuing existence** of the Heiner Inquiry documents and tapes; and

    (b) knowingly covered-up known and/or suspected misconduct involving public officials at the John Oxley Youth Centre ("**the Centre**") *inter alia* concerning the abuse of children in their care as gathered in evidence by Mr Heiner during the course of his lawful inquiry into the management of the Centre.

11. However, that while it was asserted from the outset that section 129 may have been breached, it is submitted that more significant and compelling is that despite opinions from eminent Queens

Counsel (all learned in the criminal law) such as Messrs Ian Callinan[1], Robert F Greenwood[2] and Anthony Morris[3], and retired Queensland Appeal Court Justice, the Hon James Thomas AM[4], having publicly advised on this serious mistake of law over an extended period after the 5 March 1990 shredding, those government authorities adamantly refused to correct their demonstrable mistake of law in the Heiner Affair (including after the 2004 Queensland Court of Appeal ruling in ***R v Ensbey***[5]) and then to act in accordance with the law and their duty.

12. Consequently, it is submitted that the failure of these authorities to apply the law honestly and equally in a situation of such seriousness which overtly perpetuated an injustice against me and others to the advantage of others in high places in government by means of a systemic cover-up not only warrants potential public admonition, on the evidence adduced, but it demands a thorough and urgent public review to expose and address the full extent of that 23-year cover-up.

THE ILLEGALITY OF THE SHREDDING OF THE HEINER INQUIRY DOCUMENTS AND TAPES

1. The Laws at Issue

1.1. The relevant provisions of the ***Criminal Code (Qld)* 1899** which we submit may have been breached in respect of the shredding of the Heiner Inquiry documents and tapes are as follows:

(a) Section 129 of the ***Criminal Code*** – **destruction of evidence** – 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."*

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[1] 7 August 1995 Special Submission to the Senate Select Committee on Unresolved Whistleblower Cases

[2] 9 May 2001 Submission to Senate President which later led to the establishment of the 2004 Senate Select Committee on the Lindeberg Grievance

[3] October 2006 Morris QC and Edward Howard Report into the Lindeberg Allegations commissioned by the Borbidge Queensland Government

[4] Opinion to University of Queensland's School of Journalism's student May 2003 newspaper *The Queensland Independent*

[5] ***R v Ensbey; ex parte A-G (Qld)*** [2004] QCA 335 of 17 September 2004

(b) Section 132 of the ***Criminal Code*** – **Conspiring to defeat justice** – provides for: "(1) *Any person who conspires with another to obstruct, prevent, pervert, or defeat, the course of justice is guilty of a crime and is liable to imprisonment for 7 years.*"

(c) Section 140 of the ***Criminal Code*** – **Attempting to pervert justice** – provides for: "*A person who attempts to obstruct, prevent, or defeat the course of justice is guilty of a crime – Maximum penalty – 2 years imprisonment.*"

1.2. The binding authority regarding section 129 of the ***Criminal Code (Qld)*** is found in ***R v Ensbey; ex parte A-G*** *(Qld)* [2004] QCA 335 of 17 September 2004. Case law dates back to 1891 in ***Vreones,*** and was cited in ***Ensbey***.[6] His Honour Davies JA in ***Ensbey*** relevantly said 15:

> *"...It was sufficient that the appellant believed that the diary notes might be required in evidence in a possible future proceedings against B, that he wilfully rendered them illegible or indecipherable and that his intent was to prevent them being used for that purpose."* (In making this ruling, His Honour also referred to the authority in ***R v Rogerson*** (1992) 174 CLR 268 at 277)
>
> And at 16:
>
> *"...Now, here, members of the jury, the words, 'might be required', those words mean a realistic possibility. Also, members of the jury, I direct you there does not have to be a judicial proceeding actually on foot for a person to be guilty of this offence. There does not have to be something going on in this courtroom for someone to be guilty of this offence. If there is a realistic possibility evidence might be required in a judicial proceeding, if the other elements are made out to your satisfaction, then a person can be guilty of that offence."*

1.3. His Honour Justice Jerrard said at 49:

> *"A more difficult matter for appropriate application of the section is where, as in this case, not even criminal proceedings are on foot or foreshadowed, let alone judicial proceedings, at the time the potential evidence is destroyed. There is authority at common law, however, approving the application of the associated offence of fabricating evidence, provided for by s 126 of the Code, to a situation in which there was no judicial proceeding on foot, and only the reasonable possibility, foreseen by and which arose out of facts known to the accused, that one might occur in the future."*

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[6] Other cases cited were ***Knight v The Queen*** (1992) 175 CLR 495 (applied), ***R v Fingleton*** [2003] QCA 266; CA No 177 of 2003, 26 June 2003, ***R v Selvage & Anor*** [1982] 1 All ER 96.

1.4. The triggering elements of section 129 of the ***Criminal Code*** are:

(1) knowing that any document may be required in evidence in a judicial proceeding;

(2) wilfully rendering it illegible or indecipherable; and

(3) with intent thereby to prevent it from being used in evidence.

1.5. McHugh J in ***Ostrowski v Palmer*** [2004] HCA 30 (16 June 2004) said at 52:

> *"...If a defendant knows all the relevant facts that constitute the offence and acts on erroneous advice as to the legal effect of those facts, the defendant, like the adviser, has been mistaken as to the law, not the facts."*

And at 41:

> *"...At common law, and in my opinion under the **Criminal Code**, once the prosecution proves in relation to a strict liability offence that the defendant knew the facts that constitute the actus reus of the offence, that is, all the facts constituting the ingredients necessary to make the act criminal, the defendant cannot escape criminal responsibility by contending that he or she did not understand the legal consequences of those facts.";*

And at 59:

> *"...for the purposes of s 24 of the **Criminal Code**, it is irrelevant whether the mistake of law is induced by incorrect information obtained from an official government body or from any other third party or is induced by any other form of mistaken factual understanding. Thus, in any situation where a person's mistaken belief as to the legality of an activity is based on mistaken advice, that person would not have a defence under s 24. To find otherwise would expand the scope of the defence in s 24 to an unacceptable extent. It would also undermine the principle that ignorance of the law is no excuse."*

1.6. Callinan and Heydon JJ said in ***Ostrowski*** at 85:

> *"...A mockery would be made of the criminal law if accused persons could rely on, for example, erroneous legal advice, or their own often self-serving understanding of the law as an excuse for breaking it..."*

2. Background to the Shredding

2.1. By the Queensland Government extending this Commission's remit pursuant to **Commission of Inquiry Amendment Order (No.2) 2013**[7] to include "*...industrial disputes in youth detention centres*" it broadened the scope of consideration and findings to involve "all" conduct by public officials at the John Oxley Youth Centre between 1 January 1988 and 31 December 1990 which Mr Heiner took evidence about instead of conduct pertaining specifically to instances of "*...historic child sexual abuse.*"

2.2. Counsel and I do not, however, retreat from our stated position that during the course of his inquiry, Mr Heiner heard and took evidence about "*...historic child sexual abuse*" (namely, the Harding Incident). This assertion shall be addressed later in this submission.

2.3. It is now plain that evidence of unlawful "child abuse" (i.e. as in the 26 September 1989 Handcuffing Incident to an outside fence throughout the night) was taken by Mr Heiner and known to be in the documents at the time they were destroyed.[8] The relevant head of power (at the time) is open to be found under the ***Children's Services Act 1965 and Regulations***[9] and the Code of Conduct associated with the ***Public Service Management and Employment Act 1988 and Regulations***.

2.4. It is relevant to point out that by their subsequent actions the Goss and Beattie Governments acknowledged that matters of "child abuse" (as in the 26 September 1989 Handcuffing Incident) was part of Mr Heiner's investigation, and hence had to comprise some of his gathered evidence.

2.5. This is manifest in **Document 13**[10] in which the Goss Government sent evidence about the Heiner Inquiry to the **Senate Select Committee on Unresolved Whistleblower Cases** in July 1995, and in the Beattie Government's establishment of the **Forde Inquiry into the Abuse of the Children in Queensland Institutions** ("**the Forde Inquiry**") in August 1998 with a remit to investigate the 26 September 1989 Handcuffing Incident.

2.6. Relevantly, I put this to Commissioner Forde in the Introduction to his 18 September 1998 submission at page 4:

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[7] http://www.childprotectioninquiry.qld.gov.au/_data/assets/pdf_file/0004/178717/Commissions-of-Inquiry-Amendment-Order-3e.pdf

[8] See QCPCI Transcript 3 December 2012 p24 (Re Exhibit 71 – Feige/Copley) 7 December 2012 – Feige/Copley; Transcript 4 December 2012 p18 – Jan Cosgrove/Copley; Transcript 5 December 2012 p40 – Lannen/Copley; Transcript 7 December 2012 pp35-36 – Cox/Copley; Transcript 11 December 2012 p53 – Coyne/Copley; Transcript 12 December 2012 p44 – Collins/Commissioner; Transcript 13 December 2012 p53 – Yuke/Copley; Transcript 24 January 2013 p59 – Walker/Lindeberg.

[9] Note the **Forde Report** at p172 – Re Investigation into the 26 September 1989 Handcuffing Incident at JOYC

[10] **Document 13** was a tampered/edited version of Mr Coyne's report to Mr Ian Peers setting out reasons why he had handcuffed the children. Its contents appeared on the front page of *The Courier-Mail* on 30 May 1998 as unacceptable treatment of children and was arguably the major cause for the incoming 'minority' Beattie Government setting up the Forde Inquiry in August 1998.

*"**A bastion of hope and justice***

As a universal principle, the Crown/State - the Fountain of Justice - should always be seen as a bastion of hope and justice. It is especially important to maintain the integrity of that bastion for children who may or have suffered abuse at the hands of those with control over their young lives.

In that sense, any effort by the Crown/State (i.e. Executive Government and/or its agents) to knowingly ignore, destroy evidence of or cover up suspected child abuse of children in its care and control should never be tolerated or excused in any decent caring society governed by the rule of law.

I submit that governments cannot be permitted to destroy evidence of suspected child abuse perpetrated by Crown employees against children in lawful custody or care of the Crown to prevent public exposure and liability as well as possible prosecution of the offenders for whatever reason. Equally, governments cannot be permitted to destroy public records when it knows that they are evidence for pending or impending court proceedings and when done for the express purpose of preventing their use in those proceedings."

2.7. Poignantly, might I suggest, the situation was summed up at page 10 which still attends this Commission 14 years later, especially given its recently amended Term of Reference:

"...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."

2.8. It is a matter of public record that the Forde Inquiry found the 26 September 1989 Handcuffing Incident ordered by Mr Coyne to be unreasonable in respect of its duration and hence possibly unlawful under section 69(1) and (5) of the ***Children's Services Act 1965*** and Regulation 23(10), but a prosecution was not possible due to (the limitation period of) 12 months having elapsed.[11]

[11] At Page 172, the **Forde Inquiry Report** relevantly says: *"That both the act of handcuffing and the length of time that X and Y were handcuffed constituted a possible breach by Mr Coyne of section 69(1) of the Children 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."*

2.9. Further consideration[12] suggests that this offending conduct may have represented *prima facie* offences under Sections 335, 355 and 544 of the ***Criminal Code (Qld)***,[13] and therefore were not limited by the elapse of time when the Forde Inquiry made its findings.

2.10. In any case, the Commission should be mindful of these factors in reaching its decision regarding the lawfulness of the shredding within a 'full and careful' picture under its amended remit because at the time this incident of child abuse was investigated by Mr Heiner and at the time the Queensland Cabinet considered the fate of his gathered material and ordered its destruction on 5 March 1990, *inter alia*, "***...to reduce the risk of legal action and provide protection for all parties involved in the investigation***", (See **Exhibit 151** page 2), the Commission knows that the Hon Dean Wells confirmed on 23 April 2013 at pages 26-27 that the Cabinet knew the material may have been about "misconduct" worthy of consideration by the Criminal Justice Commission ("**CJC**").

2.11. It reasonably follows that these serious *prima facie* breaches of the ***Children's Services Act 1965*** opened the way to action against Mr Coyne because they plainly fell within the meaning of "industrial matters" going to suspected official misconduct, which brought into play "a realistic possibility" of future judicial proceedings in various curial or quasi-judicial forums, all of which were authorised at law to administer and take evidence on oath.

2.12. This has the legal consequence of triggering relevant provisions under Chapter 16 of the ***Criminal Code (Qld)*** dealing with Offences Relating to the Administration of Justice because of the definition of "judicial proceeding" under section 119 of the ***Criminal Code (Qld)***.

2.13. For example, Mr Wells acknowledged that the Heiner material may have been about "misconduct" yet the CJC's Official Misconduct Division, pursuant to the ***Criminal Justice Act 1989***, had become operational since November 1989. It is likely, therefore, that it was known that the contents of the Heiner Inquiry documents represented "suspected official misconduct" and this opened up wider considerations in how the material should be handled. Relevantly, section 37(2) of the ***Criminal Justice Act 1989*** says:

> *"It is the duty of each of the following persons to refer to the Complaints Section all matters that the person suspects involves, or may involve, official misconduct –*
>
> *(a) The Parliamentary Commissioner for Administrative Investigations;*
>
> *(b) The principal officer (other than the Commissioner of Police) in a unit of public administration;*
>
> *(c) A person who constitutes a corporate entity that is a unit of public administration.*

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[12] See Exhibit 5 Attachment 2, Volume II, Alleged *Prima Facie* Counts 14-23

[13] Section 335 – **Assault**; Section 355 – **Deprivation of Liberty**; Section 544 – **Accessory after the fact**.

Section (4) says: A person shall discharge the duty prescribed for the person by subsection (2) and (3) notwithstanding –

(a) The provisions of any other Act; or

(b) Any obligation to which the person may be subject to maintain confidentiality with respect to the matters or complaints concern.

2.14. The CJC was a "judicial proceeding" pursuant to section 119 of the ***Criminal Code (Qld)***. When Mr Wells recited what Queensland Premier, the Hon Wayne Goss, is alleged to have said about the type of material the Heiner Inquiry documents represented (at Point 15 in the Wells' Statement), the issue of "realistically possible" future judicial proceedings before the CJC was triggered : (See **Exhibit 351**)

"...I think it was that this point that the Premier said that these people could in a few weeks repeat their concerns to the Criminal Justice Commission, and we were setting that up with the powers of a standing Royal Commission and with ***a misconduct division the function of which would be to deal with precisely these kinds of issues****."* (Bold and underlining added)

2.15. It is also relevant to cite what some additional comments *The Sun* elicited from Heiner Inquiry witnesses regarding other aspects of the alleged misconduct put before Mr Heiner in that newspaper's 11 April 1990 front page coverage on the shredding. (See **Exhibit 342**) Albeit, the sources are anonymous, reporter Miles Kemp wrote:

*"****Allegations at the inquiry centred around charges of corruption and misconduct*** *by two youth workers.....Two witnesses at the inquiry claimed today serious allegations of funding rorts and jobs-for-the-boys had been raised before Mr Heiner."* (Bold and underlining added)

2.16. Allied to this is the earlier 1 October 1989 *The Sunday-Sun* coverage (p18) of the 26 September 1989 Handcuffing Incident with Ms Anne Warner, as Shadow ALP Families Spokesperson, speaking about her knowledge of this incident and related 'sedating of inmates.' She is reported as calling for a review of the Centre. (See **Exhibit 324**) The article records that she obtained her information of possible serious child abuse from sources inside the Centre. There is no surprise in any of this.

2.17. It is noteworthy that Mr Ian Peers' (misleading) claims in *The Sunday-Sun* article that the handcuffing only occurred "***...for a few hours***" when the full version of the aforementioned related **Document 13** shows that he knew the handcuffing was throughout the night. (See **Exhibit 324**)

2.18. Evidence has been adduced that this Handcuffing Incident was one of the complaints[14] which Mr Heiner was commissioned to review, being part of the list of complaints lodged with Director-General Mr Alan Pettigrew by Ms Janine Warner of the QSSU on 10 October 1989. (See **Exhibit 72**)

A Proper Option

2.19. Referring back to Point 2.13, although the ***Criminal Justice Act 1989*** was not fully in force at the time of the actual shredding on 23 March 1989, the issue of foreseeability should be a consideration for this Commission in its Report on 3(e). It is known that the CJC's Official Misconduct Division came into operation in November 1989, and while its Complaints Section did not come into operation until 22 April 1990, the majority ruling and associated arguments in ***R v The Secretary of State for the Home Department ex parte Fire Brigade Union*** [1995] 2AC 513 meant, under the prevailing circumstances at the time both as a proper place to refer the "misconduct" and "defamation" allegedly contained in the material and as a proper place to secure them from access (if in fact this was ever a reasonable concern), the CJC was **an immediate option**. The Cabinet Secretariat had held the Heiner Inquiry documents and tapes in its possession (albeit secretly) from around 9 February 1990 as a device to avoid access by Mr Coyne and others[15], but it is hardly credible that their continuing preservation for a short time further was a legal and practical impossibility before being able to refer the material to the CJC, **let alone immediately**, to overcome the alleged difficulties instead of destroying it, unless the department and the Queensland Government never wanted anyone to see what Mr Heiner had lawfully discovered during his brief Inquiry into the running of the dysfunctional Centre.

2.20. If "foreseeability" is not held to be an immediate option to involve the CJC after 22 April 1990, it is suggested that the material could and should have been properly referred to the police, especially as it was an option earlier advanced by Mr Peers in an (undated) memorandum to Ms Matchett around the time when Mr Heiner was about to write his report and temporarily downed tools on 19 January 1990 (See **Exhibit 123**) until his appointment status was clarified. All this came to nought for Mr Heiner when Ms Matchett summarily terminate his commission on 7 February 1990.(See **Exhibit 136**). The Peers memorandum relevantly says at page2:

> *"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:*

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[14] "Unsigned" Complaint says: *"Reports of use of handcuffs as a restraint – chains used to attach a child to a bed – handcuffed to permanent fixtures – medication to subdue violent behaviour – resident child attached to swimming pool fence for whole night – all inappropriate management."* (See **Exhibit 88**)

[15] See The Hon Dean Wells' Statement, **Exhibit 351** at p3, Point 9 which says: *"...She (Warner) said that if the documents stayed in her department they would become part of or be relevant to the personal files of the employees who were making or who made the accusations, and to keep unsubstantiated scuttlebutt and insults on people's files was intolerably unfair."*

- ***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?"* (Bold and Underlining added)

Determined Destruction

2.21. It is submitted that there was a determination on the part of the Queensland Government [which certainly means "the political Executive" within the definition under 3(e)] that these public records were going to be destroyed no matter who or what stood in the way, and Mr Wells expressed this 'political desire' in his Statement (See **Exhibit 351**) at Point 19 thus:

> *"As I mentioned in paragraph 15 the political reality is that the destruction option was effectively established as the default position by the end of the first cabinet submission. The juggernaut of government was already programmed and moving in the direction of the destruction option before cabinet was ever informed that any solicitor was looking for the documents. In other words knowledge of the interest of the solicitor in the documents came too late to have been an ingredient in the direction cabinet took on the issue."*

2.22. In this revealing insight about "*...the juggernaut of government*" being already programmed towards destroying the material back in 1990, it is submitted that it is not open to accept that Mr Wells accurately records "the state of things" because his 'cherry-picking' version clashes with what was actually set out in the relevant Cabinet submissions; the first Cabinet submission of 12 February 1990 (See Exhibit **151**) plainly declares that its objective was "*...to reduce the risk of legal action and provide protection for all involved in the investigation.*" Conduct pursuant to that objective was embarked on by the Cabinet Secretariat. For example, on 13 February 1990, acting on behalf of the Cabinet, Mr Tait wrote to the Crown Solicitor, Mr O'Shea, seeking advice regarding any discovery/disclosure obligation which might apply to the Heiner Inquiry documents should a writ be issued. (See **Exhibit 158**)

2.23. In ***A v Hayden*** (1984) CLR 532 the High Court held that in any act:

> *"...neither the Crown nor the Executive has any common law right or power to dispense with the observance of the law or to authorise illegality."*

2.24. The chronology of events indicates that when Ms Warner signed off on the 12 February 1990 Cabinet Meeting submission, i.e. on 5 February 1990, at page 6 of **Exhibit 151**, it records this about the whereabouts and security of the Heiner Inquiry documents and tapes, "*...This material has been handed in sealed boxes*[16] *to the Acting Director-General, Department of Family Services and Aboriginal and Islander Affairs. It has been stored in a secure place and has not been perused by the Acting Director-General.*"

2.25. The relevant question is: "Why not?" For a public official at that level to deliberately deny herself the opportunity to learn of evidence of improper conduct within her department amounts to dereliction of duty at best, and for her Minister to connive to that end smacks of her own complicity in that dereliction. It opens up questions of wilful blindness.

A motivation factor to transfer the documents to Cabinet

2.26. There is no indication in the 12 February 1990 Cabinet submission about the 'sealed box' needing to be relocated into the possession of the Cabinet Secretariat in order that the objectives of the submission could be agreed to, but, for some unexplained and undocumented reason between 5 February and 13 February 1990, something happened which saw the urgent need to secretly transfer the 'sealed box' from its 'security[17]' in the department to the 'security' of the Cabinet Secretariat. It is submitted that the only triggering event which occurred between those dates was the 8 February 1990 letter from solicitors Rose, Berry and Jensen, on behalf of Mr Coyne and Ms Dutney, seeking access to certain parts of the Heiner Inquiry documents and tapes pursuant to ***Public Service Management and Employment Regulation 65***. ("***PSME Regulation 65***")

2.27. This notification carried with it "a realistic possibility" of judicial review if access was refused, whatever differing interpretations were offered about whether the ***PSME Regulations*** extended to these records, which at that point in time, were not thought to be "public records" pursuant to section 5 of the ***Libraries and Archives Act 1988***.

2.28. It is relevant to point out that Mr Coyne had the benefit of always holding the acting Solicitor-General's "whole of government" 30 June 1989 interpretation of the meaning of ***PSME Regulation 65***

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[16] It might be noted that the plural word "boxes" is used when the evidence adduced suggests that it was always "one" box. It is possibly a mistake by the composer of the document, especially given Mr Roughead's evidence about collecting a single box from Mr Heiner.

[17] We posit that the imputation regarding a need for "security" over the 'sealed box' brings (unnecessarily) to this matter an element of 'drama' that someone was going to raid the department to steal the box and therefore a greater amount of physical 'security' resided in the Cabinet Secretariat. The only force being exerted at the time to obtain access was one of law, not via unlawful break and entry. Decisions regarding the fate of these records could have been done 'on the papers', save that the transferral allowed Ms Matchett, albeit disingenuously we submit, to be able to write to various parties seeking access (as she did) that nothing was held by the department. In effect, they disappeared after 9 February 1990 only to be returned to be secretly destroyed on 23 March 1990 in Mr Trevor Walsh's office by his hand and of Ms McGuckin's from State Archives in a shredder.

because it was Mr Coyne's request of Mr Pettigrew which triggered the obtaining of that advice simply because he (Coyne) wanted to know about his obligations regarding staff recordkeeping at the Centre.

2.29. Even at that stage, it is submitted that such an interpretation was a "mistake of law", not a "mistake of fact" and consequently offers no defence for what members of the 5 March 1990 Goss Cabinet did in this matter after having started "*...the juggernaut of government*" on its course of action; notably the Crown Solicitor's 16 February 1990 advice to Mr Tait corrected the earlier erroneous view (as a "better view") regarding the legal status of the Heiner Inquiry documents and tapes which first surfaced in the 23 January 1990 Crown Law advice to Ms Matchett.

2.30. The accuracy of "the state of things" which Mr Wells seeks to rely on is further exposed as inaccurate because the 19 February 1990 Cabinet submission (See **Exhibit 168**) at pages 1 and 2 plainly says "*...a number of demands requiring access to the material, including requests from Solicitors on behalf of certain staff members.*" (And, of course, there remained the unspecified but anticipated and feared action in defamation).

Not Credible

2.31. Returning to Ms Warner, what is remarkable, but not credible, is that she would have the Commission believe that a mere few weeks after becoming the responsible Minister on 7 December 1989, she had forgotten all about the claimed child abuse as well as the realistic possibility that Mr Heiner may have been provided with evidence about it from the same aggrieved staff members who had told her back in late September 1989 and who were pressing for an inquiry which she also echoed.

2.32. Even when the responsible Minister (which included legal responsibility for the welfare of the children at the Centre) and when she came into possession of the material in a box collected from Mr Heiner at the Children's Court by Mr Damien Roughead (See **Exhibit 309**), with the power of the Crown behind her, she and her acting Director-General failed to look inside the box, even if only to find out whether children's lives were being put at risk.

2.33. Instead, this material was suddenly transferred across George Street to the Cabinet Secretariat[18] on or about 9 February 1990 within a matter of a day, or thereabouts, after a solicitor, acting for his clients Mr Coyne and Ms Dutney, had sought access to their relevant extracts from her acting Director-General, Ms Matchett, under ***Public Service Management and Employment Regulation 65*** (See **Exhibit 141**).

[18] QCPCI Transcript 19 February 2013 – Tait/Lindeberg p36, 38.

3. Defamation not the only "realistically possible" future Judicial Proceedings

3.1. For the sake of accuracy and completeness, it must stress that the notice of foreshadowed judicial proceedings placed on the Queensland Government by solicitors Rose Berry Jensen for Mr Coyne and Mrs Dutney, and by the QPOA and Queensland Teachers Union ("**QTU**") was never **solely** directed at defamation proceedings.

3.2. The object of placing the Queensland Government on notice, verbally and in writing, was to preserve and secure access to the Heiner Inquiry documents and tapes (as well as the original complaints) because the public servants doing so (i.e. Mr Coyne, Mrs Dutney and Ms Mersaides) had a legal right of access pursuant to ***Public Service Management and Employment Regulation 65*** (***"PSME Regulation 65"***), and they wished to exercise that right.

3.3. This is not to suggest that any of those parties had foresworn any right to sue for defamation, but what this set of circumstances presented for those individuals was that being public officials and dealing with "*departmental public records*" (i.e. the Heiner Inquiry documents and tapes), it gave them **another** line of legal attack to secure the relevant records under ***PSME Regulation 65***, either out of court or in court, which might only have been, in a different circumstance, secured in an action in defamation after lodging and serving a writ in defamation and triggering the Discovery/Disclosure Rules of the Supreme Court on the other party.

3.4. However, it must be made clear that solicitor, Mr Ian Berry, did have a brief for an action in defamation from Mr Coyne and Mrs Dutney. A covering letter dated 8 February 1990 from Mr Berry to Mr Coyne and Mrs Dutney C/- of the JOYC headed "***Defamation***" is held which covered the 8 February 1990 letter sent to Ms Matchett seeking access to certain extracts of the Heiner Inquiry documents as they related to his clients and access to the original complaints under ***PSME Regulation 65***. (See **Exhibit 141**)

3.5. When Mr Wells told the Commission on 23 April 2013 that the only "access" legislation he was aware of which might concern the Heiner Inquiry documents was prospective Freedom of Information legislation (notwithstanding Counsel Assisting did inform him about rights under ***PSME Regulation 46***), it is obvious that the full scope of ***PSME Regulation 65*** needs to be fully appreciated, and unless it is, a full and careful finding by the Commission may fall short on this course of legal action to gain access.

3.6. The acorn from which ***PSME Regulation 65*** grew is found in the 1982 case, and arguably spawned the Heiner Affair. It was brought before the Supreme Court of Queensland under the long-standing ***Public Service Act and Regulations 1922*** in ***Wixted v The State of Queensland***[19]. It is a matter of

[19] QSC 679 of 1982

record that High Court Justice Pat Keane, as a young barrister, represented Queensland Museum Librarian, Mr Edward (Ted) Wixted against the Director of the Queensland Museum. They appeared before His Hon Justice John Macrossan. It concerned Mr Wixted's right, as a public servant, to access detrimental files which were being kept away from his personal file wherein if it were otherwise, he had a right to access, copy and comment on by way of it being an expression of natural justice as that concept was understood when the law was enacted in 1922.

3.7. At the time Mr Wixted brought his challenge, a widespread culture had arisen in the Queensland public service of 'managers' keeping secret files on subordinates which had the potential to be detrimental to the officer's interests and their being unable to answer what may be alleged about them in those secret files.

3.8. In ***Wixted,*** the court ruled that the law permitted a public servant access only to his personal file, and, in doing so, this mischief of 'artificial' files being kept on public servants was finally exposed in court.

3.9. The solution to 'this Wixted mischief' was the introduction of ***PSME Regulation 65*** in 1988. It was part of a drive to respect 'procedural fairness' by the (Sir Ernest) Savage Commission of Inquiry, established by the Bjelke-Petersen Government, flowing out of its investigation into the ***Public Service Act and Regulation 1922*** and red tape in government more generally.

3.10. The provision says:

> ***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."*

3.11. The significant feature of the provision is its reach. It goes beyond an officer's personal file to *"**any** departmental file of record held on the officer."*[20] Unlike ***PSME Regulation 46*** where a duty rests on the department to show an officer any detrimental report and invite a comment **before** placing it in his/her personal file, ***PSME Regulation 65*** is triggered by a request from the officer or his/her agent (i.e. a solicitor or union) providing the subject matter concerns that officer. In simple terms, it might be said that "no matter where the departmental file or record goes, this access law was sure to go."

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[20] It is noteworthy that in the CJC's 30 January 1993 clearance finding on Mr Lindeberg's 1990 complaint, this key provision was misquoted, and thus misinterpreted (in writing). The CJC reversed it back to "the Wixted mischief" by considering the Heiner matter as "*...**held on the officer's file.***" However, in its published Guide for Whistleblowers, the CJC quoted and adopted it in the manner which Mr Coyne, the QPOA and QTU were seeking to have enforced beyond "*...**the officer's file***" to as it says and means, namely, **any departmental file or record held on the officer**. In its Guide, the CJC recommended that any would-be whistleblower made sure that no secret records or files were held on him/her by enacting it before blowing the whistle by way of combatting prospective reprisals.

3.12. This provision represented an early 'freedom of information' equivalent for public officials. It did away with the mischief of managers keeping secret files on them, and brought about more sound recordkeeping and managerial processes by and for public officials.

3.13. Throughout the entire period when Mr Coyne and Mrs Dutney were seeking access to the Heiner Inquiry documents and tapes (and original complaints) under ***PSME Regulation 65***, it is beyond doubt that those within the Department and Crown Law who thwarted their access efforts **knew** about the reach of this law. It is known that Mr Coyne held a copy of the acting Solicitor-General's 30 June 1989 advice (See **Exhibit 61**) on this law because he caused the interpretation to be sought by Mr Pettigrew on 20 June 1989 (See **Exhibit 60**) so that he could lawfully arrange his recordkeeping at the Centre.

3.14. It is clear that the insurmountable problem those in DFSAIA always had with Mr Coyne's (and Mrs Dutney's) access applications (and more especially when he engaged the additional weight of a solicitor and his union behind his request) was that whatever Mr Heiner did and received by way of generating records pertaining to Mr Coyne during the course of his inquiry, he was generating *"departmental public records held on the officer"* and consequently he was triggering a legal right of access for Mr Coyne should he so desire. Plainly Mr Coyne did wish to exercise his legal right under ***PSME Regulation 65***.

3.15. The seal of Mr Coyne's right to access, even more so than when the 'sealed box' of Mr Heiner's material was placed into the possession of the Department, particularly occurred when the Crown Solicitor came to *"...a better view"* in his 16 February 1990 advice (See **Exhibit 164**) to Mr Tait (on behalf of the Queensland Cabinet) regarding the proper status of the Heiner Inquiry documents and tapes, declaring them "public records". Mr Coyne's position was strengthened and advanced when the Crown Solicitor advised that their ownership rested with the Department because they weren't created for a Cabinet purpose, meaning that they were "departmental public records" and plainly captured by ***PSME Regulation 65***.

3.16. It is submitted that a state of knowledge always existed in the Department and the Office of Crown Law that any action in judicial review regarding access pursuant to ***PSME Regulation 65*** would succeed. It is submitted that this acute awareness brought about deceitful delaying tactics on the part of the Department to forestall the foreshadowed judicial proceedings served on the Department by the solicitor and two trade unions. The deceit lay in saying (in writing and verbally) to Mr Coyne, his solicitor, and both unions, at relevant times, that the Crown Solicitor was still considering its position (re access) while knowing, before the façade of probity, that active steps were being taken to destroy the very documents being sought.

3.17. Trust in government to act fairly, we submit, was being ignored. Vaisey J. in ***Sebel Product Ltd v Commissioner of Customs and Excise*** (1949) Ch 409 at 413:

"At the same time I cannot help feeling that the defence is one which ought to be used with great discretion, and that for two reasons. First, because the defendants being an emanation of the Crown, which is the source and fountain of justice, are in my opinion, bound to maintain the highest standards of probity and fair dealing, comparable to those which the courts, which derive their authority from the same source and fountain, impose on the officers under their control..."

3.18. Consequently, in this immediate circumstance, it is submitted that five options were open:

(a) Provide normal access (lawful);

(b) Refuse access and contest a judicial review regarding the access force of ***PSME Regulation 65*** (probably lawful but also a potential abuse of process);

(c) Dissuade the would-be litigants by lawful means from proceeding with access under ***PSME Regulation 65*** (lawful);

(d) Find a proper authority for referral and repository which may prevent access at law (lawful);

(e) Destroy the public records and hope that no one challenges the decision of executive government afterwards (*prima facie* unlawful).

3.19. Another question which arises for the Commission is that because, as counsel and I contend, that there was an awareness in government that Mr Heiner took evidence about child abuse and child sexual abuse (a matter yet to be settled by the Commission regarding the **latter** type of abuse being in the documents and tapes), any option of destroying these lawfully gathered materials was prohibited at law irrespective of any other access claims on them because of their potential evidentiary value.

3.20. It is open to suggest that any "realistically possible" future judicial proceedings reasonably capable of being foreseen by the Queensland Government at that time in which the Heiner Inquiry documents and tapes might be used in evidence ought to have prevented their destruction at law because it was never open for the description of "junk" to be properly applied to these public records.

4. The Legal and Associated Implications of the Crown Liability Policy for Crown Employees

4.1. It is submitted that the legal and associated implications relating to indemnities for Crown employee and officials which first came into play in this matter in the 12 February 1990 Cabinet Submission (at p5) gives rise to important considerations as to whether or not those involved in destroying the

Heiner Inquiry documents and tapes can reasonably and properly claim that they were always acting in good faith. Rather, it is submitted that they acted deceitfully behind this long standing **1982 Crown Liability Policy** shield. That is to say, that the Queensland Government did not, in fact, act in the interests of "all" concerned but actively sided with those who might be described as "the anti-Coyne" camp, and did so without ascertaining the substance, let alone the validity or invalidity, of the complaints levelled against him, as gathered by Mr Heiner during his taped interviews with staff.

4.2. Relevantly, the aforesaid Cabinet Submission informed all Cabinet Ministers thus:

> *"It is recognised that many Crown employees have difficult and delicate and functions and that in the diligent carrying out of them they are exposed to claims for damages.*
>
> *It is not desirable that such employees should be restricted in the carrying out of their duties and functions by any fear that they may have to make payment out of their own pockets in respect of any claims arising out of the due performance of these duties and functions.*
>
> *The Crown will accept full and sole responsibility for all claims including the cost of defending or settling them, in cases where the Crown employee concerned has diligently and conscientiously endeavoured to carry out his duties."*

4.3. The aforesaid assurance of indemnity against financial loss resulting from any legal action which might eventuate from their appearance as witnesses before the Heiner Inquiry was given by Ms Matchett to **all** the JOYC staff at a meeting she convened on or about 13 February 1990. Significantly, and quite properly, she qualified the indemnity by saying that it only applied if witnesses conducted themselves diligently and conscientiously at the time of giving evidence. In short, it meant that as Crown employees they could not lightly engage in "malicious gossip-mongering" to damage the reputations of others. There was rightly an expectation that their evidence would be truthful and directed wholly towards achieving a better running youth detention centre.

4.4. It follows that one of the issues to consider is whether there ever was truly malicious defamatory material in the Heiner Inquiry documents and tapes or whether there was merely proper disclosure to Mr Heiner because the alleged conduct (notwithstanding it carried a highly defamatory imputation if untrue) may, if found to be a fact, have been improper and affecting the proper running of the Centre. However, if found to be untrue and maliciously motivated in transmission to Mr Heiner, did the Queensland Government have any legal right to destroy what it has publicly described as "malicious gossip", which appears to have been "a convenient euphuism" for an alleged extra martial affair between Mr Coyne and a female colleague?

4.5. The Commission holds a submission from a QSSU Executive member who asserts that Ms Walker informed them at a time when the Heiner Inquiry was being established and the complaints gathered that this alleged conduct was occurring during working time. If this were found to be true, it may have amounted to official misconduct.

4.6. Consequently, did this one spark of an alleged defamation mentioned by Mr Heiner to Mr Coyne and a female witness (as put to Mr Wells by Counsel Assisting[21]) which Mr Coyne subsequently told Ms Matchett about in early January 1990 with Mr Trevor Walsh in attendance,[22] cause a raging bushfire on the tinder of untested evidence and bring about an irrational panic inside government to destroy the material? In that panic were individual rights under due process of law between potential litigants disregarded in some twisted hope that the shredding would satisfy everyone concerned and defeat the defamation? And, was it the case that when these ill-conceived hopes went wildly off the rails there arose and obvious and urgent need to justify these (illegal) actions after the event, and hopefully exculpate those involved from any alleged wrongdoing? It is only then, it is submitted, that the material in the box had to be administratively described as "junk"[23], - "nasty things said about people[24]" and "low grade scuttlebutt and gossip.[25]"

4.7. However, on 23 April 2013, Mr Wells[26] belled the cat and acknowledged that the contents concerned "misconduct", "defamation", and potentially "criminal defamation."

4.8. It is therefore submitted, that either way, due to the contents constituting matters/issues of misconduct or defamation, a "realistic possibility" existed that the Heiner Inquiry documents and tapes might be required in a future judicial proceedings, be it before a court or a tribunal such as the CJC, State Industrial Relations Commission, or, for that matter, a commission of inquiry.

4.9. All public officials are expected to always, during the course of their public duties, tell the truth, act honestly and impartially in the public interest. They must not knowingly advantage themselves or others, or disadvantage another by act or act of omission. These are foundation obligations on which the ***Criminal Justice Act 1989*** was based, and on which the current ***Public Sector Ethics Act 1994, Public Service Act 2008*** and the ***Crime and Misconduct Act 2001*** are also based,, and such obligations have been long reflected in Chapter 13 of the ***Criminal Code (Qld)*** 1899 – **Corruption and Abuse of office**.

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[21] See Transcript 23 April 2013, p44 at 1 – Copley/Wells

[22] See Transcript 13 February 2013 pp81-82 – Copley/Matchett

[23] See Transcript 23 April 2013, p79 at 40 – Commissioner/Wells

[24] See Exhibit 325 – Anne Warner Point 28

[25] See Transcript 18 February 2013 p93 at 4 – Byrne/Comben

[26] See Transcript 23 February 2013 p68 at 5 – Bosscher/Wells

4.10. Under these circumstances, and leaving aside for a moment the other known demand for access claim under the ***Public Service Management and Employment Regulation 65*** by certain parties[27], by destroying the Heiner Inquiry documents and tapes, whether to reduce the risk of legal action for all parties involved or to restore harmony to the Centre, it is submitted that the 5 March 1990 Queensland Cabinet deliberately destroyed either:

(a) lawfully gathered evidence and information concerning the running of a youth detention centre that was either put forward by witnesses in a positive and truthful manner to improve its overall running (which may have meant for someone blowing the whistle on the manager's alleged affair with a female colleague during work time, and/or other matters concerning his handling of child abuse, child sexual abuse [as shall be addressed later] and other industrial issues like his alleged application of inequitable disciplinary processes and favouritism in the workplace[28]);

or

(b) malicious lies by one or more witnesses designed to destroy Mr Coyne's reputation (and the female colleague's), if not their careers, by diminishing their standing in the workplace, the department and elsewhere in the general community.

4.11. It is submitted that the very character of this alleged defamation [in (b)] warranted a full investigation by the department when the Heiner Inquiry documents and tapes were returned to their possession and control because nothing has been adduced in evidence which shows that Mr Heiner resolved the truthfulness of the allegation one way or the other, other than to confront Mr Coyne and the other party with it for comment.

4.12. This unsatisfactory situation, it is submitted, was directly exacerbated because (as we all now know due to the Inquiry's work) no one in a position of authority ever examined the entirety of the Heiner Inquiry documents and tapes when delivered to the department. Thus assumptions to become a false reality, driven out of wilful blindness for fear of finding out what was in the documents. In short, it was a boil that never got lanced.

5. Obligations on the Crown to Obey the Law

5.1. It should be noted by the Commission that any comment in the 12 February 1990 Cabinet Submission (See **Exhibit 151**) which claims (at page 2) that the QPOA had been consulted and consented to a course of action involving the destruction of the Heiner Inquiry documents was false and misleading.

[27] Mr Coyne, Ms Dutney, Ms Mersaides, the QPOA and QTU.

[28] See Mr Heiner's Terms of Reference

5.2. I emphatically assert that the QPOA **never** approved the 'shredding' course of action which Minister Warner claimed (without supporting evidence) to be 'the state of things' under the heading of "**Consultation**" in the 12 February 1990 Cabinet Submission signed off by her on 5 February 1990. (See **Exhibit 151**) I **never** met with Ms Warner throughout this whole period when dealing with the Heiner Inquiry and related matters. I only dealt with Ms Matchett and Ms Crook, and, in passing, with Ms Jones. My only subsequent meeting on 19 January 1990 with Ms Matchett was on 23 February 1990 (See **Exhibit 178**) placing legal claims on the documents by the QPOA and QTU.

5.3. This misrepresentation in the Cabinet Submission is a serious, if not deliberate, misrepresentation of anything that I may have said at the "off the record/without prejudice" confidential meeting with Ms Matchett, Ms Sue Crook, Ms Janine Walker and Ms Sue Ball on 19 January 1990. (See **Exhibit 125**) Nothing was agreed to at the meeting which in anyway could have been honestly construed as later represented of the QPOA's position, whose official spokesperson in this matter was me until removed from the case around 8 March 1990 by Mr Martindale on Minister Warner's insistence.

5.4. My presence at the 19 January 1990 meeting was subsequently found out by Mr Coyne through his departmental sources, and thereafter, I undertook not to engage in any such "confidential/off the record" meetings again because they placed me in a conflict of interest situation when my overriding priority was towards my members' industrial/legal interests.

5.5. This conflict between the QSSU and the QPOA over the Heiner Inquiry and its associated documentation is seen in **Exhibit 135.** It is a QSSU record-of-meeting for a 6 February 1990 meeting attended by Ms Matchett and Ms Crook for the DFSAIA and Ms Ball and Mr Brian Mann for the QSSU. It records:

> *"Ms Matchett indicated that she had called this meeting with us separately to the POA, as we stood on different ground...The Department outlined that as a result of legal advice, they had abandoned the Department Inquiry headed by Mr Heiner and they were yet to be advised as to whether to destroy all the evidence provided to the Inquiry, to protect staff from legal action by the Management at JOYC....Ms Matchett indicated that she still didn't want us to tell members that the Inquiry was abandoned, but rather she wished to visit the Centre on the following Wednesday and tell all the staff herself and also provide staff with her proposals to resolve the problems at JOYC."*

5.6. Notwithstanding **Exhibit 135** is not an official government file, it nevertheless shows that the QSSU and QPOA had different interests in the matter, and nothing epitomised it more than in the QPOA's mission to gain access to the Heiner Inquiry documents (and original complaints) on behalf of its (management) members, Ms Coyne and Mrs Dutney. On the other hand, the QSSU which represented the Youth Workers, believed that their members' complaints should remain confidential.

5.7. It is relevant to note that in Crown Law's 18 April 1990 advice to Ms Matchett regarding access to the original complaints under ***PSME Regulation 65***, she was advised that Mr Coyne **did have a right of access** but, as the evidence shows, not only didn't she comply with legal obligation but together, she and Crown Law combined in May 1990 to dispose of the original complaints back to the QSSU on 22 May 1990, and then never told Mr Coyne or the other parties (i.e. Mr Berry, the QPOA and QTU) that claim of access under ***PSME Regulation 65*** was right at law.

6. WHAT THE CABINET KNEW AND DID

6.1. It is noted that on 23 March 2013 at page 85, Counsel Assisting informed the Commission that a letter had been sent to all the surviving Ministers of the 5 March 1990 Cabinet Meeting, along with the transcript of Ms Warner's 18 February 2013 evidence and invited to appear at a public hearing to testify about why Cabinet had made the decision to enable the destruction. The letter advised them that unless they or a lawyer acting on their behalf contacted the Commission by 15 April and indicated that they wished to give evidence, the Commission would proceed on the basis that they were content to rely on the evidence given by Ms Warner regarding the decision. Counsel Assisting indicated that these former Ministers were content to leave the matter on the basis of Ms Warner's testimony.

6.2. It is respectfully submitted that what Griffith C.J. in ***Clough v. Leahy*** (1904) 2 CLR 139 at pp 155-156 said ought to be always borne in mind by the Commission:

> *" If an act is unlawful - forbidden by law – a person who does it can claim no protection by saying that he acted under the authority of the Crown."*

6.3. Relevantly, what His Honour Davies JA in ***Ensbey*** said at 15:

> *"...It was sufficient that the appellant believed that the diary notes might be required in evidence in a possible future proceedings against B, that he wilfully rendered them illegible or indecipherable and that his intent was to prevent them being used for that purpose."* (In making this ruling, His Honour also referred to the authority in ***R v Rogerson*** (1992) 174 CLR 268 at 277)
>
> And at 16:

"...Now, here, members of the jury, the words, 'might be required', those words mean a realistic possibility. Also, members of the jury, I direct you there does not have to be a judicial proceeding actually on foot for a person to be guilty of this offence. There does not have to be something going on in this courtroom for someone to be guilty of this offence. If there is a realistic possibility evidence might be required in a judicial proceeding, if the other elements are made out to your satisfaction, then a person can be guilty of that offence."

6.4. This following line of questions was put to Ms Warner by me on 18 February 2013 regarding a key item of information in the 5 March 1990 Cabinet Submission (See **Exhibit 181**) which each Minister had before him at the time the decision to destroy the Heiner Inquiry documents and tapes was taken.

> ***MR LINDEBERG:*** *This is a document you signed on 27 February? ---- Yes*
> *And it's a document that you took to and spoke to in cabinet? ----Yes*
> *Can I ask you to turn to page 2, please, and look at the heading called Urgency? ---- Yes*
> *You read and understood those words at the time you took your decision?---Yes*
> *Thank you very much. I have no further questions.*[29]

6.5. The passage on page 2 reads as follows:

> ***"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."* (Bold and Underlining added)

6.6. It is submitted that the following is the definition of "**Formal Legal Action**" by *Halsbury's Laws of England* (4th Edition) is a relevant consideration for the Commission in this matter as a common understanding any reasonable person ought to have, let alone Ministers of the Crown and senior bureaucrats.

> *"Action means any civil proceedings commenced by writ or in any other manner prescribed by rules of court. It has a wide signification as including any method*

[29] QCPCI Transcript 18 February 2013, p44 at 10--20

prescribed by those rules of invoking the court's jurisdiction for the adjudication or determination of a lis or legal right or claim or any justiciable issue, question or contest arising between two or more persons or affecting the status of one of them. In its natural meaning action refers to any proceeding in the nature of a litigation between a plaintiff and a defendant. It includes any civil proceedings in which there is a plaintiff who sues, and a defendant who is sued, in respect of some cause of action...."[30]

6.7. It is pertinent to remind the Commission that in the Crown Solicitor's 16 February 1990 advice to Cabinet Secretary, Mr Tait, acting on behalf of the Cabinet, that the Crown Solicitor cites *Halsbury's Laws of England*, (4th Edition) in coming to the "*...better view*" that the Heiner Inquiry documents and tapes were always "public records" under the ***Libraries and Archives Act 1988***, and perhaps even more relevant to the aforesaid definition regarding the meaning of "**Formal Legal Action**", he advised the Cabinet (of which Ms Warner was a member) that:

"...There must however be a pending action, Commission of Inquiry or other civil or criminal proceeding pending before anyone can seek production of document....If then, for example, anyone suspects he or she was defamed in any of the material produced by Mr Heiner, were to commence an action against him in respect thereof, the plaintiff would, no doubt, at a fairly early stage in the action, seek an order for third party discovery of the material pursuant to Order 35 Rule 28 of the Rules of the Supreme Court....The person in whose "possession or power" the documents are, could oppose the making of such an order on several possible grounds, viz. that it was fishing, that it was not necessary that he inspect the document at that stage of the proceedings and that generally it would not be just that an order for production be made....If it be the case that the documents are in the possession or power of the Crown (and I shall deal more fully with this aspect presently), then a claim of Crown Privilege could also be made. Even if the documents are not in the :possession or power" of the Crown, such a claim could probably still be made....However, if the documents are not "Cabinet documents", then the claim would have limited chances of success....The documents under consideration in this case could not be fairly described as Cabinet documents...." (See **Exhibit 164**)

6.8. The 5 March 1990 Cabinet meeting had been preceded by meetings on 12 and 19 February 1990. Ms Warner, in admitting that she "*...read and understood those words at the time you took your decision*" in this key passage in the 5 March 1990 Cabinet Submission regarding "*...no formal legal action*" yet

[30] *Halsbury's Laws of England*, 4th ed., vol. 37, para. 17, p. 24

instigated, reference to the related objective which she first brought to the attention of the Queensland Cabinet on 12 February 1990 in her Submission signed by her on 5 February 1990 becomes highly important. (See **Exhibit 151**) Relevantly at page 2 it says:

> ***"OBJECTIVE OF SUBMISSION***
>
> *Extension of the abovementioned policy to Mr Heiner will provide him with indemnity from the costs of future legal action which could result from his part in the John Oxley Youth Centre investigation.*
>
> *Destruction of the material gathered by Mr Heiner in the course of his investigation would* ***reduce risk of legal action and provide protection for all involved in the investigation****. The Crown Solicitor advises that there is no legal impediment to this course of action."* (Bold and underlining added)

6.9. It is submitted that whatever other motivations have been claimed to have driven this decision (i.e. to bring industrial harmony to the Centre), nowhere has the aforesaid motive been dismissed or can be reasonably dismissed because industrial harmony and the need to prevent anticipated/foreshadowed legal action becoming a reality **were indissolubly intertwined** in the spoken words, writings and thinking of those members of Cabinet (and bureaucrats behind who handled this matter from 12 February until 5 March 1990.

6.10. It is submitted that to any reasonable person the common understanding of "**formal** legal action" means writs, court, contempt and rules of discovery and disclosure relating to evidence and associated matters pertinent to the administration of justice.

6.11. This is not to suggest however when dealing with a government regarding issues surrounding access to public records that even if the intervention by a solicitor, union or individual were "informal" that a government is open to disregard such dealings until or unless it is served with a writ. For example, the overwhelming majority of interactions between governments and others outside government (i.e. the people in general and corporations) are happily and expected to be done by phone call or correspondence seeking an action which is permitted at law. Applications under freedom of information, in the main, are entered into and completed by exchange of letters, and there is no expectation that a solicitor must be engaged to draw up a writ for lodging in a court and serving in order to preserve the relevant public record from destruction. Our system of government would grind to a halt if this became the norm if and when citizens had to interact with government to uphold their rights.

6.12. It is suggested in a community of mutual civility and respect for the law and the rights of the individual exists (and rightly are expected to exist by reasonable persons) where societies purport to operate under the rule of law, elected and appointed public officials are expected to act fairly, honestly and reasonably. Under the prevailing circumstances at the time of the shredding of the Heiner Inquiry documents, it is submitted that the Queensland community, including public servants, were expecting a new dawn of probity in government under the Goss administration after the revelations of the Fitzgerald Inquiry.

6.13. In such an environment, especially where the independence of the Judiciary and the administration of justice were to be respected, any solicitor, trade union or public servant who had served notice on government about access to public records in accordance with law, and placed a preparedness, verbally and in writing, to institute "**formal legal action**" to enforce legal rights (including if necessary an action in defamation), should not be disadvantaged in not serving a writ when evidence before this Commission shows that access might still be achieved out of court as normally happens, especially when the Department was declaring in writing that its position was "interim."

6.14. On 14 February 1990, Mr Walsh, recorded the content of the phone conversation with solicitor Mr Berry. The contents were subsequently noted by Ms Matchett on 21 February 1990 in which he relevantly said:

> *"...Mr. Berry 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."* (See **Exhibit 159**)

6.15. This phone conversation was confirmed in writing by Mr Berry on 15 February 1990 which Ms Matchett noted on 19 February 1990. Mr Berry also referred back to his letter of 8 February 1990 seeking access to relevant extracts of the Heiner Inquiry documents and tapes (and the original complaints) pertinent to his clients, Mr Coyne and Mrs Dutney pursuant to ***PSME Regulation 65***. Of particular relevance, he wrote this:

> *"We refer to our telephone conversation with Mr Trevor Walsh on 14th February and confirm his advice to the effect that you will be absent from Queensland until the end of this week.* ***Mr Walsh did indicate of our intention to commence Court proceedings*** *in view of the fact that against the wishes of our client he has been*

seconded to another section. That move being only after a discussion with Mr Heiner."

We request your response, together with your response to our letter of 8th February within 48 hours." (See **Exhibit 161**) (Bold and Underlining added)

6.16. Ms Warner under questioning by me confirmed that she knew about Mr Coyne's quest for the documents and threatened legal action which, by any reasonable understanding the facts herself and from speaking with Ms Matchett, she had to know relied on the **continuing existence** of the Heiner Inquiry documents and tapes either totally for an action under judicial review associated with the force of ***PSME Regulation 65***, or, for an action in defamation, totally or in part (depending on what was written and recorded about him in the material when accessed under discovery/disclosure). Relevantly, on 18 February 1990, this exchange occurred:

> ***"LINDEBERG:*** *You do know that I was a trade union official?----Yes.*
> *And you do know that Mr Coyne was my member?----Yes.*
> *And you would have reasonably thought that it was my duty to protect his interests?----Yes.*
> *And you did know that he was seeking access to the documents?---Yes.*[31]

6.17. Whichever way the Commission approaches the shredding against the facts presented, it is submitted that it was an act by the Queensland Government which **knowingly** obstructed known and anticipated courses of legal action open under the administration of justice by one or more persons known at the time, let alone others as a "realistic possibility" judicial proceedings in the future.

6.18. It is submitted in respect of consideration regarding interference with the administration of justice, that ***R v Rogerson and Ors*** (1992) 66 ALJR 500 is relevant wherein, *inter alia*, Mason CJ at p.502 said:

> *"...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..."* (Bold and Underlining added)

And Brennan and Toohey JJ at p.503 said:

[31] See QCPCI Transcript 18 February 2013, p42 at 5-10.

"...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." [Also see; ***R v Selvage and Anor*** [1982] 1 All ER 96; ***R v Vreones*** [1891] 1 QB 360; ***R v Sharp*** (11) (1938) 1 All ER 48; ***Reg v Spezzano*** (1977) 76 DLR (3d), at p163; and ***The Queen v Murphy*** (1985) 158 C.L.R. 596]; ***R v Wijesinha*** [1995] 3 S.C.R. 422.

Mistake of law not mistake of fact equates to ignorance of the law

6.19. It is submitted that any claim that members of 5 March 1990 Cabinet are exculpated from the said wrongdoing because they acted on Crown Law advice which was [purportedly] the best legal advice available at the time in respect of the decision to destroy said documents carries no weight at law.

6.20. Acting on legal advice, including advice from the Office of Crown Law or eminent senior counsel, which is founded on a mistake of law - not a mistake of fact - is no defence to criminal prosecution because mistake of law, pursuant to section 24 of the ***Criminal Code (Qld)*** 1899, equates to ignorance of the law, and ignorance of the law is no excuse. This is long well settled at law. In ***Ostrowski v Palmer*** [2004] HCA 30 (16 June 2004), Callinan and Heydon JJ, concerning a matter of ignorance of the law involving a Western Australian crayfisherman who acted on advice provided by the Western Australian Government Fisheries Department, said this:

"...A mockery would be made of the criminal law if accused persons could rely on, for example, erroneous legal advice, or their own often self-serving understanding of the law as an excuse for breaking it..."

6.21. McHugh J in **Ostrowski** said at 52:

"...If a defendant knows all the relevant facts that constitute the offence and acts on erroneous advice as to the legal effect of those facts, the defendant, like the adviser, has been mistaken as to the law, not the facts." And at 41: *"...At common law, and in my opinion under the* ***Criminal Code****, once the prosecution proves in relation to a strict liability offence that the defendant knew the facts that constitute the actus reus of the offence, that is, all the facts constituting the ingredients necessary to make the act criminal, the defendant cannot escape criminal responsibility by contending that he or she did not understand the legal consequences of those facts."*; and at 59: *"...for the purposes of s 24 of the* ***Criminal Code****, it is irrelevant whether the mistake of law is induced by incorrect information obtained from an official government body or*

from any other third party or is induced by any other form of mistaken factual understanding. Thus, in any situation where a person's mistaken belief as to the legality of an activity is based on mistaken advice, that person would not have a defence under s 24. To find otherwise would expand the scope of the defence in s 24 to an unacceptable extent. It would also undermine the principle that ignorance of the law is no excuse."

6.22. In ***R v Cunliffe*** [2004] QCA 293, McMurdo P, McPherson JA, Mackenzie J stated this:

"...Misinterpretation of the law equates to ignorance of the law and is not an excuse: [See also ***Olsen & Anor v The Grain Sorghum Marketing Board; ex parte Olsen & Anor***.]

Executive Government not above the law

6.23. By way of completeness, any argument that Executive Government ought to have a right to seek, receive and act on advice with impunity, runs counter to the binding authorities of ***F.A.I. Ltd v Winneke*** (1982) 151 CLR 342 at 4, wherein Gibbs CJ said:

"... I can see no reason in principle why the rules of natural justice should not apply to an exercise of power by the Governor in Council, who is of course not above the law..."

6.24. In ***A v Hayden*** [1984] CLR 532, wherein Deane J said:

"...neither the Crown nor the Executive has any common law right or power to dispense with the observance of the law or to authorise illegality."

6.25. It is obviously accepted that Governments do have the right to seek, receive and act on advice but on the proviso that it is legal and within Constitutional constraints if government by the rule of law matters, as was ruled in ***A v Hayden*** [1984] HCA 67; (1984) 156 CLR 532 by Brennan J at 18, that is:

"...No agency of the Executive Government is beyond the rule of law."

6.26. It is submitted that any putative exculpatory claim that the Heiner Inquiry documents were destroyed under the authority of the section 55 of the ***Libraries and Archives Act 1988*** carries no weight at law under these circumstances. The ***Libraries and Archives Act 1988*** is the statutory instrument which authorises the disposal of public records **insofar as the documents are "public records" in and of themselves**. The ***Libraries and Archives Act 1988*** provides no statutory head of

power to authorise the destruction of public records in the face of said records being known to be, or suspected of being, evidence required in judicial proceedings. When such direct knowledge, reasonable suspicion and/or foreseeability exists, the relevant documents are required to be preserved for usage, even when the Crown is a third party to the known and/or suspected litigation. To think otherwise, would be to suggest that section 55 of the ***Libraries and Archives Act 1988*** has the capacity to override the provisions of the ***Code***, in particular Chapter 16 concerning **offences against the administration of justice**. It plainly does not, and by her admission, Ms McGregor agrees that had she been informed that the documents were being sought at the time she appraised them, she would have advised department that they "*...should not be destroyed.*"[32] (See **Exhibit 306**)

6.27. **Queensland State Archives Disposal Authority Form (QSA-TS-026)** *inter alia* sets out the scope of a legal disposal of public records under section 55 of the ***Libraries and Archives Act 1988.*** It relevantly states that: **Public records must not be disposed of if they are required: (i) for any civil or criminal court action which involves or may involve the State of Queensland or any agency of the State; or (ii) because the public records may be obtained by a party to litigation under the relevant Rules of Court, whether or not the State is a party to that litigation; or (iii) pursuant to the *Evidence Act 1977*.**

The Executive Government a player in the legal action

6.28. On 12 February 1990, in agreeing to indemnify Mr Heiner in respect of any future litigation which may have flowed out of his inquiry, the evidence of which was captured in the public records held by the Queensland Government, made it, beyond any reasonable doubt, a prospective actual defendant, or ex parte entity, to these legal actions, be they in whatever form, if not most likely in defamation.

6.29. The 12 February 1990 Cabinet Submission also informed the members of Cabinet (who later attended the 5 March 1990 Cabinet meeting) that the Queensland Government was also legally bound to defend and settle any future legal action coming out of the Heiner Inquiry by virtue that the witnesses who attended did so by invitation of the Department, and during working hours. The only condition which may have voided this undertaking was if a witness knowingly lied to Mr Heiner and engaged in, for example, malicious defamation.

6.30. It is submitted therefore that it is not open for those members of 5 March 1990 Cabinet, or for that matter especially Counsel for the State of Queensland to argue that by destroying these public records it did not interfere with the administration of justice because had they remained in existence

[32] See **Exhibit 306** Point 27

they **knew** that there was a "realistic possibility" of their use as evidence in a judicial proceedings in various forms, including defamation and judicial review, and indeed, the indemnity provided to Mr Heiner by the Queensland Cabinet on 12 February 1990 in respect of future judicial proceedings goes to directly to this very point.

6.31. It is submitted therefore that the shredding of these public record by order the executive government of Queensland on 5 March 1990, either made such legal action more difficult or impossible depending on its form which any reasonable person knew, or had to know, was open at the time they were destroyed "*...to reduce the risk of legal action*" and that the Commission should find accordingly in respect of the provisions of the ***Criminal Code (Qld)*** 1899 suggested by me and my counsel.

7. CHILD SEXUAL ABUSE IN THE HEINER INQUIRY DOCUMENTS AND TAPES

7.1. As stated earlier, my counsel and I do not retreat from our firm position that evidence of child sexual abuse came before the Heiner Inquiry. This section seeks to demonstrate the correctness of this view on the weight of compelling evidence produced by the Commission. Counsel Assisting and The State of Queensland are claiming that key witnesses, Ms Irene Parfitt and Mr Michael Roch, are unreliable historians despite their testimony that the Harding Incident formed part of their evidence to Mr Heiner.

7.2. It is submitted that it is beyond doubt that a threshold of "child abuse" has been reached in respect of material gathered by Mr Heiner concerning the handcuffing of children to outside fences for prolonged periods throughout the night, as well as to a storm water grate, but according to Counsel Assisting and The State of Queensland evidence of child "sexual" abuse has purportedly fallen short. It is submitted that the fact that this "child abuse" material went through the shredder warrants direct acknowledgement in the Commission's Report.

The Role of Whistleblowers

7.3. It is submitted that to ease any concern over why only two, or perhaps one whistleblower (i.e. Mrs Irene Parfitt) told Mr Heiner about the Harding Incident, it is relevant to comment on the role of

whistleblowers in the history of public inquiries, and to realise that they only ever emerge in ones and twos but never in droves. This is a sign of a base human condition at work in the affairs of mankind. It's called fear.

7.4. Fear of reprisal can test the bravest of human hearts. Fear about the odium of dobbing in a work mate in Australian culture, and perhaps, even more especially in prison environment, or exposing the corruption of a powerful government can silence the most talkative of tongues when the moment to speak the truth arrives, even in democracies where whistleblower protections are supposed to exist.

7.5. Voltaire was correct when he said that it was dangerous to be right when government was wrong. Fear is an instinctive human trait in the overwhelming majority of us. For the majority, it's flight not fight. But, for those rare few, it works in reverse. They simply won't cop it.

7.6. The famous adage of "build it and they will come" may apply to building a baseball field in an Iowa corn paddock[33], but simply does not apply when governments set up inquiries, and that's why the compulsion of summons is more often needed than not.

7.7. One only need look at what happened with the Fitzgerald Inquiry. At a moment when the Fitzgerald Inquiry was vulnerable for want of a credible witness because of the police "code of silence", it was the voice of one brave police officer who spoke out without the force of a summons: Sergeant Colin Dillon. On 15 September 1987 he went into the witness box and blew the whistle on well-known corruption in the Licensing Branch. He tabled his famous unopened bottle of Chivas Regal Royal Salute whisky – the potent symbol of the attempt to bribe him by corrupt police officers in the Licensing Branch – and, with tears, he pleaded for his fellow officers to come forward.

7.8. Did they rush to join him? No. History shows us that no other police officer publicly lined up like Dillon. One man, Colin Dillon, gave the Fitzgerald Inquiry new life to go forward at a crucial time, and the rest is history.

7.9. One credible person can make all the difference. One person can, if listened to, be the deadly enemy of corruption in public administration. He or she can be a catalyst for change, but, just as easily, one person can be quickly ridiculed, ostracized, shunned or deemed to be unreliable when speaking out thus allowing corruption to go unchecked. But, one credible witness-cum-whistleblower needs one brave commissioner to bring about necessary change.

7.10. It is submitted that this Commission now stands at the beginning point of the Heiner Affair and a 23-year serious cover-up by Queensland's 'post-Fitzgerald' system of government. That point is the legality of the shredding. However, because of the cut-off date of 31 December 1990 stipulated in the amended Term of Reference 3(e), the other limb to my disclosure, namely alleged illegal disbursement of certain public monies to buy the silence of the Centre manager about "the issues and

[33] This is a reference to the 1989 film "***Field of Dreams***"

events leading up to and associated with his removal from the Centre" as agreed to by him and the State of Queensland in their 12 February 1991 Deed of Settlement will not be reviewed.

7.11. The point is that if just one credible witness comes forward, it should be the quality of his/her recall of relevant issue of child sexual abuse (i.e. the Harding Incident), and not the absence of such recall by many others.

7.12. The Commission has heard that one witness clearly recalled telling a middle-aged-to-elderly man about the Harding Incident when she was interviewed by him at the Children's Court at North Quay. She recalled the venue's architectural construct. She recalled its internal furnishing. The witness is Ms Irene Parfitt. (See **Exhibit 42**)

7.13. It has not been contested that the only man who ever took evidence about the running of the John Oxley Youth Centre at the Children's Court at North Quay was Mr Heiner. (See **Exhibit 307**) Other witnesses have also said that they were interviewed by him at this venue and not at John Oxley Youth Centre where he interviewed most of his witnesses.

7.14. Contrary to Counsel Assisting's claim, it is submitted that the *Brigenshaw* standard has been safely met in Ms Parfitt's recollection of events as set out in her 27 September 2012 Statement and under questioning in the witness box on the two occasions of 12 December 2012 and 21 January 2013. She is the only witness to be tested twice in the witness box. It is submitted that she was reliable on both occasions and even more so on the second occasion.

7.15. It is submitted that Ms Parfitt is underpinned by another witness Michael Roch, along with evidence from other witnesses, Messrs George Nix, Daniel Lannen and David Smith.

Child Abuse and Child Sex Abuse existed at the Centre

7.16. It is submitted that everyone attached to this Commission, including those with leave to appear, just like many staff at the John Oxley Youth Centre in the lead up to the Heiner Inquiry, either know now or knew at the time that child abuse and child sexual abuse existed at the Centre. Neither type of abuse was a figment of the imagination because both had a foundation in fact at the Centre. This is beyond dispute.

7.17. Relevantly, back in 1987 before the Fitzgerald Inquiry, it wasn't just Sergeant Dillon who knew about corruption in the police service. He wasn't delusional. Others plainly knew also. But, while they held back, more than likely out of fear of the known and the unknown, Dillon had the courage and decency to stand up and speak out, and to bring corruption to the attention of Commissioner Fitzgerald, even in the face of potential reprisal. It is submitted that Ms Parfitt ought to be seen in the

same light, and be treated as a credible historian. She may have been a lone voice but others knew the song she was singing.

7.18. Evidence adduced shows that Mr Heiner was even forewarned about child sexual abuse Annette Harding Incident having occurred when the Terms of Reference were bring drawn up at a meeting between Messrs Heiner, Alan Pettigrew and George Nix. Mr Heiner was forewarned that the Incident may come up during his inquiry. The Incident was a running sore inside the department according to Mr Nix who declared in evidence that its handling at the time had been "***...abominable***" and that it used to come up for discussion on the department's Executive team on which, it must be said, Ms Matchett also served.

7.19. It is submitted that this may have been the very reason why Mr Heiner asked Mr Roch about the Harding Incident instead of the other way round as occurred with Ms Parfitt.

7.20. Staff who opposed Mr Coyne's leadership style at the Centre and who were concerned about the Harding Incident may not have spoken up because they knew that they were working in a very toxic and fearful environment where double standards over discipline and opportunity applied. Reprisal was an ever-present reality. They knew that the Centre management enjoyed the support of the department's leadership. Evidence adduced before this Inquiry clearly shows that their fears were understandable if one fell out of favour with the Centre management. It was a divided workforce, with children's welfare somewhere caught up in the middle.

7.21. It is submitted that Ms Parfitt demonstrated calmness under close questioning by Counsel Assisting and Mr Bosscher, not just once but twice. Most significantly, she was able to accurately place the time of her relevant evidence to Mr Heiner as being **before** her marriage with Bradley Parfitt in 1994.[34] She specifically recalled giving evidence in the Children's Court at North Quay, and recalled its furnishings and its entrance architecture. She could not recall a Makerston Street high-rise building office (i.e. Forbes House) and speaking with Mr Hobson on 3 March 1999, notwithstanding a Forde Inquiry record of interview shows otherwise. She was not the only witness who appeared before both the Forde and Heiner Inquiries, (i.e. Messrs Christensen and Lannen) however, no other witness was so tested before this Inquiry, and therefore, it is submitted that reliance on her as an historian by the Commission is safe.

7.22. Evidence shows that an anonymous Centre worker attempted to alert the public to the Harding Incident in *The Courier-Mail* on 17 March 1989 when journalist Paul Whittaker reported on the March 1989 riot at the Centre. (See **Exhibit 326**) This is not disputed. We all know that the following day in *The Courier-Mail* the Department tried to allay public concern by saying in a media release (See **Exhibits 251 and 326**) that the alleged victim of sexual abuse was 17 years-of-age and never raised a complaint of rape.

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[34] See QCPCI Transcript 21 January 2013 p31 and 37.

7.23. It is submitted that it is open for the Commission find those assurances to be false and possibly designed to mislead the public and muddy the waters. The Statutory Declaration from former Queensland Police Commissioner, Noel Newnham (See **Exhibit 352**), well and truly exposes the mischief imbedded in the media release. Far from the Department being open about what occurred in the Harding Incident, it is submitted that the opposite was occurring, and it is only now that the true story is being exposed. Of course, it is accepted that it is open to find that Mr Sherrin may have been deceived about the facts by certain officers in his Department, but it is not open to find the Harding Incident was ever treated in an open and transparent manner. (See **Segment 8**)

7.24. This action of Minister Sherrin and the Department at the time, it is submitted, probably had a profound effect on those staff who wanted the unresolved Harding Incident and other dysfunctional managerial issues aired and addressed. It probably caused greater agitation and desire amongst aggrieved staff to have an inquiry set up headed by someone from outside the Department.

7.25. Consequently, when a credible witness like Ms Parfitt says that she raised the Harding Incident with Mr Heiner then, on balance and in accordance with *Brigenshaw* test, it is submitted that she more than likely did, because it was fully expected to be raised as Mr Nix told this Commission and Mr Heiner.

Parfitt was 100% certain

7.26. In her evidence Ms Parfitt said she thought that the very reason for setting up the Heiner Inquiry was to look at the Harding Incident. She wondered why the boys hadn't been charged. That's what she told Mr Heiner. Counsel Assisting asked her on 12 December 2012 at page 26 if she was 100% certain that she raised the topic with Mr Heiner, and she said that she was.

7.27. It is submitted that Ms Parfitt cannot be dismissed as being an unreliable historian just because the actual time when she thought that she saw Mr Heiner in the Children's Court was out by a few months after the passage of some 23 years. It is more than reasonable for a witness to have complete clarity about a meeting but not have a recollection of its date. Indeed, this is more likely than not and it should therefore not diminish the weight given to a witness's statement. Further, it is submitted that, on balance, the date of that meeting must carry far less relevance and weight than the **content** of the meeting.

An Important Moment in Time Captured

7.28. The Commission also had another credible witness in Mr Michael Roch. He was consistently concerned about the maladministration of the Centre, and for good cause. Because he got Ian Peers

and Alan Pettigrew mixed up - over which of them attended a staff meeting at the Centre in 1988 - Counsel Assisting attempted at Points 36 and 37 in his submission (See **Exhibit 340**) to discredit Mr Roch's testimony. It is submitted that that minor confusion should have no such effect, that it was entirely understandable after such a length of time, and that Counsel Assisting's submission on that point should be rejected.

7.29. It is submitted that Counsel Assisting's challenge to Mr Roch's standing as a reliable historian in 2013 because he had suffered a stroke around 2006/07 should be disregarded because it ignored completely what Mr Roch had said in November 2001 (when his recall was reliable) regarding his discussion with Mr Heiner about the Harding Incident – spoken words which were faithfully recorded on the Grundy/Roch tape recording in November 2001. Mr Bosscher played the recording to the Commission. The transcript records that Mr Roch instantly recognised his voice. The tape recording has been accepted into evidence.

7.30. Mr Roch freely admitted to the Commission that his memory of events back in 1988-1990 was now impaired due to the effects of suffering a stroke around 2006/07. He didn't hide anything from anyone. He was honest and forthright. Counsel Assisting claimed at Point 50 in his Submission (See **Exhibit 340**) that he was "suggestible" as a witness but this is unworthy and misleading. The submission was an attempt to misrepresent Mr Roch's forthright honesty and to misrepresent his true value as a credible witness. It is strongly suggested that the Commission should dismiss this unsound claim by Counsel Assisting.

7.31. What is abundantly clear is that Mr Roch was always concerned about the Harding Incident. It is submitted that it is safe to hold that he was also interviewed by Mr Heiner in the Children's Court along with Ms Parfitt (or if not at the Centre), and that he is still reliable as an historian because his story about the Harding Incident is supported by solid evidence captured prior to his suffering a stroke.

7.32. Counsel Assisting holds a Statutory Declaration from Mr Bruce Grundy, the reporter, dated 13 March 2013. It is submitted that it should not be suppressed but entered into evidence for completeness sake because in it Mr Grundy declares that he is the other voice on the tape.

7.33. It is submitted that probably Mr Roch followed Ms Parfitt when meeting Mr Heiner at the Children's Court because his evidence was that **Mr Heiner asked him** about the Harding Incident. In other words, Mr Heiner probably wanted further clarification or confirmation about the rape aspect of the Harding Incident after Ms Parfitt's disclosure.

7.34. It is submitted that if Counsel Assisting and the Crown Solicitor are contending that these two witnesses lack credibility, then there is a strong and compelling need for their contentions to have a very high and very persuasive threshold before a witness's testimony can be held to be unreliable. It is not for the witnesses to defend the accuracy of what they have said under oath but for Counsel

Assisting and the Crown Solicitor to prove the inaccuracy with evidence or a more persuasive argument. **It is submitted that neither any evidence nor any compelling arguments have been submitted or can be found against Ms Parfitt and Mr Roch**.

7.35. It is submitted that the evidence from Ms Barbara Flynn, which Counsel Assisting seeks to advance, is dangerously flawed. Compelling evidence has come forward which suggest that she is an unreliable historian when claiming that no evidence of the Harding Incident – i.e. child sexual abuse – was placed before Mr Heiner purportedly on the basis that she was his constant companion during all interviews. The fact is that she wasn't always by his side, most especially at the Children's Court, or, if she was, she seems to have oddly, and for reasons only known to her, overlooked those occasions.

7.36. Ms Flynn couldn't recall whether or not the interviews were tape recorded. The fact is that they were. There were some 15 tapes of interviews. She could only recall interviews at the Centre and not those that unquestionably took place at the Children's Court. One of those witnesses at the Children's Court was Ms Parfitt. It is possible that there were occasions when Mr Heiner simply didn't want her present for some witnesses.

7.37. It is submitted that the very most Ms Flynn could have ever said as an historian, and nothing more, was that she did not know of any evidence of child sexual abuse being given to Mr Heiner at times when she was assisting him – and, as the evidence shows, that wasn't all the time. Therefore, it is submitted, that Ms Flynn can say nothing whatsoever about Ms Parfitt's appearance before Mr Heiner. She was either not there, or has completely blanked it out of her memory for whatever reason.

7.38. It is submitted that the unreliability of Ms Flynn's current memory is shown by what she alleged transpired between herself and journalist Bruce Grundy. There is little doubt that she attempted to discredit Mr Grundy in her oral evidence when in the witness box. My counsel and I are aware that the Commission holds the interview tape between them. The tape was obtained when police summonsed Mr Grundy to hand over his relevant material. It is submitted that little weight can be given to her testimony while conflicting evidence exists in the Commission's possession (albeit not put into the public hearings) which strongly suggests that her recall of events is far from accurate. It is submitted now that that tape should also be no longer suppressed but entered into evidence.

7.39. It is submitted that no reliance can be safely placed in Ms Jan Cosgrove's recollections about child sexual abuse as Mr Heiner's other assistant. At best, she was only in the interview room intermittently and it is known that she did not transcribe all the interview tapes because it was done elsewhere. She did, however, recall being shown the location where the unlawful handcuffing incidents occurred at the Centre.

7.40. 7.39. It is submitted that the evidence presented by and adduced from Mr George Nix was compelling in setting the scene for the Harding Incident being brought to Mr Heiner's attention

without surprise by those in the department who were "in the know." What happened to Ms Harding was an open secret, but the real details of how it was handled were not, and these were therefore open to misrepresentation.

7.41. Mr Nix was party to setting up the Heiner Inquiry. (See **Exhibit 322**) He stated that the Harding Incident was raised with Mr Heiner. It occurred when the Terms of Reference were being drawn up, together with Departmental Director-General, Mr Alan Pettigrew, who authorised the inquiry pursuant to section 12 of the ***Public Service Management and Employment Act 1988.***

7.42. Mr Nix described the handling of the Harding Incident as "*...**abominable.***" In his statement he said this:

> "*...The focus at our level from memory was the fact that the outing had to result in failure because the kids had not been under staff supervision at all times. There was conflicting evidence about the actual sexual assault. The way the staff handled it had been abominable.*"[35]

7.43. It is accepted that Mr Nix was not a witness before Mr Heiner like JOYC staff were. As to whether or not Mr Heiner wrote notes based on this initial meeting with Messrs Pettigrew and Nix which became part of his 'gathered evidence' and placed in the 'sealed box', no one knows. It also appears according to inquiries conducted by Detective Sergeant Fabian Colless of (the late) Mr Heiner's family that nothing of relevance was to be had. (See **Exhibit 352** at **Point 19**) However, it is submitted the Commission should find that the Harding Incident was already known to Mr Heiner **before** he commenced his inquiry, and that conflicting views over its handling were known to exist in the department.

7.44. It is most likely that the Harding Incident may have been referred to in Mr Nix's notes when he and Mr Pettigrew met with Mr Heiner, and the Commission knows that those notes mysteriously disappeared after Mr Nix handed them over to Mr Walsh (who was acting under instructions from Ms Matchett to retrieve them for her in January 1990 from his possession). Ms Matchett now claims she never saw those notes after Mr Walsh took them from Mr Nix.

7.45. It follows, it is submitted, that it is safe to find that Mr Heiner was forewarned that the Harding Incident might be raised for consideration as an issue by witnesses regarding how the Centre was being run and about its impact on the safety of children because it involved a child being sexually abused due to a failure of supervision and training of certain staff, and it is a matter of fact that adequate staff training and child safety formed part of his Terms of Reference. (See **Exhibit 83**)

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[35] See **Exhibit 322** p3 at Point 8

7.46. It is submitted that what this importantly establishes is that Ms Parfitt and Messrs Nix and Pettigrew **were of one accord** that the handling of the Harding Incident was relevant to the management of the Centre. Messrs Nix and Pettigrew forewarned of its coming to Mr Heiner, and Ms Parfitt delivered it to him at the Children's Court.

7.47. It is submitted that it is simply not open to find as a fact that no evidence of child sexual abuse existed in the Heiner Inquiry documents and tapes because the 15 tapes of interviews weren't examined by anyone including the State Archivist or her assistant.

7.48. For those who claimed not to have spoken about the Harding Incident, it can be accepted that no evidence from them of child sexual abuse existed in the Heiner material. However, for those who said that **they did** inform and/or speak to Mr Heiner about the Harding Incident, like Ms Parfitt and Mr Roch, and potentially Mr Lannen and Mr Smith, and probably Mr Terry Owens (who is now deceased), the Commission cannot find as a matter of fact that their evidence wasn't in the material because no one listened to the 15 interview tapes of interviews before they were destroyed on 23 March 1990.

7.49. It is submitted therefore that evidence of child sexual abuse **did exist** in the Heiner Inquiry documents and tapes because what has been claimed under oath – that Ms Parfitt and Mr Roch talked about the Harding Incident with Mr Heiner - **has not been disproven by anyone**.

7.50. It is submitted that the Commission may find that the handling of the Harding Incident, from beginning to end, was symptomatic of the mismanagement of the Centre. From the application of disciplinary processes by double standards, potential breaches of the Department's Code of Conduct, poor training, poor supervision, to a deeply flawed response by all parties to all aspects of the 24 May 1988 excursion to the Lower Portals where the sexual assault occurred: it's little wonder that Ms Parfitt spoke out, and it's little wonder that Mr Nix also raised it with Mr Heiner.

7.51. While the Crown Solicitor may wish to suggest in his submission that the Harding Incident was handled properly at the time, it only appeared that way on the surface. We submit that, on a closer examination of the evidence, the handling of the case and the so-called investigation were both deeply flawed, and we have covered this aspect in considerable detail in this submission at Segment 8.

7.52. At another level, the fact that the Harding Incident had occurred in the first place, it is submitted that it challenged Mr Coyne's authority at the Centre. Why? It is because his supporters, who were

supposed to supervise the bush outing, badly let down the so-called "progressive" side at the Centre. This undoubtedly diminished Mr Coyne's authority, his departmental executive supporters and his Centre favourites in the eyes of the "anti-Coyne" grouping, but what worsened and soured everything at the Centre, including its harmony, was that none of his supporters was disciplined over their gross failure in carrying out their fundamental duty of care towards Ms Harding and it is submitted that the Commission should find accordingly.

7.53. Notwithstanding the timeframe in the amended Term of Reference, the Commission ought not to disregard the fact that Ms Harding was paid some $140,000 in compensation for a breach of duty of care by the State of Queensland in May/June 2010. This settlement was reached by the same Office of Crown Law which stands before this tribunal representing the State of Queensland, and it is a matter of which the Crown Solicitor, Mr Greg Cooper, must have knowledge, if not even involvement. Ms Harding has since publicly described the $140,000 payment as dirty yucky money to keep her hush hush.

7.54. It is clear that the Terms of Reference of the Heiner Inquiry covered these aforesaid industrial/administrative matters of training, equitable application of disciplinary processes et cetra. Unsurprisingly and significantly, staffing/industrial issues of Crown employees and the welfare of children housed at the Centre under the care of the Crown became inextricably intertwined. It is a matter of public record that Mr Heiner himself acknowledged this inescapable point when appearing before a parliamentary House of Representatives Committee on 18 May 2004 in Brisbane.

7.55. This interconnection was attested to by witness Mr Frederick Feige's claim, as the AWU workplace delegate, that the QSSU – the driving force behind setting up the Heiner Inquiry - brought the Harding Incident to a monthly departmental industrial relations meeting for consideration just before the Heiner Inquiry was set up. (See **Exhibit 17 at Point 32**) Consequently, it is submitted that it is safe to find that the Harding Incident was a running sore for many staff at the Centre, including their unions. It showed how dysfunctional industrial relations and child sexual abuse became entangled at JOYC. Poor supervision on a bush outing first resulted in a female child being raped, and then, afterwards, poor supervision saw the male inmates abscond requiring the police to be called to Mt Barney. It is submitted that the Harding Incident was much more than a matter of "***...shit happens***"[36] as one of the supervisory staff on the excursion sought to describe it to the Commission on 22 January 2013.

7.56. Mr Nix certainly expected the Harding Incident to be raised with Mr Heiner. It is submitted that the Heiner Inquiry's Terms of Reference at Points 2 to 8 mirrored this and provided ample scope to cover various industrial employment/managerial aspects flowing out of how the Harding Incident was handled, Mr Coyne's divisive management style, let alone similar considerations which could

[36] See QCPCI Transcript 22 January 2013, P104 at 15

have spun out of the original complaints handed to Mr Pettigrew by the QSSU, including the 26 September 1989 handcuffing incident which had been authorized by Mr Coyne, and which Ms Warner undoubtedly knew about as can be seen in her statement to *The Sunday Sun* on 1 October 1989, (See **Exhibit 327**) just before the Heiner Inquiry got under way.

7.57. It is submitted that the Commission also may safely find that Mr Heiner was lawfully appointed, lawfully able to receive and lawfully able to hear and record evidence from his witnesses. Long-standing claims about the Heiner Inquiry being improperly established have been put to bed as unsubstantiated, if not being politically self-serving.

7.58. Equally, it is further submitted that the Commission may safely find that Mr Heiner's witnesses were lawfully entitled to inform him about their concerns over the running of the centre under the current management team, particularly involving Mr Coyne's conduct. They gave their evidence during work time with the approval of the department. A Notice of the Heiner Inquiry being established was placed on notice boards at the Centre inviting staff to participate. We submit that it was a serious enterprise brought about for the public good with no coercion to attend.

8. THE HANDLING of the HARDING INCIDENT by the POLICE

Introduction

8.1. The core submission put forward to the Commission in this part is that the sum of the available evidence indicates that the responses by government agencies to the alleged sexual abuse of Annette Harding in 1988 were disgracefully inadequate. Regardless of whether or not the alleged sexual offence was actually committed against her, and whether (if it was) there was sufficient evidence or cause to lay charges against any person, those responses ought, in my submission, to have been far more rigorous and prompt than the evidence indicates was actually the case.

8.2. It is submitted that:

1. The principal agency charged with the duty to protect this 14-year-old, and her interests, tried to conceal its negligence or other inadequacies, and indeed succeeded in doing so for decades; and

2. The agency charged with the duty of investigating reports of criminal behaviour, in this case the reported rape of Ms Harding, did almost no

investigating but its very involvement allowed others to claim that they, for their part, had done all that was necessary.

8.3. It is submitted that neither agency should escape censure for its part in the affair.

The Department of Family Services

8.4. Perhaps the best evidence of what the Department and its officers did, and did not do, is to be found in the file labeled (at what point is not known, but conjecturally to conceal its true import) "***Report on Educational Program Incident 24th May, 1988***". Extracts from this file are to be found in various Exhibits before the Commission, numbered **242** *et seq*, and it is particularly referred to.

8.5. That Exhibit is a report by the Manager of the John Oxley Youth Centre ("**JOYC**"), Mr Peter Coyne, dated Friday 27 May, 1988. According to the content of this contemporaneous record, that was:-

- three days **after** suspicions about a sexual assault having been committed against Ms Harding first emerged among staff;
- two days after Mr Coyne said that:
  i. Ms Harding had confirmed those suspicions, saying she wanted charges laid;
  ii. he believed Ms Harding had been sexually assaulted on 24 May 1988; and
  iii. he had obtained verbal evidence and/or admissions from several youths confirming a sexual assault had been committed against Ms Harding;
- two days after staff acknowledged holding fears for Ms Harding's physical safety;
- one day after Ms Harding's mother first spoke with her about the alleged assault (by telephone);
- on the same day as Mrs and Ms Harding confirmed to Mr Coyne that they wanted "a complaint made to police"; and
- on the same day as that complaint was made to then-Inspector David Jefferies.

8.6. Nothing in the other exhibits, or other evidence to the Commission, seems to contradict those points.

8.7. **Exhibit 250** is the report of Dr Maree Crawford who examined Ms Harding later the same day. It states that her examination was done "**on the request of the Juvenile Aid Bureau**". It is submitted that this was plainly because of the initial action taken by Inspector Jefferies. **This is a clear indication that a sexual assault complaint was laid with the police** and a first step being taken by the police to verify whether sexual intercourse had taken place with a minor.

8.8. Notably that report refers to forensic swabs having been taken but with the results being unknown to the doctor – presumably meaning the results of scientific examination, as opposed to medical examination, of swabs she took from Ms Harding's body. That is, even up to 9 June 1988 (twelve days **after** that medical examination) when Dr Crawford's report was prepared, evidence potentially remained secured but not accessed by this police investigation.

8.9. Thus, it is submitted that despite the Department officers having had detailed knowledge of what had happened to Ms Harding for several days, no medical treatment was apparently offered to her, and no report to police was made about this apparent crime, until after Mrs Harding, as well as Ms Harding, had personally insisted on that to Mr Coyne. By any reasonable standard especially given the potential seriousness of the offence, it is submitted, this was a serious breach of reasonable standards for the conduct of public officers, and certainly contrary to the standards espoused in **Exhibit 304** before this Commission.

8.10. Despite the fears for Ms Harding's physical safety which became apparent on 25 May 1988 (See **Exhibit 242**) she remained in the same environment; no mention appears of any special steps being taken to protect her or remove her to another environment.

8.11. At higher levels of the Department, far from ensuring that Mr Coyne and his staff acted promptly to uphold the law and Ms Harding's rights under the law, and far from taking any corrective steps needed to ensure staff carried out their duties effectively, it is submitted that the concern was principally to keep the whole affair "under wraps". Thus:

- **Exhibit 242** bears the marginal note that it should have been in the Minister's press brief;
- Mr Nix, (See **Exhibit 246**) noted on 30 May 1988, the unlikelihood that Ms Harding would fall pregnant, and also that Mr Coyne would "talk to" a staff member who had been alleging "a cover-up";
- Director-General Pettigrew, (See **Exhibit 247**) told the Minister on Monday 30 May 1988, that "apparently four boys interfered with one of the girls" on the occasion referred to – thereby downgrading the alleged seriousness of the incident - but then his concern seems to have been solely with whether the press would find out about it, or whether Ms Harding's parents might blame the Department staff;
- When there was a brief, 20-word reference in ***The Courier Mail*** of 17 March 1989 (See **Exhibit 326**) into an incident which Counsel Assisting suggested was the Annette Harding incident, the Department's Media Release of the same date (See **Exhibit 251**) did not correct any seeming inaccuracies, but apparently added another layer of misdirection, if not deliberate deception.

8.12. While the above-mentioned Exhibits shed light on the actions, or lack of actions, of the police when this reported crime against Ms Harding was reported to them, even more light was shed by the evidence of Ms Podlich and Ms Tomsett and **Exhibits 252, 253** and **253A**.

A Police Investigation

8.13. As a starting point, the following is submitted:

- A police investigation can be brought to a successful conclusion without any charge being laid – prosecution is not a determining factor;
- A successful conclusion may be generally defined as one in which the truth of the matter under inquiry has been determined, so far as is reasonably practicable;
- A police investigation, however thorough and painstaking, may not necessarily achieve the object of revealing the truth of an incident or allegation;
- A police investigation may be properly terminated - even before it could be said to be otherwise concluded – on the grounds that there are no proper grounds for police involvement (such as that the incident does not involve an offence or a danger to any person);
- As part of an investigation such as that initiated in the Harding Incident, it is submitted that it is the duty of the investigating police officers to locate and gather information and physical evidence that might be likely to help bring that investigation to a successful conclusion;
- That includes searching for, finding and preserving any physical evidence, so that it can be examined by appropriate experts. (This is essentially the "course of conduct" referred to by Ms Podlich at p. 8-14 of the transcript of her evidence.);
- It also includes getting the names and locations of any witnesses or potential witnesses to the alleged event, as well as likely suspects, and when possible (if not immediately) obtaining any information they can usefully and truthfully give to help bring that investigation to a successful conclusion.

8.14. In my respectful submission all of the above aspects of a police investigation are well known to the Commission and to those barristers appearing before the Commission, on the basis of the

experience and knowledge they all bring to bear, and which they do not (or ought not) leave behind when entering the Commission's hearing room.

8.15. Thus Counsel Assisting, at p.17-74 of the transcript, asked Ms Tomsett:

> *"...Of course, it's possible that if you had asked for the names of staff who had gone on the outing then by questioning those staff members you may have found your way to the staff member who apparently allegedly had questioned the boys and received the admissions, mightn't you?"*

8.16. Notably, Ms Tomsett agreed with that proposition, but defended her failure to ask the questions on the basis that "*...we didn't have a complaint...*" and that aspect of her answer was simply accepted without further question.

Witnesses

8.17. During a police investigation such as this, it is a common fact, I submit, that some people may not be able to be seen promptly. These might include people who saw or heard something relevant, or who took part in the incident in some capacity. And, of course, these might also include experts who can give useful information about physical evidence; all those classes of people should normally be seen as soon as is reasonably practicable afterwards - for the purpose of obtaining any information they can usefully and truthfully give to help bring that investigation to a successful conclusion.

8.18. It is submitted that it was the ordinary duty of the officers, pursuant to their oaths of office to "*...see and cause Her Majesty's peace to be kept and preserved*" and as part of the investigation assigned to them, to identify all those people for that very reason.

8.19. That sort of conduct, it is submitted, would be fully in accordance with the circumstance posited by Counsel Assisting in his examination of Mr Jefferies, and agreed to by Mr Jefferies, at p. 13-118 of the transcript – that is to say, even in the absence of "direct evidence from the child about what happened" satisfactory evidence might be obtained from one or more other witnesses.

8.20. It is plain that in the Harding Incident, while several people were in fact able to provide useful and truthful information, if they had been asked, the officers **made no effort** to ask anything of any of them, or even to record any information to locate such people later. Indeed, it is submitted, they recorded, and made, no effort whatsoever to inquire of anybody at JOYC whether any person other than Ms Harding might be able to help them in their inquiries, in any way at all.

8.21. Ms Podlich (p. 8-19 of the transcript of her evidence) claimed to be unable to recall any inquiry of Mr Pekelharing or Ms Hayward as to the identity of the potential offenders – even **before** obtaining

Ms Harding's signature in Ms Tomsett's notebook, and there is no record in **Exhibits 252, 253 or 253A** of the names of any such potential witnesses or offenders.

8.22. It is clear from their statements that both officers understood from the outset that the alleged rape had occurred on an outing from JOYC, and having regard to the overt nature of that institution and the circumstances under which their interview was conducted, they must also have understood, in my submission, that staff members from JOYC **must have been present** at that outing.

8.23. Two factors that the officers then had to consider, or ought to have considered, it is submitted, were:

(a) Conflicts of interest, as between JOYC staff; and
(b) Physical risks to a prisoner who informs on other prisoners, in such places.

8.24. It is submitted that there was a real possibility that action might be taken against those staff members who arranged or took part in the "outing" on 24 May 1988 which had such serious outcomes – the alleged rape of one child by two males in a group of five males, and the subsequent absconding of several of those males (on the belief that they were in trouble over the sexual assault). Yet colleagues of those staff members participated in the interview at which Ms Harding kept silent. And, of concern, the police officers allowed that to happen, despite the possible conflict of interests and the possibility that Mr. Pekelharing and Ms. Hayward had something to hide or to gain by influencing the outcome of that interview.

Ms Harding's Environment

8.25. JOYC has been referred to as a prison. Ms Hayward agreed at p. 11-66 of the transcript that the Centre was a prison, and the documents, such as **Exhibit 242**, make it quite plain that this was a prison environment, with all that that entailed. One obvious fact of prison life is that a prisoner who informs to authorities about misdeeds by other prisoners is likely to suffer harm. Indeed **Exhibit 242**, folio 2, refers precisely to fears being held on 25 May 1988, for Ms Harding's safety. It would be naïve and strange, in my view, if the police officers who saw Ms Harding on 28 May 1988 did not immediately appreciate that she was actually at risk following her complaint to the authorities.

8.26. If they knew of a lower level of harassment – such as being teased or taunted – as it is submitted below they must have, or even without that knowledge, then it is submitted they ought to have known that Ms Harding had reason to feel coerced into silence on that day. She was a child, but they were, purportedly, experienced adult police officers.

8.27. The generalized assurances of Ms Hayward (See **Exhibit 244**) given to Ms Harding, with other information, over the space of 3 – 5 minutes should not, it is suggested, be taken as removing such feelings and there is no indication in **Exhibit 244** or **Exhibit 245** that the police officers gave that assurance to Ms Harding, a 14-year-old child. When giving evidence to the Commission, Ms Hayward could not say what Ms Harding's legal rights were or what she had been told those legal rights were. She was not even sure whether in **Exhibit 244** she had been referring to information given by herself or the police officers. It is submitted below that the police officers gave Ms Harding the information about how long the matter would drag on if she agreed to discuss the matter with them, but otherwise, it is submitted, it is an open question exactly what information was given to Ms Harding.

8.28. Nothing in the police officer's statements or evidence, and nothing in **Exhibits 252, 253** or **253A**, indicates that they even turned their minds to Ms Harding feeling under some coercion, let alone did anything about that, though it is my submission that they ought to have.

8.29. When questioned about the possibility of coercion, Ms Hayward, it is submitted, said little more than that she was not party to any coercion; she said she was then (on 28 May 1988) acting in an unfamiliar role and was not quite sure of what her role ought to have been. With respect, that might be regarded as forgivable when she was speaking of events in 1988, but it is submitted that at that time it is most probable that she actually **did know** that Ms Harding had been subjected to at least hostile behaviour from fellow-prisoners.

8.30. But, by that evidence, it is submitted, Ms Hayward showed that she was certainly **not acting** *in loco parentis* when the police officers spoke to Ms Harding. Since she was unsure of what her role was, it cannot be reasonably argued that she was exercising any parental role. Nor did she (or anybody else) so claim. To put the matter beyond question, it is strongly submitted, there was no parental figure present when the police officers spoke to Ms Harding and the subsequent suggestion put to Mr Jefferies that there was such a presence was quite wrong and misleading.

Physical Evidence

8.31. It is submitted that upon a complaint such as this one, the police investigation should have included the prompt securing of the clothing worn by both the alleged victim and any alleged perpetrator, so that clothing can be examined for relevant evidence by an appropriate expert. It is not apparent on the evidence before the Commission that any steps were taken, either upon Mr Coyne's complaint on 27 May 1988 or later, in that direction. It is acknowledged there is a possibility that such steps were canvassed between Messrs Coyne and Jefferies and promptly discarded as impracticable due to the passage of time, but, in either case one might expect that a prudent investigator would make a note of the facts in his/her records.

The Myth of "No Complaint"

8.32. Certain assertions, or assumptions, evident during the course of Mr Newnham's appearance before the Commission, on 25 January 2013, (commencing at p. 16-2 of the transcript) deserve particular attention in this submission. For example:

> **MR COPLEY:** *"That presupposes that in this hypothetical situation Mr Newnham would have received a complaint. The evidence in this case reveals that the child did not make a complaint to the police and said she did not wish to make a complaint."*

8.33. It is submitted:

1. It is going too far to say that the evidence in this case reveals that the child **did not** make a complaint to the police and said she did not wish to make a complaint;

2. The very highest that any such evidence could be put was when Ms Tomsett said to Counsel Assisting, at p. 17-74 of the transcript, "*.....we didn't have a complaint. We didn't follow up on it after* ***she didn't want to talk about it***" (bold and underlining added);

3. Both Ms Podlich and Ms Tomsett strongly suggested that Ms Harding actually said nothing to them, let alone said anything like "*I do not wish to make a complaint*", regardless of any words somebody else wrote and then had her sign;

4. According to the evidence, and the statements of the officers - Ms Podlich and Ms Tomsett - Mr Pekelharing and Ms Hayward had told the officers that Ms Harding wished to make a complaint of having been raped by two males and it is impossible to believe the officers had not earlier been told that their superior had arranged for her to be medically examined the previous day. (The fact of the examination was referred to in the officers' statements.) On that basis, it is submitted that then-sergeant Podlich and then-constable Tomsett **could not** have avoided knowing that an official complaint had already been made to the police and that an official investigation had already been commenced and was made manifest in the doctor's examination ;

5. The facts that a complaint had been made, and an investigation commenced, on Friday 27 May 1988, was recorded in **Exhibit 253A**;

6. It takes a strong imagination to think that the complaint was **not** made on behalf of Ms Harding, even if not made by her directly, and to also then **rule out the possibility** that one or more adults might also be originators of the complaint;

7. It is quite wrong to suggest that a minor (particularly, one might think, an imprisoned 14 year-old) can reasonably halt a police investigation – even one into an incident in which she was allegedly a victim – especially when, on the evidence, the minor's parent/guardian has also lodged the complaint which triggered that investigation;

8. It is most likely that Ms Harding signed Ms Tomsett's notebook without actually comprehending what was going to happen as a result, or while her will was effectively overborne by other factors. For example, a signature to a confession to a crime obtained under such circumstances would likely not be accepted or acted upon;

9. It is wrong to suggest that police in such circumstances should require a formal complaint (whatever that may mean) or even a signed statement from the victim, as a pre-condition to taking any other investigative action. To accept that view would be to accept that where such a victim is dead, unconscious, mentally incompetent or even unavailable for a few days for medical reasons, then the police should stay their hands and take no action. It would remove from the protection of the criminal law any person suffering from some inability to communicate with the police;

10. It is a simple everyday fact that an investigation can proceed, and can be successfully concluded, and even that a person can be charged with and convicted of a crime, without direct evidence from the victim of that crime, without an "official complaint" (whatever that may be) from the victim, and even without the victim's consent. But it all depends upon a thorough search for the truth having been carried out in the first place, not truncated without adequate reason for failing to follow up most if not all of the avenues for investigation obviously available. (By way of example, as this submission was being prepared a man faced committal for trial in Melbourne, on charges of the rape and murder of Ms Jill Meagher (an ABC employee), with no possibility whatever of there having been any complaint, official or otherwise, from the victim.)

8.34. Despite the apparent defects in the memory of Counsel, who continually failed to recognize that the file documents to which Mr Newnham referred in the course of his evidence were already exhibited before the Commission, it is respectfully submitted, that the effect of those documents was not properly then laid before the Commission.

8.35. For example at p.16-27 of the transcript of his evidence the following exchange is recorded:

> **MR SELFRIDGE:** *I understand that entirely, and that's the reason for my question. How could it possibly be true that the police relied on or had an opportunity to avail themselves of that statement (Mr Pekelharing's undated memo) in order to inform themselves of it?*
>
> **COMMISSIONER:** *Because it wasn't made.*
>
> **MR SELFRIDGE:** *It's just not possible.*
>
> **COMMISSIONER:** *Yes.*
>
> **MR SELFRIDGE:** *I don't need to pursue it anyway.*

8.36. The statement in question is in **Exhibit 245** which was drawn from the files of the Department of Family Services; again, with great respect, it is submitted the above analysis is deceptive and badly flawed, for the reasons given now that:

1. While the investigating police officers indeed could not have been aware, on the morning of 28 May 1988, of Mr Pekelharing's **memo** – it rather appears that he (and indeed also Ms Hayward, whose memo was dated 28 May 1988) was reporting upon a conversation had between those officers and Ms Harding, earlier on that day. Thus, while the officers' awareness obviously could not depend upon knowledge that the memo(s) existed that awareness certainly could have, and would have arisen from the conversation that was **later** referred to in the memo(s);

2. The factors reported by Mr Pekelharing and Ms Hayward - *"reasons for (Annette) not going ahead with the complaint"* - were the length of time for the matter to come to court, and that she was receiving verbal abuse etc. The first factor must have come to

Ms Harding's awareness from somebody else, and it seems unlikely, it is respectfully submitted, to have been mentioned by anybody, or known to anybody present, but the police officers; and

3. The second factor was unlikely to have been easily removed from her mind under the prevailing circumstances, and especially not by undetailed assurances from a member of the staff at JOYC – the institution where that factor had emerged and was already known.

8.37. Indeed, neither Mr. Newnham nor anybody else **had** asserted the police had relied on, or **had the opportunity** to avail themselves of **Exhibit 245**, as Mr Selfridge was suggesting and protesting about. It might be thought unfortunate that Counsel Assisting did not promptly point that out, but in any case it is now done in this submission.

8.38. Mr Pekelharing's memo (See **Exhibit 245**) is particularly enlightening and contains much detail (though more might have been desired). It might be thought that this is the best contemporaneous record of the events that occurred in the Harding Incident between 9.20 am and 10.48 am on Saturday 28 May 1988.

8.39. Paragraph 3 of **Exhibit 245** notes that over a period of time – "some time" to use its words – the two police officers were together with Ms Harding and Ms Hayward, and that **after** that time had elapsed, the officers informed him "*...that Annette and Lorraine were discussing the issue.*"

8.40. The memo goes on to say that he (Pekelharing) then immediately joined Ms Harding and Ms Hayward, and, in the space of less than five minutes, he established:

(a) That Ms Harding wanted him to join the discussions; and
(b) "*...what factors were stopping her from making a formal complaint*".

8.41. (It is submitted, albeit in passing, that the words "formal complaint" used by Mr Pekelharing were most likely actually derived by him from the entry in **Exhibit 253** which he saw written out and signed, and apparently heard read out, before he composed his memo; that is to say, it is suggested that Ms Harding herself **would not** actually have used those words.)

8.42. The memo notes that Pekelharing immediately asked the two officers to rejoin them, and **then** notes the two "factors" for Ms Harding's "*...not going ahead with the complaint*".

8.43. It is submitted that it is most probable that both factors were discussed in the presence of the officers and that the "first factor" arose only **after** those officers had spoken with Ms Harding. Consequently it is open to conclude that the police officers most probably raised the first factor

themselves. It is further submitted that the officers knew of the "second factor" and should have taken quite overt and firm action to remove it from Ms Harding's consideration.

8.44. In any case, noting that no rebuttal witness was called, and that no reliance can actually be placed on the evidence of Mr Jefferies on this point, it is submitted that the Commission is left with the undisputed evidence of Mr Newnham which is that the police investigation of the Annette Harding complaint was seriously inadequate.

Words Put in Ms Harding's Mouth

8.45. Returning to what Ms Harding actually said, it is submitted that Counsel for the State of Queensland, Mr Hanger QC, also seriously overstated that case in suggesting to Mr Jefferies (p. 13-21 of the transcript) that Ms Harding had said to the officers, "*...I do not want to proceed with charges in this case*".

8.46. It is submitted that on the evidence before the Commission:

(a) Ms Harding said very little, if anything, to the police officers on 28 May 1988, but was effectively told by them that if she did tell them the story of what happened to her on 24 May 1988 no resolution or finality to the matter could be reached for 6 to 12 months; and that

(b) the police officers were told that she did not want to tell that story both because she was receiving verbal abuse from some of the people involved in that incident, and one or more others, and because of that period of time required to reach a conclusion.

8.47. It is significant that when Ms Podlich was cross-examined by Mr Bosscher, the following exchange took place (p. 8-19 of the transcript):

> "*...You keep going back to the issue of "if there's a complaint made". If police receive information that an underage child has been potentially sexually active with an adult, do you require a formal complaint before you can proceed?*
>
> *Yes, we did.*"

8.48. This nebulous term "official complaint" was unfortunately used again, but it is submitted that both (i.e. Mr Bosscher and Ms Podlich) here meant to refer to "a signed statement" from the child. It is submitted that no such blanket policy or practice on the part of the police existed, or should have been followed – for reasons summarised above in Point 9.

8.49. Notably, no such policy or practice was acknowledged by Mr Jefferies. At p. 13-119 of the transcript, he and Counsel Assisting discussed the purpose of Ms Tomsett's notation but did not come anywhere near confirming or denying such a policy or practice. Mr Jefferies saw such a notation as mere record-keeping, not as satisfying the terms of a policy or practice establishing pre-conditions to a police investigation.

8.50. That useful and portentous (but misleading) term "official complaint" appears in **Exhibit 253A**, Ms Tomsett's official diary entry. Alongside the inaccurate notation that Ms Harding had withdrawn her complaint – inaccurate, in my submission, because she had not actually done that but had merely declined to discuss the events of 24 May 1988 – alongside that notation is the inaccurate notation that "*...she decided not to make an official complaint*".

8.51. It is submitted that:

(a) what really happened is that Ms Harding declined to discuss the events of 24 May 1988 (for reasons discussed above); and

(b) Ms Tomsett wrote up that situation in the way she did for the purpose of "justifying" her recording that the complaint lodged by Mr Coyne with then-Inspector Jefferies - at the behest of Ms Harding and her mother - had been withdrawn, thereby seeking to justify her final step – recording "NFAD" – that 'no further action was desired'.

Evidence of an "Adequate Police Inquiry"

8.52. During Mr Newnham's appearance on 25 January 2013, mention was made of the evidence of Mr Jefferies, in the context of whether Mr Newnham's assertion that the police investigation was unsatisfactory stood up. It is submitted, on the transcript of his evidence, that Mr Jefferies **did not** express a contrary assertion based on the same set of facts.

8.53. It is submitted any **apparent** opinion he then expressed – that the police investigation was in fact satisfactory – was either so heavily qualified or so obviously based on a false understanding of the actual then-current circumstances as to render that opinion (or, rather, any suggestion that Mr Jefferies opined the police investigation was satisfactory) manifestly unsupported and irrelevant:

1. From the outset, (p. 13-116 of the transcript) Mr Copley was asking Mr Jefferies **about prosecution, not investigation**;
2. When the discussion moved to the notebook entry, **Exhibit 253**, signed by Ms Harding (at p. 13-118 of the transcript) Mr Jefferies made it quite plain that his answers (signifying approval of the action of the officers) depended upon the age of the child,

the capacity of the child to understand what she was signing, and the parent or "*parent (sic) in loco parentis was aware that the child was being interviewed and expressed that view...*";

3. There is no evidence whatsoever that Mr Coyne, the JOYC Manager, the person who had lodged the complaint with Inspector Jefferies on 27 May 1988, and perhaps a person who could be regarded as standing *in loco parentis,* had "expressed that view", or any other;
4. The contents of **Exhibits 244** and **245**, the contemporaneous memos of Ms Hayward and Mr Pekelharing, in no way suggest that they saw themselves as acting *in loco parentis,* and Ms Hayward, in her evidence, said she saw herself as being present to merely "support" Ms Harding;
5. Nothing about **Exhibits 244** or **245**, or any other evidence before the Commission, suggests Ms Hayward or Mr Pekelharing "expressed that view" (to again quote Mr Jefferies) though they did record what they took to have been Ms Harding's state of mind;
6. When Mr Jefferies was cross-examined by Mr Hanger (p. 13-121 of the transcript) the following exchange took place:

   "...And perfectly proper, I suggest to you, that when the child says, "I do not want to proceed with charges in this case," and when the child's mother, after talking to the child, says the same thing – perfectly proper for the police not to proceed?--- Obviously the police proceeded in terms of getting the medical examination done, but having weighed up the child's stated wish and the mother's and obviously having discussed it with the paediatrician and the child-care people, I see that it's an appropriate decision."

8.54. Apart from Mr Jeffries himself having arranged for Ms Harding's medical examination, it is submitted that none of the conditions set out in the question or Mr Jefferies' answer actually applied:

a. Ms Podlich (p. 8-21 of the transcript) said she had no idea where Ms Harding's mother was;
b. Mr Pekelharing recorded in **Exhibit 245** that Ms Podlich spoke to Mrs Harding on the telephone only **after** obtaining Ms Harding's signature;
c. In paragraph 2 of **Exhibit 246**, Mr Nix reported that Mrs Harding saw Ms Harding only later that day (Saturday 28 May 1988) and that "*...Initially, Mrs Harding was upset that her daughter had made this decision...*"
d. There is no record of that telephone conversation in the officers' diaries or notebooks exhibited to the Commission, but it is submitted, with respect, that there certainly would have been **if Mrs Harding had approved of that "decision"** while speaking with Ms Podlich;

e. For the sake of completeness, it is added that neither Mr Pekelharing nor Ms Hayward indicated, in **Exhibits 245** and **244**, any indication of having approved of that "decision" while acting *in loco parentis*;

f. On the evidence, Ms Harding's mother clearly was not present at the time and she **did not agree** with what was done about that notebook entry, either before, at the time of, or at any time close to its being completed;

g. On the evidence, it is submitted, any belated acceptance by Mrs Harding that Ms Harding's (and her own) complaint to the police might not be pursued was given only **after** she was presented with a *fait accompli*. The officers had already ceased their investigation;

h. Getting the medical examination done was merely a start – the results of that examination were what mattered. Dr Crawford's report was dated June 9 (**12 days later**) and manifestly was not weighed up by the police officers;

i. There is no indication either in that report, or in their records, that the officers "discussed" the case with Dr Crawford **before** deciding to take no further action at about 10.48 am on 28 May 1988;

j. In any case Dr Crawford's report makes it plain that there were "forensic swab results" **still to be pursued** which she did not have, even on June 9;

k. Mr Jefferies indicated his understanding (p. 13-124 of the transcript) of the scientific evidence was "*...it is still possible up to seven days*" – clearly meaning up to seven days **after** the alleged sexual assault;

l. Far from speaking to Dr Crawford or "the child-care people", or taking into consideration what the results of the scientific and medical examinations might be, or the wishes of Mrs Harding, it is clear that the officers terminated the investigation begun by their superior at about 10.48 am on 28 May 1988, without taking any of those steps.

8.55. At p. 13-127 of the transcript, Mr Jefferies acknowledged that an admission made to a credible person who was able to give evidence, would be a relevant factor for the officers to take into account. What was not put to Mr Jefferies was the fact established beyond question in the evidence before the Commission, in my submission – including the evidence and notes of the two officers – that **they made no attempt to speak** even to the person who originally contacted the police, Mr Coyne, let alone any other person who was on the outing on 24 May 1988, or any other staff member who might have fitted the description used by Mr Jefferies. It is acknowledged that we should have immediately pursued that with Mr. Jefferies and can only regret it now. But, in my respectful submission, the Commission should have due regard to the manner in which Mr Jefferies' observation on that important issue **was not pursued** but simply ignored by others.

8.56. It might be thought significant that Mr Pekelharing said in **Exhibit 245**, that he was able to speak to Mr Coyne by telephone – clearly, in my submission, on 28 May 1988, after the police officers had left JOYC – indicating that Mr Coyne was readily available.

8.57. Again, for the sake of completeness, it is submitted that any notion that in some way the police officers could have decided in advance that anything Mr Coyne might tell them would in any case be inadmissible in a subsequent criminal prosecution, and that **therefore** they should not have even spoken to him, is a notion without any merit. It is merely a distraction. Such a consideration was utterly irrelevant to their decision-making prior to 10.48 m on 28 May 1988.

8.58. At p 13-115 of the transcript, when Counsel Assisting was examining Mr Jefferies, the following exchange appears:

> *"Going back say to May of 1988, if officers of police went and spoke with a child and she said to the police she didn't want to make a complaint about anything then what options were open to the police in terms of extracting evidence from the child?--- Well, it would depend on what the circumstances were and the degree of cooperation that you had from either the parents or the person who was in loco parentis. Obviously you may obtain evidence by having the child medically examined which would corroborate the occurrence of a particular offence that was being alleged. You may in fact get parents to cooperate to do that and you could get a skilled paediatrician who may in fact be able to corroborate the allegation with that examination. In the instance that occurred here obviously the parental authorities were the departmental officers and they obviously consented to the child being medically examined."*

8.59. Even at that early stage of his evidence, and even when being asked about prosecution (as opposed to investigation) **Mr Jefferies made the points**, it is submitted, that evidence could be obtained by police in the face of silence from the victim, and that a juvenile's consent **was not** necessary even to an intrusive medical examination let alone the pursuit of a police investigation into an alleged crime.

8.60. At p. 13-116 of the transcript, when Counsel Assisting questioned Mr Jefferies about policy "*...regarding the utility of or the wisdom of compelling a child....*" he was overtly still referring to a prosecution, not to an investigation.

8.61. At p. 13-118 of the transcript, when Counsel Assisting questioned Mr Jefferies about "*...Options ... open to ... officers in circumstances where the child said she didn't want to make a complaint...*" he went on to ask "*...What **protective options** were open to the police officers in that situation?*" (Bold and Underlining added). Again, this was not a question directed at what other options for **investigation** were open to the officers.

8.62. At p. 13-15 of the transcript, when Mr Jefferies was examined by Counsel for Ms Harding, Mr Harris, the witness said this:

> *"...I would have thought that the police officers going out there and attempting to get complaint (sic) from the child would be what I would see as part of endeavouring to do an investigation. To follow it up then and go and talk to alleged offenders when you haven't got a complaint and you've already got the people as their parental figures aware of the thing and taking what I would see as probably appropriate action, is probably something that the police officers considered in terms of the way in which they handled it."*

8.63. Setting aside, for the moment, the loose application of the term "complaint" when what was actually meant was "statement", it is submitted that Mr Jefferies unwisely – and probably unconsciously – entered precipitately onto suspect interviews and overlooked witness interviews as part of "doing an investigation". But it is also submitted that he made unwarranted assumptions when he referred to "*...parental figures aware ...and taking...appropriate action*" when:

(a) There is, in fact, no evidence or suggestion that the "parental figures" (JOYC staff) were taking any action at all, let alone what Mr Jefferies would see as "*...probably appropriate action*", with regard to the sexual assault admitted to Mr Coyne;

(b) There was, in fact, no evidence whatever that the police officers determined, let alone considered, what action those parental figures had taken.

8.64. **Exhibit 246** records that Mr Coyne had spoken to the **children** involved in the teasing and **threatening** of Ms Harding and had advised them of the outcomes should they continue in this fashion; but, of course, that was separate and distinct from any action contemplated regarding by possibly **other** children who were involved in the sexual assault itself.

8.65. **Exhibit 245** records Mr Pekelharing similarly, on 28 May 1988, having warned all children and staff of the consequences of any verbal abuse – clearly verbal abuse of Ms Harding – i.e. 3 hours in a room.

8.66. With so many "probablies" and such an unwarranted abbreviation of proper investigative procedures, it is submitted that even this response of Mr Jefferies gives little comfort or support to those who would contend that the police investigation of the Harding Incident was completely proper.

8.67. It is my submission that much weight has been attached to the undoubted fact that Ms Harding did sign **Exhibit 253** but too little to what that note meant and how that signature was obtained. We have questioned the meaning of the term "official complaint" but there is also the claim that she was "happy" with police inquiries.

8.68. When writing out the document she intended to ask Ms Harding to sign, Ms Tomsett obviously **did not** mean to refer to a "statement", in my submission; if that had been her intention she would have simply written that word instead of the two words she did write. The officers acknowledged that their purpose in being at JOYC was to investigate an alleged rape and Ms Podlich acknowledged at p. 8-14 of the transcript that she was not without experience in such investigations.

8.69. Counsel for the State of Queensland, Mr Hanger, when questioning Mr Jefferies, at p 13-121 of the transcript, interpreted Ms Tomsett's words as meaning "*...I do not want to proceed with charges in this case*", but, with respect, that makes no sense either. This imprisoned juvenile **could not have been** regarded by the officers as having the standing to lay charges, and any charge that might have resulted from their investigation would normally have been laid by a police officer.

8.70. It is submitted that the words chosen by Ms Tomsett were selected to suggest that some formal document was required of Ms Harding **before** any police investigation could be undertaken, and that this was misleading.

8.71. As to Ms Tomsett's words saying that Ms Harding was happy with the police inquiries, it is submitted that the only inquiry Ms Harding could have known about **was her own medical examination**. I suggest that no woman who has had that experience has ever actually been happy about it. It is commonly viewed that the experience victimises the subjects of such examinations.

8.72. Of great significance, there is no evidence before the Commission, it is submitted, to show that Ms Harding had any understanding of what other inquiries police could, or should, have made – nothing to show that she knew whether or not the police had made any attempt to speak to any other witnesses or any suspects, nothing to show that she was even aware of the possibility of scientific evidence being obtained let alone that she was aware that the officers were about to abandon any attempt to do so.

8.73. It is submitted that Ms Harding had no standard by which to judge whether she should or should not be happy with the police inquiries up to the time she signed **Exhibit 253**, and consequently, it is open for the Commission to find that she had no real understanding of what she was signing.

8.74. Counsel Assisting asked Mr Jefferies, at p. 13-119 why police adopted the practice of having the child sign her name as Ms Harding undoubtedly did. His response was to the effect that it formalized the actual recording of that child's wishes, but, with respect, that merely begs the question of whether Ms Harding's wishes were truly so recorded, or whether her actual wishes had been overborne by her overall experience. It is to be remembered that she was a 14-year-old child living is a threatening environment.

8.75. But Mr Jefferies went on to say that **Exhibit 253** "*...gave the police officers verification of what had taken place and what they'd been told*", and agreed that this was "*...that they had gone out, as instructed investigated the matter to whatever extent they thought appropriate and that was the outcome as they saw it.*" With respect, that has no bearing on the issue of whether their decisions and actions were adequate under the circumstances.

Completeness of the Police Investigation

8.76. At p. 8-20 of the transcript, Ms Podlich said: "*There was no complaint. Yes, Annette did not make any complaint to us so to us we had nothing to work on.*" That was, and is, objectively wrong, in my view, and no justification at all for the officers' failure to follow up on several lines of investigation that were plainly open to them.

8.77. At p. 16-28 of the transcript it was suggested to Mr Newnham that "*...really summarised it's (that) they were too easily deflected from their investigative duties?*" and he agreed that "*...It's really summarized...*" Upon reflection, it is submitted, the Commission might now, having regard to the totality of the evidence, find that "summary" seriously inadequate as an expression of what the police officers did or did not do.

8.78. In my submission, far from merely being deflected from their duties, the officers actively sought to avoid carrying out their proper investigative duties, and actively sought to record some quasi-official reason for doing so. Despite Ms Tomsett's protestations in response to a very specific question at the top of p. 17-77 of the transcript, it is open to question why, in **Exhibit 253**, she did not record words that could reasonably be accepted as accurately attributable to Ms Harding but instead resorted to the language of "officialese".

8.79. It is also added and submitted that it is reasonable and proper to expect that police officers will always be diligent and thorough in carrying out their duties, including their duty to investigate reported serious crimes, that is (to use the common colloquial term) that they should "leave no stone unturned".

8.80. It should be understood that it is not alleged any breach of formal rules or regulations on the part of the officers. So far as can be seen, such a possibility has not been canvassed before the Commission except possibly the "policies" or "practices" discussed above. Nor it is suggested that to do so was needed or appropriate. Rather, it is submitted that whether or not there was an adequate police investigation of the alleged rape of Ms Harding can be determined on the evidence in the abstract, as it were, without assigning blame to any individuals. It is acknowledged also, that too often blame can be attached to individuals who thought they were merely following precedent, policy and widespread practice, when the fault actually lies with those who allowed bad precedents, policies or practices to continue.

8.81. That said, it is open for the Commission to find that:

A. Ms Harding complained of having been sexually abused – raped - while in the custody of JOYC on 24 May 1988;
B. Ms Harding could not legally consent to sexual intercourse due to her age;
C. Regardless of that legal aspect, she alleged that her ability to consent was overborne by other factors present on 24 May 1988, when she had sexual intercourse with two males, and that is in fact what happened;
D. Ms Harding's consent was neither necessary, obtained nor sought before she was medically examined on 27 May 1988;
E. Her consent was not necessary for the continuance of the police investigation commenced on 27 May 1988;
F. Her statement of what had happened to her on 24 May 1988 was desirable, and would have been a useful part of that investigation, but it was not a necessary condition for that continuance;
G. Ms Harding's signature to the entry in **Exhibit 253** was not a sufficient reason for the police officers to discontinue that investigation, or to stop short of several other investigative steps reasonably and prudently open to them;
H. Her signature was obtained to a document (See **Exhibit 253**) which she did not and could not have properly comprehended;
I. That document reflected more the practice desires and language of the police officers than it did any language or words of Ms Harding;
J. Ms Harding's will and desire to complain about the incident of 24 May 1988 were effectively overcome by events and information of which she became aware between that incident and her signing that document;
K. The police officers knew or ought to have known that Ms Harding's free will had been overborne, at the time her signature was obtained;
L. Ms Harding's mother had expressed her own complaint about the alleged offence committed against her daughter, and that complaint had been passed on to the police;

M. Mrs Harding's complaint was at least in part, a cause for the commencement of the police investigation on 17 May 1988;

N. Mrs Harding **did not agree** to any withdrawal of her complaint or discontinuance of the police investigation into her complaint, or into her daughter's complaint, until an appreciable time **after** the police officers had in fact halted that investigation (if at all);

O. No other person acting in place of Ms Harding's parent/s agreed to any withdrawal of her complaint or discontinuance of the police investigation into her complaint until an appreciable time **after** the police officers had halted that investigation (if at all);

P. The original complainant, Mr Coyne, **did not agree** to any withdrawal of that complaint or discontinuance of the police investigation into that complaint until an appreciable time **after** the police officers had halted that investigation (if at all); and/or

Q. For whatever reason, the police did not properly investigate the alleged sexual assault upon Ms Harding on 24 May 1988.

(The expression "and/or" is used deliberately, to denote that my submission points are not to be taken to be in any way as mutually dependent. In particular, even if my submission/s H, J and/or K are rejected that would be no reason to reject submission Q.)

8.82. It is submitted that any contention that, although Ms Harding's consent **was not required** for, or even relevant to, so many significant actions involving herself, her consent (let alone her written consent) nevertheless **was required** in some form in order to allow the police to investigate the report of a serious crime committed against her, is a contention without any merit or saving grace of any kind.

Conclusion

8.83. The segment has concentrated on the evidence before the Commission, in respect of only two issues, and in doing so have tried to avoid negative comment about the apparent focus of others. It is respectfully submitted that there appears to have been efforts at jockeying for position, at advocating for a particular cause at the expense of the truth, and at diverting the Commission away from the truth, which require particular caution on the part of the Commission.

8.84. For example, instances have been cited where counsel misled witnesses, or misconstrued evidence, whether by design or by inadvertence. In this regard the field has not be covered.

8.85. At p. 16-29 of the transcript of Mr Newnham's evidence, his 1998 interview with Mr Heiner was apparently put on the same footing as the interview between Ms Tomsett, Ms Podlich and Annette Harding. With great respect, this analogy was neither appropriate nor relevant; the circumstances

were markedly different but in any case the issue is not whether Mr Newnham's conduct can be called deficient. The issue was and is whether the conduct of the serving police officers can - not having regard to anything he did or did not do in 1998, but having regard to the duties of their offices in 1988.

8.86. Nor, with respect, should Mr Newnham's failure to immediately recall the police officers' records be allowed to detract from what the evidence from those records shows. Thus, while seeking to belittle his assertion that the police investigation of the Harding Incident was inadequate (down to about p.16-32 of the transcript), Counsel Assisting failed to show him those records (See **Exhibits 252, 253** and **253A**).

8.87. The point is that the concentration there was on reducing Mr Newnham's credibility on the issue of the adequacy of the police investigation, not on whether the documented evidence then available to the Commission actually did (or did not) say anything about that adequacy.

8.88. My final respectful submission, therefore, is that, pursuant to the Commission's charge to make "full and careful inquiry in an open and independent manner" it should look beyond what might be called the "point-scoring" and "stage-craft" that appear in the transcript and go squarely to what conclusions can properly be drawn from the sum of the evidence pertaining to the two issues concentrated on.

6 May 2013

EXHIBITS FROM QCPCI WEBSITE 1988 to 1990
(LETTERS/MEMOS/MINUTES – shaded Blue)
MERGED WITH LINDEBERG CHRONOLOGY

Date of document	Description of Document	QCPCI Exhibit No.
24/03/88	**Letter to Coyne from Pettigrew re his appointment as YOJC Manager**	58

24/05/1988

On bush outing to the Lower Portals at Mt Barney, approved of by **Mr Coyne**, (**Exhibit 242**) while out of sight of supervisory staff for around 20 minutes, **a Queensland 14-year-old Aboriginal female inmate** of the **JOYC**, Annette Harding, is raped by two male JOYC inmates while three others watch on with two masturbating. The detainees are under the control of Ms **Karen Mersaides** [school teacher] and Mr **Jeffery Manitzky** [psychologist] and other professional staff from **JOYC,** namely teachers **Messrs Gordon Cooper** and **Robert O'Hanley and Ms Sarah Moynihan**. Four boys abscond on return to car park causing staff to seek help from the police to find them. Staff are concerned that Ms Harding may have been sexually assaulted. On return to JOYC, Coyne meets with **Manitizky, Mersaides** and **Moynihan** for one hour. They advise Coyne of the suspected sexual assault incident. Coyne looks in on a sleeping Ms Harding and leaves her undisturbed.

24/05/88	**Memo of J. Foote Outcomes of meeting of that date** **Moynihan report of Lower Portals Walk**	243A 256

25/05/1988

Coyne meets with **Foote, O'Hanley, Cooper, Manitzky, Mersaides and Moynihan** at 9.00am. They discuss concerns about the suspected sexual assault. (**Exhibit 242**) Foote interview Ms Harding in her office regarding possible sexual involvement with boys at the Lower Portals. She denies that anything happened. (**Exhibit 243**). **Mark Freemantle** informs Coyne that one of the boys on the excursion admits to sexual intercourse with Ms Harding. **Coyne** instructs him not to speak to other staff until he had time to speak to all involved. (**Exhibit 248**). Freemantle is also concerned about Ms Harding's safety. (**Exhibit 242**) Coyne speaks with Ms Harding who confirms that a sexual incident occurred and that she wants the boys charged. (**Exhibit 242**). Coyne reconvenes another meeting with the excursion supervisory staff and informs them that he believes that Ms Harding was assaulted and wants a report from them about the excursion. (**Exhibit 242**). **Youth Workers Fred Feige and Terry Owens** observe these staff writing their reports together, and believe that Coyne was orchestrating what should be written down. (**Transcript 7/12/2012 pp60/61**) JOYC **Personnel Security Manager, Raymond Bentley**, does not see any report being managed by Coyne and believed that what occurred appeared to be informally hushed up. (**Transcript 12/12/2013 pp57/58**).

26/05/1988

Coyne reviews the reports by staff. He approaches the 5 boys but they decline to be interviewed. Coyne contacts DFS officer **Butler** at Beenleigh with the intention of contacting **Mrs Harding**. **(Exhibit 242)** **Senior Youth Worker Trevor Cox** contacts Coyne at home around 6.45pm advising him that Ms Harding had made contact. Coyne phones her and fixes an appointment for Friday 27 May 1988 around 11.00am. He encourages her to contact her daughter which she does. **(Exhibit 249)**. **Ms Harding** speaks with her mother and is visibly upset during the conversation. **(Exhibit 249)**

27/05/1988

Around 12.30pm **Mrs Harding** visits JOYC and speaks at length with **Coyne** and **Foote**. She then speaks with her daughter for approximately 30 minutes. Coyne and Foote join them. Ms Harding and her mother inform Coyne that they want 4 boys charged. **Coyne** immediately contacts **JAB Inspector David Jeffries** to arrange for a police investigation. **(Exhibit 243)** **Ms June West** accompanies Ms Harding to the Mater Hospital to be examined by **Dr Maree Crawford** upon the arrangement of **Inspector Jeffries**. **(Exhibit 261)** **Cox** receives a call from **Dr H Forbes** and gives a list of contraceptive pills Ms Harding could take. **Dr Forbes** phones **Cox** again to find out whether he has found the pills, and is advised that he has found a packet of **Sequilar E.D. Cox** phones **Coyne** advising him of the doctor's calls. Coyne phones Cox and advises that Ms Harding can have a double dose of **Sequilar E.D.** (i.e. as "a morning after pill"). **Cox** administers the dosage.

27/05/88	**Memo to Nix from Coyne re incident of 24/05/88**	242
	Memo of Foote re Harding interview of 25/05/88	243

28/05/1988

Police officers **Tomsett** and **Podlich** from Ashgrove JAB attend JOYC at 9.25am. They meet with Ms Harding in the company of **Lorraine Hayward** and **Rudi Peckelharing**. Ms Harding signs a complain withdrawal in Tomsett's notebook, indicating that she is happy with the police enquiries. **(Exhibit 253)** **Tomsett** and **Podlich** do not speak to any staff who supervised the outing nor the boys. Podlich phones Mrs Harding that her daughter has withdrawn her complaint. **(Exhibit 245)** Arrangements are made to collect Mrs Harding to visit her daughter that afternoon. Mrs Harding is unhappy that the complaint is withdrawn.

28/05/88	**Memo Hayward to Coyne re Police interview with Harding**	244
	Memo Pekelharing to Coyne re above	245
	Page from diary of Detective Tomsett	252
	Page from diary of Detective Tomsett	253
	Page from diary of Detective Tomsett	253A

30/05/1988

DFS D-G **Alan Pettigrew** writes to DFS Minister the **Hon Peter McKnechnie** re the Incident. **(Exhibit 247)** **George Nix** writes memo to Pettigrew regarding Ms Harding's visit to the Mater Hospital and her reasons for no wishing to proceed with her complaint. Nix indicates that Ms Harding will not fall pregnant because her period had commenced. **(Exhibit 246)**

30/05/88	**Memo Nix to Pettigrew re Harding** **Letter Pettigrew to Minister**	246 247
31/05/88	**Freemantle report to Coyne**	248
02/06/88	**Cox report to Coyne**	249

09/6/88

Dr Crawford writes to **Dr Forbes** re her 27 May 1988 examination of Ms Harding. No trauma is found, and the swab results are pending. (**Exhibit 250**)

09/06/88	**Letter Dr. Maree Crawford to Dr. Forbes re Harding examination**	250
Undated	**List of ages of alleged victim and suspected offenders**	308
28/11/88	**Memo re Staff Meeting**	87

16/3/89

JOYC experiences a major riot and is set afire by inmates. (Exhibit 326)

17/3/89

The Courier-Mail reports the riot "***Rampage at Teen Jail***" and records an anonymous Youth Worker claiming that a 15-year old female inmate had been raped on an art outing and that the incident had been "***covered up***." (**Exhibit 326**)

17/03/89	**CM News item re JOYC**	326
17/03/89	**Media Release Sherrin MLA inter alia regarding rebuff over sexual assault incident**	251

18/3/89

The Courier-Mail records that the then **Minister of the DFS (in the Ahern Government) Sherrin** allegedly stated that the rape victim was **17 years-of-age***, and she had been encouraged to bring charges but had declined to do so. The story does not reflect the content of the Sherrin media release.

[* *This age figure has been established to be untrue as the departmental file on the assault proves, and as Premier Beattie subsequently confirmed in an answer in the Queensland Parliament* [See **Question on Notice No 1471 18 and Beattie's answer on 18/11/04 below** *].

18/03/89	**CM News item re JOYC**	326

7/4/89

The date of the **Coyne memorandum** concerning a meeting held by **JOYC Youth Worker** and **AWU workplace representative Feige** [**Exhibit 20** in Forde Inquiry - accessed by Lindeberg on 9/2/01] and **Coyne** during which he purportedly confirmed that he assaulted children as did other Youth Workers.

08/06/89	**Memo re Youth Detention Centres**	59
20/06/89	**Letter to O'Shea from Pettigrew seeking an interpretation**	60

	of PSME Reg 46 and 65	

30/6/89

Acting Solicitor General **O'Shea** advises **DFS** – a "whole-of-government" advice - regarding the application of *PSME Regulations 46, 63 and 65* that it would be *"an exercise in artificiality and administrative duplication"* to run a parallel system of official files, and advises that access pursuant to *PSME Regulation 65* to confidential matter *"which could be reasonably be considered to be detrimental to the interests of the officer are unequivocal and mandatory."* As Manager of **JOYC, Coyne** is provided with a copy of the 30 June 1989 O'Shea's advice and it was upon his instigation that **DFS** sought it.

30/06/89	**Letter to Pettigrew from acting Solicitor-General**	61

17/8/89

The **Cooke Commission of Inquiry** was established by the **Cooper Government** to investigate the activities of particular Queensland Unions [*The terms of reference were sufficiently wide to look at Lindeberg's dismissal when it occurred on 30/5/90*].

28/08/89	**Letter to Pettigrew re Coyne**	62
29/08/89	**Letter to O'Shea**	63
12/09/89	**Memo to Walker** **Letter to Pettigrew**	64 65

14/9/89

A meeting is held between **DFS** and **Walker (from QSSU)** on behalf of the concerned Youth Workers re **Coyne**'s management of the **JOYC**. **Pettigrew** then **D-G** of **DFS** insists that complaints must be put in writing before any investigation will be considered

14/09/89	**Meeting Summary**	66
20/09/89	**Memo to Acting Gen. Sec.**	67
21/09/89	**Letter to Walker from Lorraine Hayward complaining role of QSSU**	67A
22/09/89	**Letter to Walker from Lynne Draper complaining about role of QSSU against management**	68
Undated	**Letter to 'Brian'**	69

26/9/89

Incident occurs at **JOYC** that sees 3 children (2 girls aged 12 and 16 and a boy aged 14) **handcuffed to a tennis court fence** all night on the orders of **Coyne** because of their alleged disruptive behaviour.

27/09/89	**Letter to Pettigrew**	70

28/9/89

Pettigrew visits **JOYC** and tells staff that he intends to hold an independent investigation into any written complaints.

29/09/89	**Letter to Pettigrew from Fred Feige**	71

1/10/89

The Sunday-Sun records the then **DFS Shadow Minister Warner** complaining of children being inappropriately handcuffed and drugged and calling for a review of **JOYC. Coyne**'s superior **Peers** claims the handcuffing was for only a few hours. **Warner** calls for a review of **JOYC** to address such matters.

01/10/89	***Sunday Sun* News item – teens handcuffed – Warner confirmed knowledge of this abuse and calling for an inquiry/review**	327

10/10/89

Written complaints made against Coyne are handed to Pettigrew by and on behalf of (QSSU) JOYC employees ["the original complaints"]. Those documents immediately acquire the status of *"public record"* and become *"a departmental record/file held on the officer* [*i.e.* Coyne]" thus subject to **PSME Regulation 65**. The **original complaints** do not thereafter leave the **DFS**' possession until **22 May 1990** and therefore do not lose their legal status of *"public record"* documents.

10/10/89	**Letter to Pettigrew enclosing exhibits 72A and 72J**	72
17/10/89	**Memo to Minister Nelson**	73
18/10/89	**Letter to Minister Nelson**	74

23/10/89

Nelson Minister of FS in Cooper Government announces that there will be a **Departmental inquiry** to investigate the operations of **JOYC**, including suspected abuse of children both physical, psychological and sexual while in lawful custody or under the care and protection of the Crown. [**Terms of Reference - Annexure 5 to Exhibit KL(B)**]

23/10/89	**Letter to Coyne from Pettigrew re reclassification of JOYC Manager's position to I-12 – Must apply for position in future** **Cabinet Meeting Minutes of Oct. '89** **Cabinet Meeting Minutes of Oct. '89**	75 76 76A
26/10/89	**Brief for Minister**	77
30/10/89	**Memo to Pettigrew from Peers** **Letter to Gillespie from Hon Beryce Nelson**	78 79
01/11/89	**Memo to Minister Nelson**	80

2/11/89

Heiner's appointment by **Pettigrew** is confirmed by **Nelson** to conduct **JOYC investigation**.

6/11/89

Coyne becomes aware of criminal allegations in the complaints against him by a staff member concerning an alleged illegal entry into that staff member's home. [*The staff member later admits that she was mistaken in her complaint.*]

06/11/89	**Letter to Minister Nelson**	81
08/11/89	**Memo to Peers**	82

13/11/89

Heiner is provided with specific **terms of reference** and required to investigate and report back on the specific written complaints against **Coyne**, and on other matters touching **JOYC** security and treatment of detainees. **Original complaints remain in the possession of the DFS**. Heiner received appointment letter from Pettigrew (**Exhibit 83**)

13/11/89	**Letter to Heiner confirming appointment and attaching Terms of Reference**	83
17/11/89	**Minutes of DFS meeting**	84
21/11/89	**Memo to Staff re Heiner**	85

22/11/89} 19/1/90 }

Heiner takes evidence from JOYC staff on tapes and places evidence on computer discs and transcribes them to paper. **37 witnesses** give evidence to Heiner.

23/11/89	**Letter from Pettigrew to 'F2'** **Letter possibly sent to Unions**	86A 86
24/11/89	**Gillespie QSSU Media Release re Security, Sexual Abuse etc at JOYC**	299

27/11/89

Coyne approaches Pettigrew seeking:

(a) a copy of all the written complaints;

(b) written advice on the process of how the complaints were going to be investigated; and

(c) the opportunity to organise and conduct a defense against the complaints laid.

These requests are later refused. **Coyne** indicates that it is impossible for him to defend himself without knowing what the specific complaints are.

28/11/89

Coyne approaches departmental staff assigned to assist **Heiner** and registers his concerns as put to **Pettigrew.**

29/11/89

Coyne is given a brief one page outline of written complaints. He is refused access to the **original complaints** handed to the Department on 10 October 1989.

29/11/89	**List of 9 names etc**	88
30/11/89	**Letter to Martindale**	89
	Letter and submission to Heiner	90

2/12/89

The Queensland Government changes. The Qld ALP wins office. Goss, a qualified solicitor, becomes Premier and Minister responsible for State Archives. Warner becomes Minister of DFSAIA. Matchett is shortly afterwards appointed as Acting D-G of DFSAIA by the new Minister Warner, replacing Pettigrew.

05/12/89	**Memo to Deputy D.G. from Pettigrew re Heiner not prepared to disclose complaints but those accused would be given ample opportunity to respond.**	91
	Letter to M. Pearce from Peers re allegation against Coyne and Cox re: entering her hone unit	92
08/12/89	**Summary of JOYC discussions**	93
	Letter from Mersaides to Pettigrew re role of Barbara Flynn – overstepping the mark	94
12/12/89	**Letter to C Thatcher re Heiner investigation**	95

14/12/89 -18/12/89

Coyne officially requests from **Matchett** copies of the **original complaints and transcript of evidence gathered by Heiner in order to defend himself**. He questions the legal validity of the inquiry, and **informs Matchett that he will sue for defamation if his career suffers as a consequence of the inquiry.**

14/12/89	**Memo to D.G. requesting documents**	96
15/12/89	**Memo to Matchett re Barbara Flynn**	97
	Paper in Matchett's writing headed George Nix	323
18/12/89	**Memo to Matchett re JOYC complaints**	98
18/12/89	**Memo to Acting DG re JOYC modifications**	99

19/12/89	**Letter to Matchett re JOYC medications from Dr Nigel Collings**	100

2/1/90

Matchett is officially informed by **Peers** (now Acting D-G of DFSAIA) in a **memorandum** that **the original complaints against Coyne are held on an official file in the Department's possession created by Nix.** It is described as *"a file compiled by Mr Nix including the original letters of complaint."* **Nix** tells **Peers** where it can be found while he (Nix) is in Adelaide.

02/01/1990	**Memo to Matchett re Heiner**	101
04/01/90	**Memo to Matchett from L Draper**	102

5/1/90

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

08/01/90	**Letter to Crook and Coyne**	103
10/01/90	**Memo to Coyne re Pearce allegations**	104

11/1/90

Heiner confirms to Coyne that allegations of criminal conduct have been made against him. Coyne gives evidence to **Heiner** for the entire day. He is also accused of having an affair with **Dutney**. He is told by Heiner that he (Heiner) only holds **copies of the original complaints**, and that they (**the original complaints**) were in the Department's possession.

11/01/90	**Statement to Heiner by Lannen**	105
	Memo to Matchett re Coyne	106

15/1/90

Coyne seeks access to **original complaints** in a memorandum to **Matchett** pursuant to ***PSME Regulation 65***. (**Exhibit 109**)

15/01/90	**Handwritten notes re Lannen**	105B
	Memo to Matchett from Coyne	107
	Memo to G Clarke from Coyne re Heiner	108
	Memo to Matchett from Coyne	109

16/1/90-17/1/90

Dutney writes to **Matchett** seeking access to complaint documents held on her pursuant to ***PSME Regulation 65*** (**Exhibit 109A**)

Matchett says in an undated memorandum to Coyne that there are no complaints on 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**. Matchett confirms the same to Dutney (**Exhibit 112**)

16/01/90	**Memo to DG from Dutney**	109A
	Handwritten file note 'Not for Publication'	110

17/1/90

On **Coyne's instructions his solicitors (RBJ)** write to **DFSAIA** and threaten a **writ of prohibition** on the Department **regarding natural justice not being afforded to Coyne** in the Inquiry process. **DFSAIA** is given 24 hours to respond.

17/1/90- 18/1/90

Matchett writes to **Heiner** seeking details from him regarding his appointment authority, and requests said details by 9.30am on Friday, 19 January 1990. (**Exhibit 116**)

Coyne sends **memorandum** to **Matchett** claiming that **DFSAIA** does hold records on himself relating to the Heiner investigation and requests a copy of same.

17/01/90	**Memo to Coyne re request for records**	111
	Memo to Dutney re request for records	112
	Fax from Rose Berry Jensen to DG	113

18/1/90

Coyne writes to **Matchett** challenging **Heiner's** legislative base to carry out his review-cum-grievance at the Centre. (**Exhibit 121**)

Matchett writes to Queensland Crown Solicitor **O'Shea** twice:

1. She seeks advice regarding Coyne's solicitors' letter of 17 January 1990; and

2. She expresses concern over the legality of Heiner's appointment and encloses **Coyne's memorandum** dated 15 January 1990. (**Exhibit 115 & 116**)

O'Shea confirms the legality of **Heiner's** appointment pursuant to *PSME Act and Regulations 1988* but alerts **Matchett** to possible defamation ramifications as witnesses are not immune from writ. (**Exhibit 117**)

18/1/90-19/1/90

Heiner writes to **Matchett** declining to meet with her. He discusses that **Ms Draper** does not wish to attend and be questioned by him, and accepts her position. Notation by **Walsh** to **Cosgrove** indicates that **Matchett** wants to talk to **Heiner** about other matters. (**Exhibit 119**)

Matchett sends **2 further memoranda** from **Coyne** and **Dutney** to **O'Shea** to consider. **O'Shea** reaffirms the legality of Heiner's appointment, and he also considers the matter of natural justice. **O'Shea** notes that **Matchett** has arranged a meeting with the two unions (**QPOA and QSSU**) to discuss the Heiner inquiry.

18/01/90	**Memo re JOYC Inquiry**	114
	Letter to O'Shea re Inquiry	115
	Letter to O'Shea attaching proposed letter to Heiner	116
	Fax from O'Shea to Matchett re previous discussion	117
	Letter from Matchett to Heiner re meeting	118
	Letter Heiner to Matchett re meeting	119
	Memo to Matchett from Coyne re Heiner Inquiry	120
	Memo to Matchett from Coyne re Investigation	121

19/1/90

Matchett requests an *"off-the-record"* meeting with QPOA union organiser Lindeberg , Janine Walker and Sue Ball of the QSSU. 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."* **Lindeberg** on Coyne's instructions indicates that his **QPOA member Coyne** still wishes to see the **original complaints** against him and that there will be no more *"off-the-record"* meetings with the Department. (**Exhibit 125**)

19/01/90	**Letter Matchett to O'Shea enclosing Coyne letters**	122
	Letter Matchett to O'Shea re Heiner meeting	123
	Fax O'Shea to Matchett	124
	Reort on meeting with Matchett re abandonment	125
Received 22/01/90	**Handwritten copy of note to 'Sue' from Lannen**	105A
	File note re 11am meeting 'Not for publication'	126

23/1/90

O'Shea provides advice to Matchett. He believes that the documents are 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 **Coyne** and **Dutney** indicating that everything has been shredded.

23/01/90	**QSSU letter to Matchett re staffing** **Memo Thomas to Crown Solicitor re JOYC** **Letter Thomas to Matchett re Heiner appointment** **Memo Nix to Matchett re JOYC issues**	127 128 129 130
Undated	**Memo Ian (Peers?) to Matchett re Dutney interview**	131A
24/01/90	**Peers to Matchett Admin file notes + note on conversation with Coyne** **Notes in Matchett's writing including reference to Kevin 9.00am meeting on this date**	131

29/1/90

QPOA officially lodges breach of *PSME Regulation 63* regarding the Heiner inquiry and seeks access to the **original complaints**. Letter is signed by **Martindale** General Secretary of QPOA making him officially aware that the documents are required by Statute before and after their destruction.

29/01/90	**Memo Coyne to Matchett** **QPOA to Matchett raising concerns re Inquiry**	132 134
	Handwritten file note 'Not for Publication'	133

2/2/90

Memorandum from **Peers** of **DFS** to **Matchett**. [**HA Exhibit 46a-b**]

06/02/90	**Report on Meeting and note re destruction of evidence** **Letter Walsh to Tait re Cabinet Submission**	135 151B
07/02/90	**Letter to Heiner re termination of Inquiry** **QSSU memo Walker to Members**	136 137

8/2/90

Coyne's solicitors 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.

08/02/90	**Letter Walsh to Matchett re Coyne**	138

	Memo Coyne to Matchett copy Peers re Inquiry **Memo Coyne to Matchett copy Peers re lack of reply**	139 140
08/02/90	**Letter Rose Berry Jensen to Matchett re access to docs *PSME Reg 65*** **Memo to O'Shea from Dept. of AG re Heiner appt.** **Letter O'Shea to Stewart (AG's dept.) re JOYC**	141 142 143
9/2/90 -15/2/90 **Matchett** seeks advice from **O'Shea** re Coyne's solicitors' letter of 8 February 1990 and encloses a copy of the letter.		
09/02/90	**O'Shea to Stewart** **QPOA letter to Matchett re Coyne and Dutney** **Letter Peers to Matchett re Coyne conversation** **Memo Walsh to Matchett re Coyne** **Memo Walsh to Matchett re JOYC & Lindeberg** **Memo Walsh to Matchett re Coyne call** **Transcription of Matchett call to Coyne**	144 145 146 147 148 149 150
	Cabinet Submission 00100 to Minister re JOYC	151A
<u>12/2/90</u> **Cabinet meeting is held at which the Heiner inquiry is officially terminated. (1) Heiner is given indemnity for costs by Cabinet. (2) A further memo to Cabinet to be made concerning what approach should be taken re the papers spoken of in the submission No 00100. The documents are transferred to the Office of Cabinet from DFSAIA in an attempt to obtain *"Cabinet privilege."* [Tabled in QLA by Beattie on 30/7/98]**		
12/02/90	**Cabinet Decision Minute re Henier indemnification** **Memo to Matchett re Coyne secondment**	151 152
Received 14/02/90	**Letter Matchett to O'Shea re previous correspondence**	153
13/2/90 Acting Cabinet Secretary **Tait** seeks **O'Shea**'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.		

13/2/90

Matchett meets with JOYC staff and officially informs them that:

1. The Heiner inquiry has been terminated;

2. No report will be made;

3. **The Crown** ***"will accept full responsibility for all*** **[legal]** ***claims arising out of a Crown employee's due performance of his/her duties provided these duties have been carried out conscientiously and diligently***"; and

4. Coyne will be immediately seconded to special duties in head office commencing in Brisbane on 14 February 1990.

13/02/90	**Matchett notes prepared for Coyne meeting on this date**	154
	Letter Matchett to Coyne re secondment	155
	Matchett notes re JOYC meeting on this date	156
	Letter Tait to O'Shea re Cabinet records	158
	Letter Walsh to Tait re indemnity	168B

14/2/90

Coyne instructs his solicitors to serve notice on DFSAIA of his intention to commence court proceedings to gain access to the documents. Berry of RBJ telephones DFSAIA Executive Officer Walsh and tells him not to destroy anything pertaining to Coyne's legal claim on relevant documents and serves due notice on the Crown giving unequivocal notice of the evidential status of the material. **Walsh** confirms the serving of notice in a **Departmental memorandum dated 14 February 1990** to **Matchett** which she later initials as having read on **21 February 1990**. The **memorandum** is in terms:

"... 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 ... Coyne and that they have every intention to pursue the matter through the Courts ..."

14/2/90

Meeting occurs at the QPOA Headquarters. It is attended by Messrs Coyne, Manitzky, Karen Mersiades, Dutney and QTU Industrial Officer Rose. **It is chaired by Lindeberg**. It is agreed that **Lindeberg**, acting on behalf of both unions, will arrange a meeting with **Matchett** to inform her of the legal claim on the Heiner Inquiry documents by both Unions and their preparedness to join **Coyne** and **Dutney** in their legal action to gain access to the documents pursuant to **PSME Regulation 65**.

14/02/90	**Inter alia instructions to Walsh re Cabinet decision**	157
	Memo Walsh to Matchett	159
	Handwritten notes 'Not for Publication'	160

15/2/90

Coyne's solicitor puts in writing his telephone conversation with Walsh of 14 February 1990 and reaffirms notice on the Crown of his client's intention to commence Court proceedings.

15/2/90

Walsh officially informs **Matchett** of the content of his conversation with Coyne's solicitor Berry.

15/02/90	**Letter Rose Berry Jensen to Matchett re Coyne legal action**	161

16/2/90

O'Shea provides advice to Cabinet in response to Cabinet's letter of 13 February 1990 regarding the Heiner documents. He advises that:

1. The documents cannot attract "*Cabinet privilege*" as they were brought into being for a Departmental purpose not a Cabinet one;

2. **Should civil proceedings commence and a writ issue, the documents could not be successfully withheld;**

3. 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 L&A Act;** and

4. **Permission to have them destroyed must be first obtained from the State Archivist.**

Copy of above advice was sent to Matchett

16/2/90

Matchett officially responds to **Coyne's solicitor**, acknowledges receipt of his letter of 8 February 1990, and indicates that the Crown's position regarding access as per **PSME Regulation 65** is that she is **still awaiting legal advice, and that nothing sought is on Coyne's personal file.**

16/02/90	**Minutes of Meeting at JOYC**	162
	Letter Matchett to Rose Berry Jensen re Coyne, Dutney	163
	Fax to Tait from O'Shea re correspondence	164
	Fax to Matchett from O'Shea	165
	Letter to Stewart from O'Shea	166
	Memo to A.G. from O'Shea	167
Undated	**Submission 00117 consequence of Option 4**	168A

19/2/90

State Cabinet meeting is held. The Cabinet memorandum was deferred to allow Tait to liaise with State Archivist. NB: Cabinet memorandum contains a reference to a number of demands requiring access to the material including requests from Solicitors on behalf of certain staff members. [Tabled in QLA by Beattie on 30/7/98

19/2/90

DFSAIA receives:

1. A copy of **O'Shea's advice of 16 February 1990 to Cabinet**; and

2. **Coyne's solicitors' letter of 15 February 1990 putting the Crown on notice of impending Court proceedings**.

19/02/90	**Cabinet Minute re Decision 00118**	168

20/2/90

Tait sends to **O'Shea** for approval a **copy of a draft letter** (dated 19 February 1990) **which the Cabinet wishes to send to the State Archivist seeking the urgent destruction of the Heiner documents (*but does not want to be seen to be applying pressure on her*)**.

20/02/90	**Letter Tait to O'Shea re previous correspondence**	169

21/2/90

Matchett initials **Walsh's Departmental memorandum of 14 February 1990** as having read it.

22/2/90

O'Shea advises **Tait** that he sees **nothing "*... objectionable*" in the draft letter to the State Archivist**.

22/2/90

DFSAIA seeks advice from **O'Shea** regarding Coyne's solicitors' letter of 15 February 1990 putting the Crown on notice enclosing a copy of the solicitor's letter to him.

22/02/90	**Letter Matchett to O'Shea with enclosure**	170
	Letter Fingleton to O'Shea re Heiner documentation	171
	Fax O'Shea to Tait re draft letter to State Archivist	172
23/02/90	**Letter Tait to State Archivist**	173
	File note re Tait request by State Archivist McGregor	174
	Fax 13.44pm McGregor to Tait giving approval for shredding with handwritten notes at bottom of page	175A
	Fax 13.44pm McGregor to Tait	175

23/2/90

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 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.*]

23/2/90

The documents are delivered to State Archives at Dutton Park from the Office of Cabinet. ***McGregor faxes to Cabinet her written approval*** **(in less than one working day)** ***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 L&A Act.]*** **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.** [Facsimile transmission Exhibit 9 **(SSC on UWC)**]

23/2/90

Lindeberg meets with Matchett in the afternoon and lodges further complaints about breaches of **PSME Regulations 46 and 65**. They discuss Coyne's foreshadowed litigation and its possible outcome if **Coyne** gains access to the material and potential defamation action ensues. He indicates that the **QPOA** and **QTU** may join **Coyne**'s legal action to seek access via a judicial review of the Statute if the Department does not grant access pursuant to his rights. The conversation is witnessed by **DFSAIA's Chief Industrial Officer Sue Crook. Matchett assures 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 **Coyne's temporary secondment** is genuine and coincidental, and has nothing to do with the Heiner Inquiry.

26/02/90	**Letter Tait to Matchett**	175C
	Fax Tait to Walsh with attached fax McGregor to Tait	175B
	Letter O'Shea to Matchett with draft letter to RBJ	176

26/2/90

O'Shea advises Matchett that *"the matter cannot advance further from the Department's point of view until Cabinet makes a decision."* He informs Matchett that Coyne's solicitors' letter is still subject to ongoing consideration and drafts a letter to be dispatched stating same. (**Exhibit 176**)

27/2/90

QTU Acting Secretary Knudsen writes letter to Matchett seeking access to Heiner documents in accordance with ***PSME Regulation 65*** on behalf of its member. (**Exhibit 177**)

27/2/90

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." (**Exhibit 181**)

29/02/90	**QTU letter to Matchett re JOYC complaints seeking access pursuant to PSME Reg 65**	177

1/3/90

QPOA's Kinder sends letter officially lodging complaints of breaches of PSME Regulations 46 and 65 with Matchett. Also confirms **Lindeberg**'s meeting with **Matchett** on 23 February 1990. The meeting around 3.00pm is witnessed by Sue Crook. **Kinder** becomes officially aware that the Heiner documents are required **before the shredding occurs**. (**Exhibit 178**)

1/3/90

Dutney sends a **memorandum ["the Dutney Memorandum"]** to **Clarke** of **DFSAIA** setting out details of various matters including staff misconduct and *prima facie* criminal assault by a Youth Worker **Feige** against a youth, putting the lives of children at risk. [*This memo was written and received before the shredding of the Heiner documents*]

01/03/90	**QPOA Kinder letter to Matchett re JOYC investigation**	178
02/03/90	**Memo Peers to Matchett re Coyne conversation with second last para page 2 'not for publication'**	179
Undated	**Memo to Minister re Heiner material**	180

3/3/90

Coyne's secondment from **JOYC** Wacol to **DFSAIA headquarters in Brisbane** CBD made official and published in QGG No 55 3/3/90 p1088 [*This rendered any claim for additional traveling time as a consequence of the relocation null and void - see Deed of Settlement of 12/2/91 wherein $10,000.00 of the $27,190.00 represented alleged additional traveling time*].

5/3/90

The Goss Cabinet decided [No 00162] that following advice from the State Archivist and the Crown Solicitor the material gathered by Heiner during his JOYC investigation be handed to the State Archivist for destruction under the terms of s55 of the L&A Act to reduce risk of legal action and provide protection for all involved in this investigation. In the Cabinet Submission, (signed by Minister Warner) the Goss Cabinet is informed that a firm of solicitors is seeking production of the material but have not yet lodged a writ. Warner at least knew that the Heiner Inquiry documents to be destroyed contained evidence of suspected criminal abuse and/or misconduct by public sector employees of children at the JOYC and therefore might give rise to a reasonable suspicion of official misconduct. (Exhibit 181)

05/03/90	**Cabinet Minute re Decision 00162**	181

8/3/90

Lindeberg when discussing related Heiner inquiry matters with **Warner**'s private secretary **Norma Jones** on the telephone **inadvertently learns of the plans to shred the documents**. He challenges the private secretary's comments indicating that the documents are required. **Jones** ends the call abruptly.

13/3/90

Lindeberg meets with **Jones** and is immediately told that **Warner** refuses to deal with him on "*the Coyne case*" and will only deal with the QPOA General Secretary **Martindale** or QPOA **Kinder**. No reason is given. **Lindeberg** briefs **Martindale** before he meets with **Warner** concerning legal demands seeking access to the Heiner Inquiry documents.

15/3/90

Martindale meets with Warner. After the meeting he tells Lindeberg that Warner has alleged that he has threatened her career and that of her senior Departmental officers and **wants him removed from the case. Lindeberg denies threatening anyone**. He 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 **Martindale** and **Kinder** (before the documents were shredded), but with full knowledge that the Heiner documents were being sought by **QPOA** and **Coyne**.

15/3/90

Martindale telephones **Coyne** and offers him an equivalent position elsewhere in the Department and requests an **urgent** response. **Coyne** does not respond.

19/3/90

QTU's Knudsen writes to 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."*** (**Exhibit 187**)

19/3/90

Matchett writes a memorandum to Coyne indicating that the Crown's current position is *"interim"* and states *"I have provided interim responses to Mr Berry 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."*

19/3/90

Matchett writes a memorandum to Coyne indicating that the Crown's current position is *"interim"* and states *"I have provided interim responses to Mr Berry 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."*

19/3/90

Matchett writes to QTU in response to its letter of 27/2/90 advising that its request to access the Heiner documents *"is currently being examined."*

19/3/90

Matchett writes to the QPOA indicating that access to the documents is **still** the subject of *"ongoing legal advice."*

19/3/90

Matchett writes to Coyne's solicitors and questions whether **Walsh** did say that a discussion with Heiner had occurred as referred to in his (Berry's) letter of 15 February 1990. **She confirms that she is still seeking ongoing legal advice as advised in her letter of 16 February 1990 regarding access to the documents.**

19/3/90

Matchett seeks further advice from O'Shea and encloses 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.

19/03/90	**Memo Matchett to Coyne re JOYC complaints investigation**	182
	Letter Matchett to O'Shea, att Thomas re above	
	Letter Matchett to RBJ re Coyne	183
	Letter Matchett to Martindale re JOYC complaints	184
	Letter Matchett to Knudsen QTU re JOYC outcomes	185
	Letter Knudsen QTU to Matchett re JOYC outcomes	186

		187

22/3/90

Tait informs State Archivist McGregor by letter of Cabinet's decision of 5 March 1990 to destroy the documents under the terms of section 55 of the L&A Act indicating that the material is being forwarded to her. [*The letter omits any reference to the fact that Cabinet has ordered the shredding "to reduce the risk of legal action" nor does it state what Coyne and others were doing legally and industrially to gain access to the material.*]

22/3/90

Coyne meets **Walsh** and discusses access *et al* to the Heiner documents. **Walsh** tells **Coyne** that **DFSAIA** is **still** waiting for **O'Shea**'s advice.

22/03/90	**Letter Tait to McGregor re forwarding Heiner material for action following Cabinet decision of 05/03/90**	188

23/3/90

Archivist McGuckin is collected by a Cabinet official from Dutton Park Archives. The Heiner documents are taken from Cabinet office in the Executive building and across to Family Services building. McGuckin is joined by Walsh and together they destroy the materials.

23/03/90	**Archivist McGukin file note re collection and destruction of records, paper, cassette & computer disc**	189
02/04/90	**Walsh file notation re destruction of Heiner material**	190

9/4/90

Queensland Times (p5) carried a news item "***Escapees still on the run***" which indicates a statement by a spokesman for DFS Minister **Warner [Graham Staarke]**:

"*The place* [JOYC] *needs a real clean up and it will get it. There have been on-going problems of a similar nature since the riot in March last year.*"

The spokesman is also reported to have 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 do exist.*"

9/4/90

Matchett letter to **QTU** "*... discussions with Crown Solicitor are nearing completion.*"

09/04/90	***Queensland Times* News item JOYC escapees still on run**	328

11/4/90

***The Sun "Labor Blocks Secret Probe"* page 1 (Exhibit 342)**

11/04/90	***The Sun* News item Labor blocks secret JOYC probe**	342

18/4/90

<u>O'Shea</u> provides advice to <u>Matchett</u> re her letter of 19 March 1990. He confirms that Coyne has a legal entitlement to view and take copies of the <u>original complaints</u> 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 Coyne's entitlements can be avoided just because the material is not on his personal file. <u>He advises that if she wishes to dispose of them, prior approval must be obtained from the State Archivist pursuant to the L&A Act</u>. <u>The photocopies of original complaints are returned to the Department</u>.

18/04/90	**Letter O'Shea to Matchett re destruction of Walker material forwarded on 10/10/89**	191

20/4/90

QTU writes another letter to Matchett inquiring as to access to the documents and **concern over a newspaper article** that they may have been destroyed. They seek an urgent response. (**Exhibit 192**)

20/04/90	**Letter Knudsen to Matchett re destruction of docs**	192
29/04/90	**Letter Tait to Bingham CJC re assessment of a complaint relating to Heiner docs**	212

8/5/90

Internal memorandum by DAC Smith of **DFSAIA** to **Matchett** 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 **Coyne** if they are retained in the possession of the Crown in accordance with the Crown Solicitor's advice of 18 April 1990.

8/5/90

Matchett seeks advice from O'Shea in relation to the trade union letters (QPOA & QTU) of complaints submitted on 10/10/89. She indicates that she does not want to approach Cabinet again, and wants to return the original complaints to the QSSU.

08/05/90	**Memo Smith AG's office to Matchett re discontinued inquiry etc** **Letter Matchett to O'Shea re JOYC and Walker docs**	193 194

9/5/90

Matchett informs the QTU by letter that she is still seeking Crown Solicitor's advice, and once the final advice is received regarding access, the parties will be informed.

17/05/90	**Letter Coyne to McGregor re security of Heiner material**	195

17/5/90

Coyne writes to McGregor 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 DFSAIA is still seeking advice on the matter. He requests McGregor that the documents not be destroyed.

18/5/90

McGregor speaks briefly on the telephone with Walsh regarding **Coyne's letter** which she faxes to him. **Walsh informs her not to respond to Coyne** and he advises her that the matter is being handled by the Crown Solicitor.

18/5/90

O'Shea assisted by BJ Thomas provides a one page advice to Matchett advising her to return the original complaints to the QSSU in accordance with her expressed intention. O'Shea encloses draft letters [*Draft letter may be FOI release letter dated 18/5/90 HA Exhibit 30*] to be sent to parties seeking access to the documents indicating that the sought after material has either been shredded or is not in the Department's possession or control. This letter was not revealed to Morris and Howard in their 1996 Inquiry "*on the papers*" and only revealed on 22 November 1996.

[*This advice was not released for inspection until 5/3/97*]

18/05/90	**Fax 9.40am McGregor to Walsh re Coyne letter**	196
	Memo Walsh to Matchett re Coyne	198
	Memo McGregor to State Librarian re JOYC	199
	Letter O'Shea to Matchett with draft letters to Knudsen, Walker, RBJ and Martindale	200

22/5/90

Matchett sends **altered** draft letters to:

1. **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 Heiner has been destroyed;**

2. The **QTU** declaring that everything has been destroyed (**Exhibit 202**); and

3. The **QPOA.** (**Exhibit 203**)

22/5/90

Matchett sends the **QPOA an altered draft letter** declaring that everything has been destroyed and that it appears to her that **Coyne** has not *"suffered any injustice or detriment."*

22/5/90

Matchett writes to Walker of QSSU and assures her that all documents brought into existence during the Heiner inquiry have been destroyed and returns to Walker the original complaints (officially defined as *"public records"*) which brought the Inquiry into existence. [*This return of the original complaints was without prior lawful approval from the State Archivist, and although these documents are known to be still the subject of a legally enforceable access Statute*]

22/05/90	**Memo Walsh to Matchett re Coyne call on destruction of Heiner docs and regulation 65**	201
	Letter Matchett to Knudsen as per O'Shea draft	202
	Letter Matchett to Martindale as per O'Shea draft	203
	Letter Matchett to Walker	204
	Letter Matchett to RBJ re Dutney	205
	Letter Matchett to RBJ re Coyne	206

23/5/90

DAC Smith of DFSAIA shreds the photocopies of the original complaints without prior lawful approval from the State Archivist and records the act with a personal handwritten notation on the Department's copy of the Crown Solicitor's advice of 18 April 1990.

24/05/90	**Memo Walsh to Matchett re Coyne**	207

24/5/90

Ian Berry, Coyne's solicitor phones Walsh and confirms receipt of **DFSAIA**'s letter of 22 May 1990. He tells Walsh that ***"the Department is in a lot of trouble"*** and says he intends contacting the Goss Minister the Hon David Hamill. He wishes to be advised whether Cabinet took the decision to destroy the documents. **Walsh** records the conversation and says that such a request should be put in writing. (**Exhibit 207**)

30/5/90

McGregor records in an internal memorandum that Coyne had contacted her on 17 May 1990 to confirm whether the Heiner documents had been destroyed. McGregor records that, acting on advice from Walsh, she *"declined to make any comment to Coyne beyond suggesting that his lawyer should deal directly with the Department or the Crown Solicitor's office."*

30/5/90

Lindeberg is dismissed after 6 years as senior organiser by the QPOA Martindale. The **QPOA**'s **Kinder** witnesses it [*both are aware that the Heiner documents were shredded when being sought by the union, the QTU and Coyne*]. **Martindale** cites amongst 4 reasons Lindeberg's handling of "*the Coyne case*" as a reason for his dismissal. It is alleged by Martindale that **Warner** had lodged a specific complaint against Lindeberg indicating that he was ***"inappropriate and over-confrontationalist"*** in his handling of the case. Lindeberg rejects the allegation.

30/05/90	McGregor file note re disposal of JOYC records	197

4/6/90 Lindeberg is conditionally reinstated by the QPOA Council agreeing to undergo an independent arbitration by an arbitrator mutually agreed upon by Lindeberg and Martindale. However QPOA President Yarrow appoints an arbitrator Joe Patti against Lindeberg's will and against the concerns of the industrial staff JC Patti being believed to be biased against employees and an anti-unionist.

12/6/90 A memorandum provided to the QPOA Executive by Lindeberg at Martindale's request concerning the Heiner Inquiry following an approach by *The 7.30 Report* (presenter Alan Hogan) to run a segment on the shredding. The background to the Inquiry is set out in the memorandum. Lindeberg recommends that the matter be pursued with vigor, including through the media. He alerts the Executive that (i) a potential breach of the *Criminal Code* regarding the destruction of evidence has occurred which may involve either (a) Warner properly informing Cabinet thereby making them collectively responsible; or (b) she may have incorrectly informed Cabinet; or (c) Matchett may have incorrectly informed Warner. Messrs Martindale and Yarrow refuse to talk to the media.

19/06/90	**Memo Coyne to Matchett copy Peers re PSME Reg 65**	208
02/07/90	**Letter O'Shea to Matchett re Coyne with draft letter to Coyne**	209

03/07/90. Martindale offers to drop the charges conditionally. Lindeberg refuses to accept the offer. He is not prepared to accept the conditions which may indicate any guilt on his part associated with any of the charges used to dismiss him.

06/07/90. Lindeberg writes to Yarrow indicating that he does not want Joe Patti to arbitrate. He has learnt that he is a noted anti-union advocate and former work colleague with Martindale when both worked for an employers' association. Lindeberg records that Yarrow refused his suggestion to overcome the impasse by appointing an arbitrator that neither he (Lindeberg) nor Martindale wants. He indicates that he is being forced into a process which prima facie disadvantages him but he is prepared to meet with Patti to explore the process in keeping with his belief *"...in the integrity of the position of President of this union, which should ensure all POA members are treated fairly, and that you have indeed selected someone who is independent and will adhere to the Rules of Court No 25."*

01/08/90	**Memo Matchett to Peers re appointment nominations**	210

	Letter Matchett re appointment recommendation	211

1/8/90 Matchett letter to QPOA President Yarrow re meeting of 19 July 1990 regarding Coyne, his legal action, reimbursement of fees, relocation, and an undertaking on his [Coyne's] part not pursue or canvass such matters through Ministers of the Crown [including Premier Goss], PSMC, QPOA, his solicitors, herself or senior DFSAIA staff. The Meeting between Yarrow and Coyne occurs away from QPOA HQ in Peel Street South Brisbane where Lindeberg is still fighting for reinstatement after being dismissed, including over his handling of "the Coyne case" when trying to preserve the Heiner Inquiry documents and tapes from destruction.

2/8/90 Patti delivers his report and decision upholding the sacking of Lindeberg. Lindeberg is ordered from the premises but refuses to leave. He becomes a watched over prisoner in his own office until 5.00pm. His union car disappears. That night the union door locks are changed. Lindeberg wants the report and decision taken to the QPOA's Council for ratification as the union's supreme governing body. For that purpose he prepares 2 documents for consideration by the Council - one entitled "*The Story Behind the Sacking of Senior Organiser Kevin Lindeberg*" and the other entitled "*Questions.*" Copies are sent to the DFSAIA D-G Matchett. The documents covers "the Coyne case."

7/8/90 The QPOA Council upholds the dismissal of Lindeberg, 38-28 by use of proxy votes later discovered to have been actively solicited by QPOA President Yarrow contrary to the Council's direction that he must act with integrity by remaining independent in overseeing the process.

13/8/90. QPOA Councillor Kingsley Bedwell writes to QPOA President Yarrow seeking confirmation that he actually solicited proxy votes to uphold the Patti decision when he was required to act independently throughout the process.

4/9/90. QPOA President Yarrow confirms that he did lobby for proxy votes, but that he did not consider there was any conflict of interest in doing so.

17/9/90 Ian Berry, of solicitors Rose Berry Jensen, lodges a detailed statement of account with DFSAIA D-G Matchett for $1,153.90 who has agreed to pay Mr Coyne's legal costs. It details, inter alia, Berry was drawing of a statement (with 56 folios) as at 21 March 1990, some 16 days **after** the Goss Cabinet had ordered relevant evidence to be destroyed to "...***reduce the risk of legal action***" with Berry still believing all the evidence was secure.

1/11/90 Confidential meeting between Matchett and Coyne (witnessed and recorded by Carpenter of DFSAIA) where at Coyne discusses his concerns about staff putting their complaints to Heiner about the handcuffing of children at JOYC. In Carpenter's memorandum it is recorded that "*Ms Matchett stated that no-one had suggested that he [Coyne] had done anything wrong.*"

5/11/ 90. Lindeberg writes a letter to QPOA President Yarrow concerning a motion carried at the October 1990 QPOA Council meeting to publish an article about his dismissal. He points out the seriousness of the matter before the union, and asserts that Yarrow acted in a partisan manner promoting the interests of Martindale because it had been established that he actively solicited proxy votes against Lindeberg when he was required by the QPOA Council to remain independent. He wants any proposed publication on his dismissal based on the facts.

30/11/ 90. Lindeberg gains part-time employment with the Department of Housing and Local Government as a Research Officer under Director Mr. Arthur Muhl.

4/12/90. Lindeberg, having gained part-time employment in the public service, seeks to receive accreditation to attend the December 1990 QPOA Council meeting as the delegate for the Department of Housing and Local Government. Cec Lee, as the QPOA returning officer, does not make himself available but Lindeberg still fronts the meeting. Messrs. Yarrow and Alan Greenhalgh attempt to have him barred but the Council accepts his nomination. He tables certain documents previously withheld from the Council, and Councillors decide to debate his dismissal at their 5 February 1991 monthly meeting.

14/12/90 Lindeberg lodges a complaint with Mr Peter Jones at CJC in respect of the "Coyne case" - i.e. the Heiner Inquiry document shredding - encompassing possible misconduct either collectively or singularly by (a) Senior DFSAIA public officials; (b) a Minister of the Crown; (c) the Queensland Executive Government; and (d) others (i.e. QPOA union officials), when destroying the Heiner documents and tapes (i.e. parts of the Heiner inquiry transcript, tapes and other documents pertaining to Coyne); the original complaints; and in respect of his (Lindeberg's) own dismissal.