



COMMONWEALTH OF AUSTRALIA

Proof Committee Hansard

HOUSE OF REPRESENTATIVES

STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL
AFFAIRS

Reference: Crime in the community

TUESDAY, 18 MAY 2004

BRISBANE

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HOUSE OF REPRESENTATIVES
STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS

Tuesday, 18 May 2004

Members: Mrs Bronwyn Bishop (*Chair*), Mr Murphy (*Deputy Chair*), Mr Cadman, Mr Kerr, Mr McClelland, Ms Panopoulos, Mr Sciacca, Mr Secker, Mr Somlyay and Dr Washer

Members in attendance: Mrs Bronwyn Bishop, Mr Sciacca and Mr Somlyay

Terms of reference for the inquiry:

To inquire into and report on:

The extent and impact and fear of crime within the Australian community and effective measures for the Commonwealth in countering and preventing crime. The Committee's inquiry shall consider but not be limited to:

- a) the types of crimes committed against Australians
- b) perpetrators of crime and motives
- c) fear of crime in the community
- d) the impact of being a victim of crime and fear of crime
- e) strategies to support victims and reduce crime
- f) apprehension rates
- g) effectiveness of sentencing
- h) community safety and policing

WITNESSES

HEINER, Mr Noel, (Private capacity) 1674

Committee met at 2.07 p.m.

CHAIR—Good afternoon, everyone. I declare open this public hearing of the House of Representatives Standing Committee on Legal and Constitutional Affairs inquiry into crime in the community: victims, offenders and fear of crime. The committee has directed Mr Noel Heiner to appear before it today. The committee will ask Mr Heiner a number of questions about the infamous affair that unfortunately bears his name. The committee was in Brisbane last October and in March this year to hear evidence about the Heiner affair, where documents relating to investigations into allegations of misconduct including possible sexual abuse of minors at the John Oxley Youth Detention Centre were shredded by senior public officials on the order of the government, for reasons that have been challenged since the shredding took place some 14 years ago. The issue had remained unchallenged in court, although the then Mr Callinan, now Justice Callinan of the High Court, gave very strong advice before a Senate committee hearing that the advice of the CJC was wrong.

Earlier this year, a minister of religion was found guilty of an offence that the Queensland government and its legal advisers have contended all this time does not exist. The offence involved the guillotining of the pages of a girl's diary that detailed her abuse. Those guillotined pages were returned to the girl's family and indeed were later able to be reassembled by a police officer. At the time of the guillotining, no legal proceedings were under way, nor were they foreshadowed in any way—in fact, the events were years apart.

By contrast, the Queensland government shredded documents pertaining to an inquiry that this committee has heard uncovered grave abuses of a physical and perhaps sexual nature, even though legal proceedings were, without doubt, foreshadowed. This evidence could not be reassembled. No members of the then government, nor any of the senior bureaucrats involved in the shredding, have ever been called to account for their actions. If it were not for the tireless efforts of a number of private citizens, particularly Mr Kevin Lindeberg and Mr Bruce Grundy and his Justice Project, this affair would most likely be buried, and the only people lamenting the appalling handling would be archivists around the world.

Despite Premier Beattie's persistent assurances that this issue has been investigated numerous times, the committee has been provided with evidence that each inquiry was flawed in one way or another. What perhaps strikes this committee most is the fact that none of the investigations into the Heiner affair appear to have gone to the source—that is, Mr Heiner himself, a retired magistrate who had been engaged by the previous National Party government to conduct an inquiry into alleged mismanagement of the John Oxley Youth Detention Centre.

We know the documents and tapes of interview collected by Mr Heiner were destroyed. We also now know that this should have been considered to be an offence under the Queensland Criminal Code. What we do not know is exactly what was in the documents that were shredded, and why the government was willing to go to such lengths to destroy the evidence and to continue the cover-up. That is why we are here today.

[2.10 p.m.]

HEINER, Mr Noel, (Private capacity)

CHAIR—Welcome. Please state the capacity in which you have been asked to appear today.

Mr Heiner—I have been directed to appear at this inquiry.

CHAIR—The committee understands that you were previously unwilling to appear before the inquiry following a number of oral and written invitations for a voluntary appearance. The committee in fact issued a summons for your appearance today. The committee will have questions that it wishes to ask you, but I do you the courtesy of asking you if there is anything you would like to say before we begin.

Mr Heiner—Only the fact that it happened 15 years ago, and my memory—at best—is most sketchy. I have read the transcript of the October and March hearings that were provided to me. My memory of a lot of those events is completely at variance with what has been said there. Apart from that, my recollection is very sketchy. I have done everything in my power to forget it since the inquiry was aborted.

CHAIR—Were you shocked when it was aborted?

Mr Heiner—No. I believe that at that time it was the only thing that could have been done to protect me and anybody who volunteered to come before me.

CHAIR—Was that because you were concerned about defamation?

Mr Heiner—No. Defamation never came up at any time. I had nearly completed the inquiry. I will say this at the start: all the people who came before me to give testimony were volunteers. I made it known that it was up to them to volunteer anything that they wanted to tell me about it. My inquiry was into the administration of the home—nothing else. There were eight or 10 different issues I was to inquire into, but they all related to the management of the homes. I queried that when I got it in relation to the treatment of any of the children. I was told in no uncertain terms not to worry myself about that; that would be treated as an entirely different matter altogether. My only inquiry was into the written complaints that had been received by the department in relation to the running and management of the home, and that is what I did.

CHAIR—And what was the nature of the complaints that had been made?

Mr Heiner—I have no idea. They were all written out. The complaints came over. I was going to use them when I wrote up a report to compare the evidence with what the complaints were. If I read them—and I do not remember reading them—they were not of any interest to me at that time. I wanted to get the evidence of everybody who had anything to say about the home there. Whether they were past employees or whoever they were, I was quite amenable to take any evidence that they wanted to put before me. I see in the transcripts that there were 35 witnesses. If I had been asked, I would have said a dozen—15 maximum. I cannot remember

35—nowhere near 35. But it was all voluntary. I understood that I had no power to compel people to give testimony, nor had I any authority whatsoever to compel the production of documents, neither of which I did in any case. I compelled no witnesses to give evidence and I compelled no production of documents. I would not have known what documents they had to produce anyway.

CHAIR—So were the people who appeared and gave voluntary evidence all employees of the home?

Mr Heiner—I have no idea. I believe some of them were present employees, some of them were past employees and some of them were just also-rans. I agreed to take evidence from anybody about anything that they wanted to give evidence about in relation to the management of the homes. I was going to sort out what was wheat and what was chaff and what was hearsay and what was not in my report. Of course, there was no report.

CHAIR—So at no stage did you write a report.

Mr Heiner—No. Contrary to what newspapers said, I did not make a report.

CHAIR—So you were told that the inquiry was terminated before you came to write a report?

Mr Heiner—I was awaiting the transcript of the last day's witnesses to come back to me, and I decided to do preparatory work for writing the report. To do that, I wanted to check into my appointment, to start with. I had very grave doubts about my appointment—as to what it was all about, who appointed me and whether I had any protection or whether the people who gave evidence before me had any protection or indemnification against anything that might have happened.

I satisfied myself that my appointment was not as I thought it was. I thought I was acting in an inquiry on behalf of cabinet, where of course I would have the authority of cabinet behind me and indemnification for any report I put in. I found out—or I thought I found out—that it was an appointment by or through the Department of Family Services. I do not know what authority they had, but they appointed me. Apparently it was on the recommendation of the minister. He had some connection to the cabinet—of course, being minister—and he got cabinet approval to have the inquiry conducted.

CHAIR—So you felt that it was not a cabinet appointment and therefore you did not have the immunity that you thought would come with that?

Mr Heiner—I satisfied myself that there was something untoward about the appointment and that nobody had any protection about anything that happened in the inquiry.

CHAIR—Who approached you—to appoint you in the first place?

Mr Heiner—I had eight paragraphs, and attached to that was a card from a George Nix from the department. I received that after I received my appointment. Two people came out to see me. One was George Nix and the other was Alan Pettigrew—or was it Allan Callaghan? It was one of the two.

Mr SCIACCA—I think Alan Pettigrew was the head of the department at the time.

Mr Heiner—It was Alan Pettigrew.

Mr SCIACCA—I am not sure of that. There was an Allan Callaghan as well, of course. But it would not have been Allan Callaghan. He was the media adviser to Joh Bjelke-Petersen at the time, and it was not then, so it was Alan Pettigrew.

Mr Heiner—He had something to do with the Department of Family Services, anyway—Alan Pettigrew. They approached me some time before I got the letter of appointment.

CHAIR—Could we have a copy of the letter of appointment and that other document with the dot points?

Mr Heiner—Yes.

CHAIR—Thank you. We will accept these as exhibits. I might read the letter for the benefit of the committee. It says:

13 November, 1989

Dear Mr Heiner—

which has been crossed out so that it reads ‘Dear Noel’—

I refer to our recent discussions concerning the investigation of staff complaints at the John Oxley Youth Centre.

I am pleased to advise that your appointment to undertake this task has received approval. I attach also a copy of the Terms of Reference which we agreed to in our discussions.

The Honourable the Minister has also approved the terms to which we agreed—\$300 a day, two days a week and, if possible, completion of the inquiries and the report in six weeks from an agreed commencement date.

Arrangements have been made for an office to be provided for you, together with parking at the Children’s Court complex. The office will be the No. 2 Magistrates Chambers. I am also making the necessary staffing adjustments within the Department so that you will have secretarial assistance and a fairly senior officer to provide input and advice. I will introduce these to you next Wednesday morning, as planned.

I look forward to working with you on this task.

That is signed by A.C. Pettigrew, Director-General. Attached to it are the same eight points. The attachment says:

DRAFT TERMS OF REFERENCE FOR THE INVESTIGATION OF COMPLAINTS BY CERTAIN MEMBERS OF STAFF AT JOHN OXLEY YOUTH CENTRE

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

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

Mr Heiner—I twice queried that part in the last paragraph about the treatment of children, and I was told in no uncertain terms that it had nothing whatsoever to do with my inquiry into the complaints about the management.

Mr SCIACCA—Who told you that?

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

CHAIR—Did that happen?

Mr Heiner—I can remember two occasions where that came up. One was in relation to a set of handcuffs. The handcuffs were put on an uncontrollable child for his own safety and for the safety of the other residents out there. That was what I was told. I believe that the child was a young boy. I see in here that somebody thought it was a young girl. My recollection is that it was a young boy. I have another recollection of an uncontrollable child being sedated. I only recollect it as a child; I cannot recollect the sex of the child or anything more about it—only that for the safety of the child and the rest of the residents there they sedated the child. Because both of them in each instance were uncontrollable. The children were uncontrollable.

CHAIR—So the management told you they were uncontrollable?

Mr Heiner—Whenever it came before me I queried it, of course, and that was what I was told. I do not know whether it was management or who it was now. I do not know. But I was convinced at the time that it was for the betterment of the child, or for the safety of the child rather than anything else, that they did it.

Mr SCIACCA—So that was during the course of your inquiry or your listening to the evidence—

Mr Heiner—This did not happen during the course of that; this happened at some previous time. I was told about it.

Mr SCIACCA—Okay. Did anything like that appear during the course of the inquiry? To your recollection, was any evidence given to you by those that voluntarily gave evidence that related to the question of possible abuses et cetera?

CHAIR—Excuse me, Con, my understanding was that Mr Heiner said that during the course of these people talking to him this question arose. That was part of the evidence.

Mr Heiner—That is right.

CHAIR—So it would have been in the documents that got shredded, basically.

Mr Heiner—To my recollection, nobody volunteered anything about any treatment of the children that occurred whilst I was there having the inquiry.

Mr SCIACCA—That is different, isn't it, Chair?

CHAIR—No. This is evidence that was given to you about two instances that had occurred?

Mr Heiner—Previously, yes—I do not know when.

CHAIR—Not during the inquiry but previously.

Mr Heiner—No. It was some time much anterior to that, yes.

Mr SCIACCA—That is, not during your acceptance of evidence—that is the point I am making.

CHAIR—During the period he was taking evidence, he was told about these two instances, but the instances were not contemporaneous with the taking of evidence.

Mr SCIACCA—I do not think that is what he was saying.

Mr Heiner—That is exactly what I said. I do not believe that they occurred whilst I was there. I believe that they were previous incidents that these people told me about.

Mr SCIACCA—I understand. Sorry, I accept that.

CHAIR—Your appointment was just before the election, wasn't it, basically?

Mr Heiner—Just before a changeover of government.

CHAIR—What was the date of the election?

Mr Heiner—December.

CHAIR—So you had only really been there for a month, if that?

Mr Heiner—Yes, something like that.

CHAIR—Was it before or after the election that you were worried about your appointment?

Mr Heiner—It was just before I was considering writing the report and awaiting the transcript of the final evidence.

CHAIR—Was that after the election?

Mr Heiner—Yes. The election was on about 10 December and this was in January.

CHAIR—What was it about your appointment that made you suddenly worry about it then?

Mr Heiner—I wanted to put in the report the facts of my appointment and what it involved—what it entailed, and what I could do and could not do—and I arrived at the conclusion that I did not know what it was all about or who appointed me or under what authority they appointed me or what indemnification or protection anybody had.

CHAIR—So you were not sure how you could describe your appointment for the purposes of your report, and that is what concerned you?

Mr Heiner—I was concerned about everybody's protection, because right at the start I think either I or somebody told everybody that we were all protected in the same way as witnesses are in a court case or the magistrate sitting on the bench is—that we had all the protection of a court for anything they wanted to volunteer. I was not satisfied that that was the case.

CHAIR—You did not think about checking up on that point before you wanted to write the report? You took the evidence first and then checked it?

Mr Heiner—I assumed—sorry, that is the wrong word—I believed that my appointment was completely aboveboard, and I do not know whether it was or was not; I just was not sure what it was all about. I thought originally that I was working as part of an inquiry on behalf of cabinet and that I had all the protection of an inquiry under cabinet, and I was not satisfied by my own personal inquiries before I made the report that that was so.

Mr SOMLYAY—Have you resolved to this day whether or not you had that protection?

Mr Heiner—It has been resolved by the destruction of the documents!

Mr SCIACCA—The election was in December 1989—obviously at Christmas and all the rest of it. Were you aware, for instance, that in early January, according to our advice, the new

director, a Ms Matchett, sought advice from the Crown Solicitor regarding requests that she had had from Mr Coyne and that the then Crown Solicitor, Mr Ken O'Shea, advised that, while you had been lawfully appointed pursuant to the Public Service Management and Employment Act and Regulations of 1988, neither he nor his informants had statutory immunity from legal action for defamation, because the appointment was not under the Commissions of Inquiry Act?

Mr Heiner—Nobody had told me until you just read it out now that that was what my appointment was under—the public service act. I was not aware of that; nobody had ever told me that. That is the first I knew about it.

Mr SCIACCA—And you were not advised also that Mr O'Shea recommended at the time that, if the inquiry were to be terminated, the documentation gathered by you should be destroyed, provided that no legal action had been commenced that would require the production of the file. You were not aware, for instance, that that had been Crown Law advice?

Mr Heiner—Here is the letter I wrote to query my appointment.

CHAIR—Can we have that?

Mr Heiner—Yes.

CHAIR—Thank you. This is dated 19 January and addressed to Ms Matchett. I will read it out:

Following discussions between Mr Pettigrew, Mr Nix and myself I agreed to conduct an enquiry into the style of management pertaining to the John Oxley Youth Centre and subsequently received a letter from Mr Pettigrew dated 13th November, 1989 with an annexure stating the Terms of Reference for my enquiry. The letter and the annexure authorised me to investigate and report to the Honourable the Minister and Director-General on certain matters numbered in the annexure. I perceived my enquiry to encompass the first of these numbers:

“The validity of the complaints received in writing from present or former staff members and whether there is any basis in fact for those claims”.

I believed that the other seven matters in that annexure were concomitant with the first matter and they formed part and parcel of my enquiry.

Following discussions on the morning of 19th January, 1990 between Ms Matchett and myself the question was raised as to the validity of the establishment and appointment and approval for my conducting this enquiry. I believed from the wording of the letter and annexure that I was to investigate matters and report to the Honourable the Minister and Director-General. I inferred from that that approval and authority from the Honourable the Minister to authorise the Director-General to appoint me to conduct this enquiry had had the specific approval of Cabinet for this action to be taken. I proceeded on the basis that Cabinet, through the Minister and thus subsequently through the Director-General to myself, had been authorised and approved. Following discussions this morning I have serious doubts as to the validity of the enquiry which I am conducting. I am not satisfied firstly that Cabinet was aware of the intention for the Director-General or the Minister to authorise the enquiry. It seems to me from the document that I have seen that it may have been the Minister solely who was responsible for the authority and my appointment to conduct the enquiry. I base this on a document I have, undated, which I have seen which purports to be notes that the Minister relied on for her submission to Cabinet—the last part of which reads, “I have agreed to accept the recommendation of the Director-General on this matter.

It does not seem possible to ascertain particulars or information as to whether that recommendation was made or that Cabinet has in fact authorised this enquiry. The only results that I am aware of is that the letter of my appointment was made that I commence the enquiry, copies of which complaints were forwarded to me.

In view of the confusion which exists and my doubt as to the validity of my actions so far, I am not prepared to continue any further with my inquiry. The action taken by me to this point was taken in good faith and in the belief that the whole structure of my appointment and authority to so act had been legally and properly constituted by Cabinet downwards. I am therefore ceasing from now to continue any further with the matter until I have obtained written information and confirmation that my actions to date including my appointment and authority to act are validated. I have had each of the interviews recorded by tape recorder and these tapes have been transcribed. I will retain possession of each of these records of interview personally and take no further action until I receive further advice from the Director-General along the lines I have suggested.

If after the Director-General has received legal advice and she determines no further action be taken I will produce to her all the documents which I have maintained as a result of my enquiry and she may do with them as she is advised to do. There has been reference to legal proceedings being taken as a result of my enquiries. I believe if there is in any legal action taken, the Department of Family Services and Aboriginal and Islander Affairs should take action to indemnify all my actions to date.

I would appreciate being kept abreast of all current developments.

Yours faithfully,

N.O Heiner.

Mr Heiner—Up until that time, I had no knowledge of any legal proceedings either commenced, about to commence or otherwise.

CHAIR—So those came out of the discussions that you had with Ms Matchett?

Mr Heiner—With Ms Matchett, yes.

Mr SCIACCA—What is the date of that letter?

CHAIR—It is dated 19 January 1990. You said that you thought that your actions should be validated by the government and that indemnity be applied. Did you receive a reply to this letter?

Mr Heiner—Not in writing; I got a phone call. I took it from someone in the department—I do not remember who it was now—and they said that cabinet had indemnified me as to everything I had done. They had already also indemnified all the people who volunteered to give evidence of the complaints before me and cabinet decided that the inquiry was to be aborted. I was to pack up everything, including paperclips, and send it all back to the department—and that is what I did.

CHAIR—So you were actually told on the telephone, as a result of that letter, that indemnity had been given to you and to every witness who had appeared before you?

Mr Heiner—That is right—because they were all volunteers.

CHAIR—But they did not put it in writing to you. Do you remember the date of the phone call?

Mr Heiner—No, I have no idea when it was. It was as a result of that.

CHAIR—As a result of this letter?

Mr Heiner—After the submission had gone to cabinet and cabinet had met, they obviously told the Director-General, and she rang me.

CHAIR—That is really quite important. You do not remember who told you?

Mr Heiner—I have an idea it was Ruth Matchett. As I say, it is all clouded in mist; I do not know.

CHAIR—But you do remember that they told you that you had got indemnity and so had the witnesses?

Mr Heiner—Of course—otherwise I would not have wrapped everything up and sent it back. Everything I had relating to the inquiry they told me to send.

CHAIR—This was by telephone—they did not write to you about that either?

Mr Heiner—No. It was all in the one telephone call—to wrap everything up. I was told that indemnification was received from cabinet and to wrap everything up and abort the inquiry.

CHAIR—Okay. So that would have been fairly soon after you wrote the letter?

Mr Heiner—As long as it takes for the minister to put it up to cabinet, and for cabinet to meet and get back to the Director-General, through the minister, I suppose.

Mr SOMLYAY—If even at this late stage someone decided to institute some legal proceeding, what is the authority—even though you were told by telephone, what is the head of power that stops that legal action from going ahead?

Mr Heiner—I would not have any idea.

CHAIR—Sorry, what was the question?

Mr Heiner—I do not really follow your question.

Mr SOMLYAY—You have been told that you have been indemnified—

Mr Heiner—Yes.

Mr SOMLYAY—but there is no evidence of that. If someone wanted to institute some legal proceedings, who would stop them?

Mr Heiner—All I could say is that it would obviously be in cabinet papers. It would be sufficient to go to cabinet, cabinet would say yea or nay and it would come back to the minister through that process. So there would have to be cabinet documentation.

Mr SCIACCA—If there was nothing ever made public in terms of what was in those documents, then there would be no course of action, because no-one could prove that they were in any way defamed or that there was any causal reason for legal action.

Mr Heiner—I do not know that any of the transcriptions were ever made public, apart from going into Crown Law—well, I do not know whether or not they went to Crown Law. All I know is that Crown Law was asked what to do with the documentation. I was—once again by telephone—told that Crown Law said that, if there were no legal proceedings pending and no likelihood of legal proceedings, then the documentation could be shredded, providing the government archivist okayed it.

Mr SCIACCA—Which is what happened?

Mr Heiner—Yes.

CHAIR—But, as we now know, you had been told that indemnity was given—therefore the question of defamation is irrelevant because they could not proceed on that basis. Either the public servant—

Mr Heiner—That is one of the reasons I agree with the shredding: it protected everybody. As far as I am concerned, it does.

CHAIR—It also breached the law.

Mr SOMLYAY—If that happened to me, I would want it in writing.

Mr Heiner—I was so pleased just to finish the thing.

CHAIR—But the long and the short of it is: once they gave you indemnity, for any proceedings that were brought, none of that could have been used in evidence, so there would be no need to shred the documents.

Mr Heiner—It never crossed my mind to ask for it in writing. I accepted the word of the Director-General.

CHAIR—That is what I am saying. You were told that the indemnity had been given so there must be either a cabinet minute to back that up or else that person was lying to you.

Mr Heiner—That is what I said. There must be cabinet documents, either from the Director-General—his recommendation to cabinet and cabinet's approval—and back to the minister and to the Director-General. Something must be in writing to show that.

CHAIR—I think we might pursue that matter, to see if we can find those documents, because there are only two alternatives: either that happened, or else the person who spoke to you was telling you a lie.

Mr Heiner—Or I am making it up.

CHAIR—You are under oath here this morning. Are you making it up?

Mr Heiner—I would not have sent all the documents back unless there was a good reason for it, and the reason for it is that I was asked to send them all back—everything. That included the complaints, the tapes, the transcription, any bench notes that I had already made—as people gave me their testimonies—any lists of the various witnesses or the people who volunteered to give evidence. My secretary worked out with the people who wanted to give something before me as to when they were or were not on duty. She created a list outlining when they were working, so that they could come in and say what they wanted to say. All that went back to the department.

Mr SOMLYAY—How was the transcript produced? Were court reporters used?

Mr Heiner—It was on tape. All the tapes went over to the department, and they arranged for them to be transcribed, and then the transcription came back to me in quarto size.

Mr SOMLYAY—There would have been more than one copy. I cannot imagine the department producing a document for you, without keeping a copy.

CHAIR—Remember that the shredding was done in two lots.

Mr Heiner—I would be surprised if there was a copy of the transcription. They would have the tapes—why would they transcribe it in duplicate?

Mr SCIACCA—Mr Heiner, you said that during the course of the inquiry, to your recollection, there were only two cases that you could remember of any so-called possible ‘action untoward’. One was the handcuffing of someone who was either a male or female, you cannot remember—

Mr Heiner—My recollection is that it was a young male.

Mr SCIACCA—Okay, a young male. The other case was with respect to the sedation of someone who was supposedly uncontrollable. Are they the only two matters that you can think of, this late in the piece, of any maltreatment at all of inmates there?

Mr Heiner—To the best of my recollection, those are all there were. Four or five years later, there was a newspaper report about a rape that had been told to me. The first I knew about it was when I read it in the newspaper some four or five years later.

Mr SCIACCA—But you would have remembered that, wouldn’t you? If an allegation like that had been made during the course of that inquiry while you were conducting it, you would have remembered that, wouldn’t you?

Mr Heiner—That is nearly something that I do not like you to ask—not that I do not like you to ask it; I do not like the concept of my having been told it and, if I had been told it, doing nothing about it.

Mr SCIACCA—I understand.

Mr Heiner—I cannot accept—

Mr SCIACCA—I would suspect you would remember it otherwise, wouldn't you?

Mr Heiner—I would have done something.

Mr SCIACCA—Of course you would.

Mr Heiner—Had I been told about it, I would have done something.

Mr SCIACCA—Yes, of course you would. That is the point I am making.

CHAIR—Mr Heiner, on that point—the question of the young boy who you say was handcuffed—

Mr Heiner—My recollection is of a young boy.

CHAIR—That was the young boy who we heard was handcuffed to a fence and left out all night?

Mr Heiner—I read that in the transcript, but the only recollection I have about the handcuffing was that it had nothing to do with a fence. I saw in there that somebody said it was to a grate or a grille. That is not my recollection. I do not recollect that at all. Whether it is the same incident or not, I do not know, but I have no recollection of a gate, a grille, a post, a grid or anything.

CHAIR—If I had been told that a child had been handcuffed or a child had been sedated, I would have been asking questions.

Mr Heiner—I did ask questions about it, but I was queried from the department and they said I was not to pursue that any further and that that was a matter for somebody else to investigate, not me. Twice I asked that, as I said. One was when I got the eight—

CHAIR—So you told them that you had heard things about the abuse of children?

Mr Heiner—I told them about the treatment of the children—obviously, those two incidents—and, as I said, I was told in no uncertain terms that my inquiry was only into those allegations of the mismanagement or the running of the home, and that was what I was to inquire into.

Mr SCIACCA—And those instructions—

CHAIR—Excuse me, I have not finished. You would feel concerned, wouldn't you, Mr Heiner, about children being handcuffed or sedated?

Mr Heiner—I was told to concern myself only so far as it related to the running of the home and the management of the home, not to the—

CHAIR—But even aside from the inquiry—

Mr Heiner—Of course I was.

CHAIR—wouldn't you want to have something done?

Mr Heiner—Of course I would, that was why I queried it. If I had been able to go into the child abuse or ill-treatment of the children, I could have done it, but I was told not to—only insofar as it related to how the place was run out there, who ran it and who was responsible for the children.

CHAIR—So did you ask who was responsible for putting the handcuffs on the kid or sedating them?

Mr Heiner—I would have at that time, obviously.

CHAIR—So you were concerned about it.

Mr Heiner—Of course I was. I would have gone into it at that particular time, and then I would have raised it—I did raise it—with the department.

CHAIR—And all that would have been in those documents and on the tape.

Mr SCIACCA—But you were told not to before the election, weren't you, by Mr Pettigrew or by the department?

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

CHAIR—But you made sure you reported on it?

Mr Heiner—I would have reported on it, yes. I had my own notes—that is all gone now.

CHAIR—It does not matter whether you took that evidence before the election or after the election, it was all on the tapes and all on the transcript?

Mr Heiner—It was taken during my inquiry. As to just when it was, either before or after the election, I have no idea.

CHAIR—But whenever it was, before or after, it was all on those tapes—

Mr Heiner—Of course.

CHAIR—and in that transcript.

Mr Heiner—Yes.

CHAIR—So it was reported to Mrs Warner, I suppose—did she become your minister?

Mr Heiner—I think it was. I think she was the minister at that time.

CHAIR—Did you ever have a discussion with her?

Mr Heiner—No.

CHAIR—She never spoke to you at all?

Mr Heiner—No.

Mr SCIACCA—When did your inquiry finish?

CHAIR—On 19 January he said, ‘No more.’

Mr Heiner—I finished it on 19 January. The inquiry itself had probably finished a day or two before that, but I was going through the transcript and waiting for the final transcript when I suddenly came upon a query.

CHAIR—Do you remember the names of any of the people who appeared before you?

Mr Heiner—No, not one.

CHAIR—You do not remember Jeff Manitzky, who was a psychologist?

Mr Heiner—I do not remember a psychologist coming before me.

CHAIR—What about a Mr Cooper, a teacher?

Mr Heiner—Why would a psychologist appear?

CHAIR—Because he became involved with the alleged rape that occurred in 1988.

Mr Heiner—As I said, the only knowledge I had about any rape whatsoever was from four or five years later in the newspaper. At first I thought it was a white girl and then some time after that I found it was an Aboriginal girl. That is all I know about the rape.

CHAIR—Nobody told you about a visit to an outlying area where a girl was alone with boys?

Mr Heiner—No.

CHAIR—So we just have these other two incidents.

Mr Heiner—I know that somebody said in the transcript that they had reported it to me and told me about it at the same time as they discussed with me the shredding of the documents. Both of those cannot run together.

CHAIR—Who said that?

Mr Heiner—It was in the March transcript.

CHAIR—Do you remember Mr Roch? He was an airline pilot who then went to work at the children's home. He said he was one of those who gave evidence to your inquiry.

Mr Heiner—From reading this, I think it was his evidence that said that he had told me about the rape and that at the same time we discussed the shredding of the documents. But I cannot remember him personally; I can only remember having read it in here. And I have no recollection of him telling me anything at all about it.

Mr SCIACCA—Did you have anything to do with this at all after 17 January, once you wrote that letter? Did you speak to anybody outside of the department or with any of the people who gave evidence before your inquiry after 17 January?

Mr Heiner—No. There have been quite a few inquiries into my inquiry.

Mr SCIACCA—Exactly.

Mr Heiner—I think there have been six or seven, and a few reporters from newspapers or other media have rung up about it. I have just made no comment. I said, 'No comment; I've got nothing to do with it.'

Mr SCIACCA—Mr Roch makes the point that he discussed with you the pack-rape and the shredding. The shredding did not take place until about a month after 17 January anyway.

Mr Heiner—That is right. I vehemently deny anybody having spoken to me about a pack-rape.

Mr SCIACCA—Okay.

CHAIR—So that we do not put words in his mouth, his words in the transcript were:

Concerning the incident with this little girl, and I believe it was to do with some documents that had been disposed of.

That is what he said.

Mr Heiner—That is semantics, isn't it?

CHAIR—Yes. Although he does not mention rape, I do not think.

Mr Heiner—The newspaper did.

CHAIR—Nonetheless, you do not recall Mr Roch?

Mr Heiner—No. I am only quoting the newspaper now. The newspaper said that it was reported to me and I did nothing about it. There was nothing I could do about it, because the documents had been shredded.

CHAIR—No. But, with regard to the two other incidents, you did report them to someone.

Mr Heiner—Yes.

CHAIR—Someone in family services?

Mr Heiner—Yes, in the family services department. There was a liaison officer between me and the department.

CHAIR—I can see that you thought you had reported it and you were told not to investigate those issues. Do you remember who told you not to?

Mr Heiner—With the mists of 15 years, no. But I know I was told not to—twice. Of that I am adamant, because, had I not been told not to, I would have.

CHAIR—And you felt quite upset that you were not permitted to do that?

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

Mr SCIACCA—Who was the government at the time that you were told that?

Mr Heiner—It was Wayne Goss's government, I think.

Mr SCIACCA—I was just wondering, because the Goss government got in in December 1989—

Mr Heiner—Yes; that was the one that went in.

Mr SCIACCA—They had not been in government for 35 years. I just cannot see the possibility that I am sure Madam Chair is trying to point to. Why would an incoming government that has been in for three weeks want to curtail something that has happened under another government that had been there for 30-odd years? It just does not make sense.

Mr Heiner—My opinion is that one government started it and the changed government stopped it. Apart from that, simply, I do not know.

CHAIR—There was also the evidence we heard that it was to do with some inter-union disputes, too, and who had supported whom for government. But that is a question aside.

Mr Heiner—The first I heard about any union involvement or about Mr Lindberg being involved in it was after the documents had been shredded. I had no knowledge of him or anybody else. I knew that Mr Coyne was talking to a union representative about the inquiry but at no time was there any mention of any legal proceedings or likelihood of any legal proceedings. A couple of letters came in to me; people wanted a transcript of the evidence. I said I did not have the authority to give them any copies of the transcript. That was a matter for the department. If the department wanted to give copies of the transcript to anybody, it was up to them to make application to them. My opinion was—

CHAIR—Who did the letters come from?

Mr Heiner—No idea. My memory is that there were two specific letters, but I do not know who they came from. As I said, I told them: ‘Go to the department and ask them for a copy of it.’ I could not give it to them—and I could not, of course, because they were not my documents.

Mr SOMLYAY—Was the inquiry carried out in camera?

Mr Heiner—No.

Mr SOMLYAY—So anybody could have been there to hear the evidence.

Mr Heiner—I just started the inquiry. As far as I was concerned, anybody could come in. The people who wanted to give evidence before me came and sat there. It would have been no skin off my nose.

CHAIR—So other people were around listening to the evidence that was given?

Mr Heiner—They could have been. I cannot remember now whether they were or were not.

CHAIR—Mr Roch described a place. I asked Mr Roch: ‘Were you interviewed by Mr Heiner?’ He said:

I think I was. He was rather a pleasant gentleman, an assistant, I think it was, in the building down towards the river ... He was very pleasant and very helpful.

Was it a building down towards the river?

Mr Heiner—It was the John Oxley youth centre. There is no river out there.

CHAIR—No, where you had the hearing.

Mr Heiner—I thought I had the hearing out at the John Oxley youth centre.

CHAIR—There was some reference in one of those letters that they gave you a magistrates court.

Mr Heiner—The Children’s Court building is on the river.

CHAIR—Did you use the chamber—

Mr Heiner—I never saw anybody there.

Mr SCIACCA—I must say that Mr Roch’s evidence was a little bit sketchy. He had a very, very poor memory.

Mr Heiner—I do not know whether the evidence I read in here came from what they said at my inquiry or from any of the other half-a-dozen inquiries after that. As I said, I have no recollection whatsoever of a lot of their stuff in here. What I do recollect is different from a lot of what is in there.

CHAIR—That is from Mr Roch?

Mr Heiner—No, everybody.

Mr SCIACCA—I take it you were never consulted about the terms of reference of the inquiry; you were just told what they were going to be.

Mr Heiner—I was told that they had received some complaints about the management of the home and that they would draw up the terms of reference and send them out to me. They did that. I believed all that related to the management of the home, nothing else.

Mr SCIACCA—You were never given any advice or information in relation to your powers and functions when you accepted the appointment?

Mr Heiner—No. I just believed that I was working under cabinet.

Mr SCIACCA—You were the management of the moment.

Mr Heiner—Yes. I was working for cabinet.

CHAIR—Can we just go back? When you heard the evidence about the child in the handcuffs and the sedated child—we took evidence about those two incidents—and you checked whether you could investigate the abuse of the children or what had happened to the children, you were told categorically no.

Mr Heiner—Yes.

CHAIR—And you do not remember whether that was in December or January. Was it very shortly after your appointment?

Mr Heiner—I have no idea at this point in time. All I know is that I queried it. I really wanted the terms of reference to be wider, to enable me to do something about it.

CHAIR—So you do not remember whether it was Ms Matchett or Mr Pettigrew.

Mr Heiner—One or either or neither. I do not know. I could not say categorically who it was.

CHAIR—Nonetheless, as I said before, that evidence about those two incidents would have been on the tape and in the transcript that was typed up by the department. So they would have known that those allegations were there—and also you told them. You told the liaison person.

Mr Heiner—Yes, I believe I did. She put it to the department. I cannot remember whether I got a phone call about that or not, but I was told not to take it any further about the treatment of the children.

Mr SCIACCA—Mr Heiner, you were concerned enough to write a letter back on 19 January. So, as a result of discussions you had with Ms Matchett, I take it, you were concerned about the possibility of defamation actions or legal proceedings as a result of the inquiry and that you did not have protection.

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

Mr SCIACCA—I understand.

CHAIR—What was important to you was that, having written the letter, you were then phoned and told that you and all the witnesses had got indemnity.

Mr Heiner—Yes.

Mr SCIACCA—But never confirmed.

CHAIR—You never got it in writing but you got it over the telephone.

Mr Heiner—It never crossed my mind to get it in writing.

Mr SCIACCA—You do not remember Ms Matchett, or whoever, saying to you that they had state crown law advice to the effect that there could be some problems with the important—

Mr Heiner—I would say categorically that she did not at any time tell me that, because, had she said that, I would have remembered. I believe I would have remembered. Right up until now,

I believed that there was no suggestion of any legal proceedings before the destruction of the documents.

Mr SCIACCA—Because if there had been it would have been contrary to the Criminal Code.

CHAIR—No. We know it is contrary to the Criminal Code anyway.

Mr SCIACCA—We don't.

CHAIR—Yes, we do. A man got convicted the other day.

Mr Heiner—The crown law solicitor would have been told there were proceedings pending or about to proceed—so would the government archivist—and the documents would not have been shredded.

Mr SCIACCA—That is right.

Mr Heiner—So (a) nobody said anything about it or (b) there were none.

CHAIR—It has turned out that the advice that was given was wrong. Indeed, when the DPP brought action against the pastor, he stood trial and was convicted for the same thing. That is why we are so concerned about two standards of behaviour. There are plenty of people who say that when you are in government you have to behave better, not worse.

Mr SCIACCA—Except that cabinets can only go on the advice at the time.

CHAIR—No, they cannot.

Mr Heiner—I have opinions, but I am not going to express them.

CHAIR—Do you mean about this whole matter?

Mr Heiner—Pass.

CHAIR—Okay.

Mr Heiner—What amuses me is that there have been seven inquiries into my inquiry and this is the first time I have ever been called.

CHAIR—Are we the first people who have asked you to come?

Mr Heiner—Apart from reporters asking me different things, yes.

CHAIR—So nobody ever asked you to come before?

Mr Heiner—No.

CHAIR—I find that absolutely amazing!

Mr Heiner—It amazed me too. Had I been approached closer to when it occurred, my memory would have been excellent.

CHAIR—Yes, of course it would have been.

Mr Heiner—But 15 years later—

CHAIR—I cannot believe that we are the first people who have asked you to come. I refer you to the evidence about those children that came out of the Forde report. It revealed:

- underqualified and vastly inexperienced staff who “resorted to ... force...because they did not have the training to deal with problems in other ways...”;
- an anal search of a 14-year-old boy by a staff member who joked and called him a “poofter” and “faggot”;
- archival material and witness accounts indicating physical abuse of children by staff including cigarette burns and assault ...;
- violence between children at a “... significant level of frequency...” and “... a continuing failure to ensure that residents were protected from other residents”;
- improper use of separation as a discipline technique ...;
- the handcuffing of children including one incident in which two teenagers were shackled in the open overnight. (Amberley air base ...).

Mr Heiner—That is news to me. I do not recollect anything about that. I can remember a child being handcuffed because of his uncontrollability.

CHAIR—That they had told you of. And there was one example of sedation. We have evidence here of sedation too. I will find that elsewhere. With regard to the staff, do you remember if people said that they did not get proper training?

Mr Heiner—All I can remember about the staff is that everybody seemed to be against management and the way that the place was run. A lot of people had husbands, wives or family who were out of work and looking for jobs, and the manager would not appoint any of them. He would appoint his own family or his friends. That was one of the reasons for all these complaints. They thought they were being hard done by because there was nepotism in the management. Everyone else was getting jobs and the people who wanted and needed jobs did not get them.

CHAIR—So they were not being appointed on whether they were the person best qualified; they were being appointed on who they were related to?

Mr Heiner—Yes: on whether they were related to the manager. That is what came across to me. A lot of the testimony that came before me was a lot to do about nothing. They just wanted

to talk. It was all about the running of the homes—how they could not get on with the people who were running the homes and the way the manager treated them. One instance was that he crept around during the night shift in soft-soled shoes to see whether people were asleep on duty. I can remember that.

CHAIR—We heard something about that.

Mr SCIACCA—To your recollection, were the people that gave evidence before you all members of the staff of the John Oxley centre? Were there people from outside that came in?

Mr Heiner—You are talking about a psychologist or something. I cannot even remember him being there. I cannot remember a pilot being there.

Mr SCIACCA—To the best of your recollection, all the people that gave evidence were in fact people that worked in the centre?

Mr Heiner—They had worked or wanted to work at the centre, had some connection with the centre or had applied for a job and been knocked back.

Mr SCIACCA—You would remember how many witnesses you have actually interviewed?

Mr Heiner—I thought it was about 12 or 15, but I see in the Forde inquiry report that it is 35. That surprises me. I do not think it was 35—not in a fit.

CHAIR—Do you recall that there was disagreement between employees who were members of the AWU and employees who were members of a competing union; that one union felt it was being preferred over another?

Mr Heiner—If that occurred, I do not remember it. I know there were members of the POA and members of the AWU, but that is all I know.

CHAIR—Did they seem to be at loggerheads; do you remember that?

Mr Heiner—No so far as I can remember. No, I do not remember that.

CHAIR—Presumably, if they were rellies of the manager and his family, he would sign them up into a union, would he?

Mr Heiner—I think at that time it was compulsory to join a union if you joined the public service.

CHAIR—Goodness, was it?

Mr SOMLYAY—It was in Queensland.

Mr SCIACCA—It was. And there were two unions there: the Professional Officers Association at the time and the AWU. I think you are right, Mr Heiner.

CHAIR—I think the allegation is that the people who were in the union that was opposed to the manager and his forces felt that they were getting a raw deal because he was favouring his union members; he was building up. The allegation that then came forward was that Goss owed the AWU because they were the people who had backed him.

Mr Heiner—I do not recollect that at all.

Mr SCIACCA—It is extraordinary putting you—

CHAIR—I am just telling you what we were told, that is all.

Mr Heiner—I do not think unionism played a part in it at all; I really do not.

Mr SCIACCA—You are aware, of course, that a lot of this was occasioned because the manager, Mr Coyne, was the one that was making the complaints. He got wind of the fact, supposedly, that there had been certain evidence given against him, as a result of which he started writing letters. This is when the whole thing came up—the powers of the commission, whether you had the power and whether you were protected. It was Mr Coyne that kept pushing this, from what we have been able to find out.

Mr Heiner—I was not aware of that at all. All I was aware of was that they had complaints from the staff that had to be investigated. I was not aware that Mr Coyne had anything to do with the complaints.

Mr SCIACCA—In the evidence, I think, Madam Chair, we have had some pretty heavy complaints against the management. I think it might have even been Mr Roch that was not very—

Mr Heiner—All these letters that I had were complaints against the management, mainly Mr Coyne. That I can remember.

Mr SCIACCA—He was the one that was causing a lot of problems—writing letters and having solicitors write in about it—because he was concerned about what had been said about him. It was consequent upon that that it seems all these events occurred.

Mr Heiner—That may have been so, but that was afterwards. I do not have any knowledge of that.

CHAIR—There are two reasons that are becoming quite apparent as to why those documents should not have been destroyed. One is because Mr Coyne was planning legal action.

Mr Heiner—Are you talking in retrospect?

CHAIR—It does not matter when, as Mr Callinan in his evidence to the subsequent Senate inquiry pointed out. I will read precisely what he said.

Mr Heiner—I think there was a differing legal view at that time, wasn't there?

CHAIR—There was a convenient legal point of view that allowed them to destroy it—

Mr Heiner—A differing legal view.

CHAIR—which has subsequently been found to be absolutely untrue. There is no limitation on criminal activity—

Mr Heiner—I agree.

CHAIR—and action should be taken here in Queensland. Because the CJC says Mr Lindeberg misstated the law—that is, he said that you did not need to have an action on foot—Mr Callinan, now Mr Justice Callinan from the High Court, said:

In my respectful submission that is by no means clear. The course of justice, when it begins to run, is a matter that has been much debated in the court and there is a serious open question about when the course of justice does begin to run in cases. Certainly, on no view, can that issue be as shortly and quickly dismissed as it is there.

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

Mr Heiner—That, to my memory, is entirely different to what the legal opinion was in 1989.

CHAIR—Correct. That is exactly the point.

Mr SCIACCA—Mr Callinan is not the font of all wisdom. He may be a High Court justice, but his opinions are just as open to—

CHAIR—It gives him a bit of rank over you and me, I would have thought.

Mr SCIACCA—As a lawyer, Madam Chair, you know that you can get opinions to go either way.

CHAIR—Yes, but we have had one.

Mr SCIACCA—But I do not think Mr Heiner can actually comment on that.

CHAIR—That is the whole point, Con, if I might point out—the matter was what you might call a moot point until the pastor was convicted. It is now a settled matter.

Mr Heiner—That is right.

Mr SCIACCA—Hindsight is a wonderful thing.

CHAIR—We should proceed now and go ahead and those same people should be dealt with by the law. The long and the short of it is, irrespective of whether it was Mr Coyne who might have been taking it, the fact that in your evidence, Mr Heiner, you had items of children being handcuffed and sedated is enough.

Mr Heiner—What children? My recollection is of one child, and I thought it was a boy.

CHAIR—It was still a child.

Mr Heiner—You said children. I do not have any recollection of children; I have a recollection of one boy.

CHAIR—And one being sedated.

Mr Heiner—Yes, and I do not remember whether that was a boy or a girl.

CHAIR—But that is a separate child?

Mr Heiner—That is a separate child altogether.

CHAIR—Two ‘childs’ means ‘children’.

Mr Heiner—You said it was two being handcuffed, and it was not.

CHAIR—No, I meant two children who had been abused.

Mr Heiner—Whether they were abused or not is a different thing. One was sedated, and the other was handcuffed—

CHAIR—Do you think putting handcuffs on a child is normal?

Mr Heiner—for their own protection, and for the protection of others, because they were uncontrollable. That is what I was told.

CHAIR—But you did not accept that?

Mr Heiner—I did not accept it insofar as I wanted to go further to find out more about it.

CHAIR—Of course you would have, just as I would have. Handcuffs on children is not what I would call appropriate.

Mr Heiner—It depends on the circumstances.

CHAIR—I do not care what the circumstances are.

Mr Heiner—I beg to differ.

Mr SCIACCA—You were a children’s magistrate, weren’t you?

Mr Heiner—No. I see in there that somebody reported to somebody out there. Two visiting justices and I went out there. We were all about the same size, shape and everything. Whether or not they are getting tangled up with reports of them, I do not know.

CHAIR—What were the other justices doing?

Mr Heiner—These were visiting justices.

CHAIR—Oh, I see. Going back to Mr Roch, he might have been talking to somebody else, not to you?

Mr Heiner—He could have been talking to somebody in the department. I do not know. But it was not me.

CHAIR—But the Magistrate’s Court is by the river?

Mr Heiner—No. The Children’s Court is by the river. John Oxley Youth Detention Centre is right out away from the river.

CHAIR—So when Mr Roch said he had seen a nice kind gentleman down by the river—

Mr Heiner—It was not me. He was probably wrong on two counts!

CHAIR—It could have been one of the visiting justices?

Mr Heiner—It could have been anybody. It could have been somebody in the department. I do not know.

CHAIR—Are they down by the river?

Mr Heiner—The children’s services department is in the same building as the Children’s Court was then.

Mr SCIACCA—Do you remember the ages of the people we are talking about? We are talking about children, but were they teenage children? How old would they usually be if they were at John Oxley Youth Detention Centre? Between what ages would they be? I do not know much about it.

Mr Heiner—I think they are up to 16 years old, but I do not know.

CHAIR—They are still children.

Mr Heiner—That is what I am going on, too.

Mr SCIACCA—So, for instance, the people they talked to you about could have been 15 or 16?

Mr Heiner—You are right. They were about 15 or 16.

Mr SCIACCA—It is possible for a 15- or 16-year-old to be uncontrollable. I agree with you: it depends on the circumstances.

Mr Heiner—I was convinced that that was the reason for those two instances. They satisfied me, anyway.

CHAIR—Did you ask them whether they had protocols? There is a question of the management of the home.

Mr Heiner—To start with, I do not understand the question. I do not know what they meant by protocols in that thing.

CHAIR—If you are running a home—and, in your terms of reference, it did say—

Mr Heiner—They referred to protocols.

CHAIR—They were more specific than that. They talked about whether the behaviour of the management and/or staff had been fair and reasonable and the adequacy, induction and basic training of staff—

Mr Heiner—That still comes back to the management, doesn't it?

CHAIR—Yes. They also talked about compliance or otherwise with the code of conduct for officers of the Queensland public service. That is management.

Mr Heiner—It still comes back to management. To me, all of those related to the style of management and the running of the homes.

CHAIR—All right. Supposing they said, 'We've got an uncontrollable child, and we have to deal with that child,' there must be guidelines about how you do that.

Mr Heiner—I accept that.

CHAIR—Did you take evidence about that?

Mr Heiner—I do not remember.

CHAIR—But if you did it would have been in those files?

Mr Heiner—Yes. For something like that, I take bench notes for use when I am writing up a report. But all those bench notes went back at the same time. You do not remember all the

evidence. That is why you take bench notes—so that you can write up a report, and refer to the transcript itself to get it correct.

CHAIR—But they all got destroyed, too?

Mr Heiner—Yes. So I am only relying on memory, which is at about two per cent at the moment. As I said, it is 15 years ago, and a lot of water has gone under the bridge since then.

CHAIR—When did you become aware of Mr Coyne receiving a payment—let us say a curious payment—of \$27,000 to shut his mouth?

Mr Heiner—I can remember—

Mr SCIACCA—Madam Chair, it is a pretty silly question to be asking if he takes an involuntary payment of \$27,000.

CHAIR—Excuse me, a condition of the payment was that he was not to speak about it.

Mr SCIACCA—You can put it differently from ‘shut his mouth’.

CHAIR—‘Shut his mouth’, ‘not speak about it’—it is all the same.

Mr Heiner—I can remember having heard that Mr Coyne had been transferred from being the manager of the home. I do not know where he went. I also heard that he had received a lump sum payment at the same time. That is all I can remember.

CHAIR—That is all you heard.

Mr SCIACCA—It is not a large payment, is it—\$27,000—for a public servant who is leaving?

Mr Heiner—I did not hear an amount. All I heard was ‘a lump sum payment’.

CHAIR—If it is just a payment, Con—it is just ‘here’s some money’, as we have heard evidence about—

Mr SCIACCA—Long service leave—

CHAIR—It was not long service leave at all. It was an improper payment.

Mr SCIACCA—We do not know that.

Mr SOMLYAY—Do we have evidence of what sort of payment it was?

CHAIR—Yes, we do; we have a lot of evidence about what sort of payment it was. On 2 December 1989, the ALP wins office and Warner becomes the minister. Ruth Matchett is appointed shortly after as the acting director-general and then Mr Coyne officially asks for

copies of the original complaints against him and a transcript. That is probably because, when he asked you, you said, 'Go and ask the department.'

Mr Heiner—I can remember having received two letters. I told him that I had no authority to give any copies of anything and that application was to be made to the department.

CHAIR—Did you pass the letters on to the department as well, with all that other information?

Mr Heiner—I would say yes, but I cannot remember.

CHAIR—That is all right.

Mr Heiner—I know he was told—whatever it was. There was somebody else too, I think; I cannot actually remember Mr Coyne. I can remember two letters coming in. I told them to get in touch with the department. Whether I wrote and told them that or whether I just told them verbally, I do not know.

CHAIR—But you heard evidence from Mr Coyne, didn't you?

Mr Heiner—I cannot remember having heard evidence from Mr Coyne.

CHAIR—You cannot remember?

Mr Heiner—No. I am sure I did not take evidence from Coyne. Just remember that all this was voluntary—all the people who wanted to say something did say something. I do not think Mr Coyne was one of them.

CHAIR—Do you remember saying that you had copies of the complaints made against Mr Coyne and that the originals were with the Department of Family Services? Do you remember that?

Mr Heiner—I thought they were originals. I thought the originals of the complaints that the department received had been sent to me. As far as I remember, they were not copies; they were the originals that I sent back.

CHAIR—Then Ms Matchett tells Mr Coyne, we heard, that there are no complaints on his personal file. Heaven only knows where that is.

Mr Heiner—I was not aware that Mr Coyne himself had made complaints; I thought all the complaints had come from staff. That is my recollection.

CHAIR—About him.

Mr Heiner—Yes—predominantly because he was the manager—but there were others they complained about too.

CHAIR—There are a couple of very important things that have come out today, and I thank you very much for coming. I am just sorry that people did not call you a lot earlier in this long story when things would have been much fresher in your memory.

Mr Heiner—I am not sorry!

CHAIR—First, your letter of the 19th is a very important letter, as is the response that came to you saying that you had been granted indemnity, as had all the people who gave evidence. They are two very important pieces of information that you have given us.

Mr Heiner—I understood at that time there was no contemplation of legal proceedings, either before or after.

CHAIR—But the fact is that you were granted immunity, which would have made it irrelevant, because they could not have called you.

Mr Heiner—That is right. I think I said if legal proceedings were ever instituted—

CHAIR—Yes, and you asked for that and you were granted it.

Mr Heiner—Yes. I thought I had it, but obviously I did not.

CHAIR—The third thing that is interesting is that there were only two instances referring to the children that you heard about—one was the use of handcuffs and one was the use of sedation. You asked if you could inquire further about that, and you were told twice that you could not inquire into the children further. But they would have been aware of the fact that you had had evidence about those two instances, because it would have been on the tapes and in the transcript that (a) the department prepared and (b) you handed back to them. They would have had them and would have known what was in them.

Mr Heiner—Whether the officers of the department read the transcript of the tapes, I do not know. The tapes may have gone over there and just been transcribed and sent back to me; that may be a different matter. Nobody over there may have read them. The typists may have read them and sent them back. I do not know.

CHAIR—It would be very strange for people to order the destruction of documents that they had not read, wouldn't it?

Mr SCIACCA—Would you agree, Mr Heiner, that if you had been properly appointed in the first place, under the proper provisions of the act, none of this would have occurred, because the fact is you would have had automatic protection as a proper, commissioned inquiry?

Mr Heiner—I thought I was appointed under the Commissions of Inquiry Act. That was my first thought. But I went into it, and I was not.

Mr SCIACCA—And that is what has caused all of this, obviously.

Mr Heiner—Of course it has. I thought I was under the Commissions of Inquiry Act or cabinet, but I was not.

CHAIR—That may or may not be the case. But that flaw—whether or not the inquiry was properly appointed—is cured by Mr Heiner being advised that he has been granted immunity, as have the witnesses.

Mr Heiner—Of course.

CHAIR—Because that is the only question that was at issue—whether or not the appointment was made in accordance with all technical detail to give that immunity.

Mr SCIACCA—That is the least they could have done, I would have thought.

CHAIR—The fact was that he was subsequently given that immunity, and that was the only question at issue. It is very important that you came and gave us that evidence today.

Mr Heiner—I was told that indemnification had been given.

CHAIR—Thank you very much.

Mr SOMLYAY—Who has the power to give that indemnity?

CHAIR—The cabinet.

Mr Heiner—I believe it was a recommendation by the minister to cabinet. Cabinet approved it, came back to the minister and, through the department, told me.

Mr SOMLYAY—They came back to you verbally?

Mr SCIACCA—If that happened, that would have been one way of righting the wrong of the previous government in not doing it properly in the first place.

CHAIR—Exactly, which meant that they would not have needed to destroy the documents and they would have been available for evidence. Has anyone any further questions for Mr Heiner? If not—

Mr SCIACCA—Can I simply make the comment—

CHAIR—Have you got a question?

Mr SCIACCA—Well, it is the same thing. I want to thank Mr Heiner as well, because he did not really have to come here and talk to us; all he had to do was turn up. But he has been very cooperative, and I think that is good. So thank you very much for having come.

CHAIR—Thank you. That is about what I was going to say.

Mr Heiner—I am pleased to have been of any help but, as I say, 15 years is too long a time ago to remember now.

CHAIR—But you have been of help to us and we do thank you for coming. There being no objection, we receive as exhibits the documents that I read into the transcript.

Resolved (on motion by **Mr Sciacca**):

That this committee authorises publication of the proof transcript of the evidence given before it at public hearing this day.

Committee adjourned at 3.23 p.m.