

Goss cabinet knew it destroyed documents wanted for court case

By [Tony Moore](#)

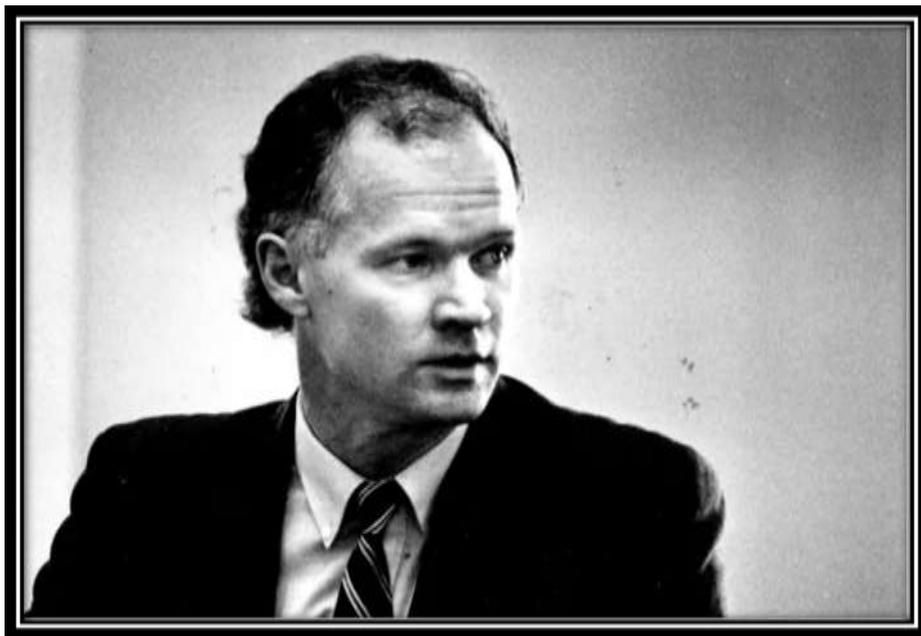
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Queensland government documents from 1990 show then-premier Wayne Goss's cabinet knew documents shredded that March were required for court proceedings.

Ministers were told on March 5, 1990, that evidence gathered by magistrate Noel Heiner into allegations of child abuse, sexual assault and the management style at Wacol's John Oxley Youth Centre was a "public record".



Late Labor premier Wayne Goss. FAIRFAX MEDIA

Then-family services minister Anne Warner also told ministers: "Representations have been received from a solicitor representing certain staff members at the John Oxley Youth Centre. These representations have sought the production of the material referred to in this (cabinet) submission.

"However to date, no formal legal action seeking production of the material has been instigated," she told colleagues.

The Ipswich solicitor was Ian Berry who asked to inspect the documents – evidence gathered by Mr Heiner – within seven days because his client, John Oxley Youth Centre manager Peter Coyne, was considering legal action.

Therefore, the approval of the state Archivist must be obtained before such destruction can occur. The state Archivist has now given approval in writing for the destruction of these records in terms of section 55 of the abovementioned Act.

URGENCY

Speedy resolution of the matter will benefit all concerned and avert possible industrial unrest.

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CONSULTATION

Crown Solicitor

State Archivist .

Goss Cabinet Minute March 5, 1990 page 3 – Heiner Inquiry where it says a solicitor has contacted seeking the documents for court action. QUEENSLAND GOVERNMENT

It followed allegations of children at the youth centre being chained to fences, [a 14-year-old girl being sexually assaulted](#) and other child abuse allegations, first made public in 1989.

Mr Berry wrote to the Department of Family Services twice in February 1990 seeking the documents and advising “of our intention to commence court proceedings in view of the fact that – against the wishes of our client [Mr Coyne] – has been seconded to another section.”

Mr Berry telephoned the department in February 14 to advise that the firm would take court action to view the Heiner documents and to say his firm would begin legal action.

The full section 129 of Queensland Criminal Code reads: “*Any person who, knowing 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.*”

That is the central point in the three-decade-long “Heiner Affair”, also known as “Shreddergate”, which was triggered when Mr Goss’s cabinet chose to shred the evidence gathered by Mr Heiner after taking Crown Law advice.

There was concern that because Mr Heiner was engaged as a contractor, full legal immunity may not be provided to people providing the information he gathered as evidence.

Cabinet minutes from February 12 and 17 show the government accepted the financial liability from any legal action arising from the way the evidence was gathered by Mr Heiner.

SOLICITORS RECEIVED

19 FEB 1990

Office of the Director-General
Department of Family Services and
Aboriginal and Islander Affairs
ALM

15th February 1990

IMB:SE

The Acting Director-General
Department of Family Services and
Aboriginal and Islander Affairs
G.P.O. Box 808
BRISBANE Q. 40001

Dear Mr Matchall

RE: PETER CONE

We refer to our telephone conversation with Mr Trevor Walsh on 15th 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 to the writer of his intention to communicate with you to advise of our intention to commence Court proceedings in view of the fact that against the wishes of our client he has been returned to another section. That move being only after a discussion with Mr Heiner.

We request your response, together with your response in our letter of 8th February within 48 hours.

HOSE BERRY JENSEN


IAN M. BERRY

*Wayne, Personal Attorney
for appeal to Crown Solicitor
re a matter of inquiry
Dean Wells
2/19/90*

LEONA HOSE IAN M. BERRY CRAIG A. JENSEN (L.B. 1911)
8TH FLOOR, IPSWICH CENTRE, BELL STREET, IPSWICH 4300
PO BOX 88, IPSWICH 4305 DX 41307 IPSWICH

The second letter from Ipswich solicitor Ian Berry in February 1990 requesting documents gathered during the Heiner Inquiry

The March 5 decision to shred the documents, including transcripts and tape recordings, triggered senate and federal committee inquiries over three decades, the 1999 Forde Inquiry into child orphanages and the 2013 Carmody Inquiry into child protection.

Wayne Goss's then-attorney-general, Dean Wells, told the Carmody Inquiry the decision was the inexperienced baptism of fire.

"We had been out of office for 32 years," he said.

"We did not know what was normal and within the area of the cabinet's concern. What we did know that a minister had a problem that an inquiry that had been established by her predecessor had been pulled up."

Queensland's then-child protection commissioner, Tim Carmody, ruled in 2013 that the [Goss Cabinet decision to shred the documents was unlawful](#) and that charges should be considered.

But he warned a decision to proceed could be challenged because cabinet sought Crown Law advice.

He found no strong evidence of sexual assault at the centre.

In July 2014, the Office of the Director of Public Prosecutions [ruled out charging Wayne Goss's cabinet for shredding the Heiner documents.](#)

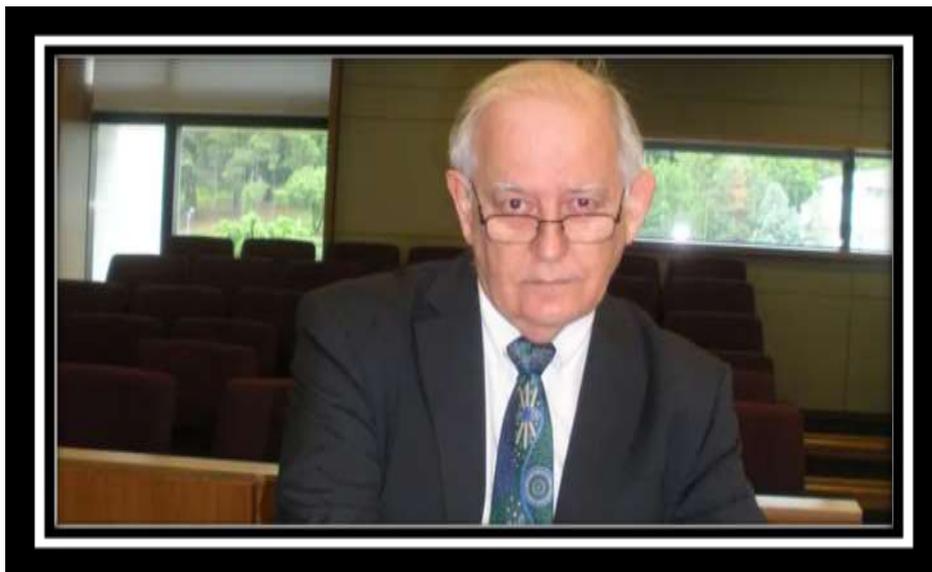
The three decade also produced noted whistleblower, Kevin Lindeberg, the now-74-year-old who became involved in 1990 because he was the lead organiser for the Queensland Professional Officers Union for public servants.

“The Minutes show I was right from the very beginning,” he said.

“This was never, ever, a madcap conspiracy theory.”

Mr Lindeberg has for three decades pursued the cabinet decision to shred the documents.

“I have been betrayed everywhere, right from the beginning and been portrayed as someone as being over the top,” he said.



Heiner Affair whistleblower Kevin Lindeberg

“I have been solid in my position in law right from the beginning, but what became horrendous for the system was that they had to charge the entire Cabinet and certain senior bureaucrats and they could not face that prospect.

The decision to destroy the documents was taken Cabinet on March 5, 1990, and the documents including tape recording and transcripts were destroyed on March 23.

The Goss government said evidence gathered was shredded in March 1990 because it was gathered in a way in which, the government believed, it may not have has legal protection.

MEDIA RELEASE – 11 January 2021
PUBLIC RELEASE OF HEINER AFFAIR GOSS FEBRUARY/MARCH 1990
CABINET SUBMISSIONS

“IT’S DANGEROUS TO BE RIGHT WHEN GOVERNMENT IS WRONG.”

Whistleblower at the centre of the long-running [Heiner affair](#), Mr Kevin Lindeberg, says that the release of the [12, 19 February](#) and [5 March 1990](#) Goss Cabinet submissions on 1 January 2021 was an important moment in the history of Queensland’s public affairs.

Mr Lindeberg says that it goes some way to exposing the many self-serving myths and untruths peddled for years by politicians and Queensland’s (then) new post-Fitzgerald integrity/corruption watchdog body, the Criminal Justice Commission (CJC), to cover up alleged very serious wrongdoing by the Cabinet contained in his public interest disclosure lodged with the CJC in 1990.

He said that while these Cabinet records reveal how the Goss Government handled the aftermath of the lawful Heiner Inquiry and its lawfully gathered evidence into the running of the John Oxley Youth Detention Centre (JOYDC) which included complaints about child abuse, they don’t tell the whole sordid story.

“An even greater story about why I blew the whistle in 1990 and have persisted for 3 decades to see the whole truth revealed remains untold to the public. It’s a shocking story. Inexcusable betrayals of public trust and ethical, honest conduct expected of our elected and appointed public office holders has so far won the day, but no longer,” Mr Lindeberg said.

“These self-serving untruths used to justify the shredding by the Queensland Government, and improperly used by various accountability authorities, none more so than the CJC/Crime and Misconduct Commission (CMC), to find no wrongdoing, leave this as an unresolved scandal of great magnitude affecting whole of government in 2021,” Mr Lindeberg said.

“Over the last 3 decades, this scandal has evolved into an historic litmus test about how we are prepared to be governed in Queensland, including whether these integrity commissions are truly as trustworthy as they and their supporters claim. Whistleblowers risk everything on their claim of integrity, and in my case, I got treachery in return time and time again in exchange for my trust.”

Mr Lindeberg says an arbitrary suppression order has been imposed on him for the rest of his life by the Parliamentary Crime and Corruption Committee (PCCC) in 2017 and again in 2018, without Parliament knowing. He has been ordered to never speak publicly about certain related extraordinary events involving alleged corruption by officials across the three arms of government in Queensland.

“This PCCC gag is an unprecedented and dangerous assault on our democratic values of free speech and the people’s right know what governments do in their name. It must be removed and all material tabled in Parliament,” he said. “If I am ever charged with contempt, I have told former ALP Attorney-General, Yvette D’Ath, that I would not pay any fine and that they can send me to jail because what is being concealed is outrageously self-serving, undemocratic and indefensible.”

“This blockage knowingly obstructs any and all external independent scrutiny of alleged serious improper events which took place during and after the 2012/13 Carmody Inquiry and with the CCC and PCCC and others in the judiciary since 2015. It graphically illustrates just how dire their situation now is in 2021 in the face of all Queensland’s so-called Fitzgerald reforms supposedly guaranteeing honest and transparent government,” he said.

“Our present system of government has been trashed by its elected and appointed practitioners of any semblance of integrity on which the public and law rely for freedom and justice to prevail, and for public confidence in our institutions to be sustained. Ordinary Queenslanders, the assembled Parliament and a free media should know about these corruption concerns instead of being hidden from them by the PCCC and CCC.”

“Against the relevant facts now known in these Cabinet submissions leading to the shredding, I was clearly always right, and the law always unarguably clear. It was always impermissible to make such an order to destroy any evidence when known to be required in foreshadowed judicial proceedings, as the Heiner Inquiry documents unquestionably were,” Mr Lindeberg said.

“We are supposed to be a civil society governed by laws, not by capricious, unethical, unlawful desires of politicians or public officials in high places full of either their own untouchable hubris or too cowardly obsequious to say no when something is so obviously wrong.”

He said that the 5 March 1990 Cabinet submission makes it unquestionably clear that the Queensland Government knew at the time that lawyers, Rose Berry Jensen, had placed it on proper and honourable notice of future court proceedings and were seeking legal access to these public records.

In February 1990, these lawyers had also instructed the Queensland Government not to shred the evidence. Two public sectors unions had also signalled the same intended course of joint legal action.

The 12 February 1990 Cabinet submission plainly spells out that Mr Heiner and his witnesses were fully protected and had been granted full indemnity in costs if any legal action commenced against them.

By the Queensland Government claiming otherwise, the public was lied to for years that no protection existed when everyone can now see that this did not reflect what the Cabinet submission says or what the Cabinet agreed to on 12 February 1990 Mr Lindeberg said.

“A long-standing Bjelke-Petersen 1982 [Queensland Government’s Legal Liability of Crown Employees Policy](#) permitted this course of action to cover all legal costs but on the proviso that JOYDC public servant-witnesses had not lied to Mr Heiner. The policy did not - and nor could it ever be as a lawful step - allow any or all the relevant evidence to be destroyed to stop any threatened or actual legal action. Such an act would be to knowingly obstruct the foreshadowed or anticipated legal action and to place a government in grave jeopardy of improperly interfering with the impartial administration of justice, as well as breaching the doctrine of the separation of powers,” Mr Lindeberg said, “but that is what occurred, and thus began this extraordinary cover-up and my journey which still persists in 2021”.

He said it was always a contrivance to claim or believe that archives law could ever override the provisions of the Criminal Code concerning offences against the administration of justice, like section 129 regarding destruction of evidence. He said that the system improperly relied on this absurdity for years.

He said that the public should know that on the very same day that the State Archivist secretly granted their disposal on a false and misleading written pretext from the Office of the Cabinet Secretary on 23 February 1990 that they were no longer required or pertinent to the public record, Mr Lindeberg, as a trade union organiser, was being assured by the Queensland Government that these same public records were perfectly safe against the background of legal claims of access and foreshadowed court action.

He said that this was another monstrous lie told to him, one which trashed Queensland’s public recordkeeping best practice around the world.

“As a union organiser, my duty was to protect my members’ legal and industrial rights of access to these departmental public records. In doing my job, I was wilfully deceived which delayed us from serving the writ because we never thought such deceptive conduct was ever possible,” Mr Lindeberg said.

“But, in what they did, their Achilles Heel was left fatally exposed,” said Mr Lindeberg, “Section 129 never required the judicial proceedings to be on foot to be triggered. It only required a ‘realistic possibility’ of future court proceedings commencing to be present, and it was. We were well past that point in due process as the 5 March 1990 Cabinet submission clearly shows and when they eventually went secretly through the government shredder on 23 March 1990”.

“The CJC’s 20 January 1993 clearance of wrongdoing by the Goss Cabinet remains a gross travesty of justice. Its clearance is materially wrong in fact and law, and not worth the paper it was written on. At its core, the CJC misinterpreted section 129 in an utterly untenable way. It declared that section 129

permitted all known and anticipated evidence to be lawfully destroyed up to the very second of the expected writ being served. This was plain wrong. It was well known at law in 1990 by reason that the Criminal Code had been enacted just under 100 years beforehand," said Mr Lindeberg, "The CJC also misquoted and misinterpreted another law, and misrepresented the role of the State Archivist".

He said these gross untruths upset him, expert lawyers and eminent QC's, former judges, public record keepers across the world, academics and others. The CJC/CMC and Queensland Government remained intransigent while publicly ridiculing his persistence that the clearance was deeply flawed and worse.

Mr Lindeberg points to a 2003/04 criminal case when a Baptist Minister did a similar shredding act some 6 years before the court proceedings commenced, just as the Queensland Cabinet did on 5 March 1990.

He points to the fact that the Baptist pastor was charged and found guilty in 2004 by section 129 being properly applied by the new DPP (and as Lindeberg said it had to be from 1990) but contrary to how the CJC and an earlier DPP declared it to be in their legal endorsement of the Queensland Cabinet's order to destroy the Heiner Inquiry, meaning that double standards in applying the criminal code came into the administration of justice with the known blessing of the CJC/CMC, DPP and police.

Since 1990, the CJC/CMC/CCC and various Queensland Governments have spent thousands upon thousands of taxpayer's dollars in defending the indefensible Mr Lindeberg said.

"The Queensland people should demand to know how this came to be," he said.

"This is an unresolved scandal of monumental proportions," Mr Lindeberg said. "The 2012/13 Carmody Inquiry never touched the documented cover-up. What has gone on inside the CCC and PCCC since 2015 is nothing short of a massive betrayal of public trust which, despite the outrageous gag threatening me with contempt should I ever disclose these extraordinary goings-on, the truth must eventually come out. The truth and the law must prevail if we truly value free speech, honesty and truth in the affairs of government any longer in Queensland."

"This was never a matter capable of being credibly described or dismissed as some madcap conspiracy theory as some have maliciously attempted to do or out of sheer ignorance or blind political allegiances in an effort to kill off my long struggle for justice," Mr Lindeberg said.

He said that to date, despite overwhelming compelling evidence, the system is still fighting back and incapable of admitting its grave error because of the unprecedented political/legal/constitutional ramifications and embarrassments involved. Instead of obeying and upholding the law impartially and honestly, Queensland's current unicameral system has failed by deliberately twisting the law and abusing its enormous power in the hope that he would either go away or die so that their day of reckoning would never arrive.

"High level reputations across whole of government are on the line," he said, "but truth and respect for the law must come first. I've always held firm to the democratic belief that no one is above the law."

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