Tabled by Mr Springborg during debate on the Public Records Bill 17-4-2002

LAID UPON THE TABLE OF THE HOUSE
THE CLERK OF THE PARLIAMENT

The

1997

LINDEBERG DECLARATION REVISITED

in

2002

Second Reading Debate

PUBLIC RECORDS BILL 2001 (Qld)

The Shredding
of the
Heiner Inquiry Documents
and
Related Matters

Kevin Lindeberg
11 Riley Drive
CAPALABA QUEENSLAND 4157
AUSTRALIA
16 April 2002

"Public Records are public property, owned by the people in the same sense that the citizens own their own courthouse or

town hall, sidewalks and streets, funds in the treasury. They are held in trust for the citizens by custodians.... As public property, public records may no more be altered, defaced, mutilated or removed from public custody than public funds may be embezzled or misappropriated. Indeed, because records document the conduct of the public's business — including the protection of rights, privileges and property of individual citizens — they constitute a species of public property of a higher value than buildings, equipment and even money, all of which usually can be replaced by the simple resort to additional taxes. It is the unique value and irreplaceable nature of records that gives them a sanctity uncharacteristic of other kinds of property and that account for the emergence of common-law principles governing their protection."
H.G. Jones, 1980[1]

FOREWORD

The *Lindeberg Declaration* was originally tabled in the Australian Senate on 26 May 1997 by Queensland Senator John Woodley.

It was written in the lead-up period before the Connolly/Ryan Judicial Review into the Effectiveness of the Criminal Justice Commission (CJC) examined the CJC's handling of the Heiner affair and when it was still an option for the then Borbidge Queensland Government to establish an open inquiry into the matter as independent Queensland barristers Anthony Morris QC and Edward Howard recommended in their October 1996 report.

Within weeks of the Declaration being tabled in the Senate and a copy sent to the International Council on Archives (ICA) in Paris, the Borbidge Government declared that it would not hold an inquiry, and the Supreme Court of Queensland closed down the Connolly/Ryan Inquiry on the grounds of demonstrable bias.[2]

In the intervening period of five years, fresh evidence surfaced throwing new light on the affair and providing a deeper understanding as to why the records were secretly shredded. It has been discovered that it aided in covering up known abuse of children in the John Oxley Youth Detention Centre (JOYC).

[1] USA Navy veteran World War II; PhD in history Duke University and university teacher in North Carolina and Georgia; State Archivist, North Carolina, 1956-68; Director of NC Department of Archives and History, 68-74; Curator of The NC Collection, 73-93; Commissioner for the National Historical Publications and Records Commission, Washington, for eight years; Former President of the Society of American Archivists and of other bodies; Author of five influential archival books and many articles; Recipient of many awards and prizes for his scholarship in the field of recordkeeping.
[2] See *Carruthers v Connolly, Ryan and A-G* [1997] QSC 132 (5 August 1997).

Despite all their recent claims to the contrary, knowledge of the abuse of children at the Centre was known at all relevant times by those in positions of authority and capable of ordering its investigation, including the Executive Government of Queensland. It remains an open question as to what the State Archivist knew when communicating with Mr Stuart Tait, the Goss Government Cabinet Secretary, or became aware of concerning the abuse contained in the Heiner Inquiry material when she inspected and approved its shredding on 23 February 1990.

Like others before it, in this affair the state of knowledge of various parties at particular times has become a critical factor. It becomes important to negate the time-honoured practice of those in positions of high public office who, in a Parliamentary democracy, should carry the real ownership of what occurred and be duly held accountable but who, inevitably, look for scapegoats down in the machinery of government to provide an easy out for themselves.

There is, however, no doubt whatsoever that the Department knew about the abuse and improper conduct of staff putting the lives of children at risk. It is now known that it held a memorandum dated 1 March 1990 written by then JOYC acting-Manager Ms Ann Dutney. She informed the Department's executive that the welfare of children at the Centre was being put at risk because of the conduct of certain staff. Within five days of the document being received, the Queensland Cabinet ordered the incriminating records destroyed. Years later it gave as one of its reasons for doing so that it was to protect the careers of staff at the Centre so that gathered evidence (of their conduct and management style) could not be used against them.

The Dutney Memorandum remained hidden from public gaze for nearly a decade until it was unearthed by investigative journalist Mr Bruce Grundy.[3] It was alluded to in evidence to the Senate Select Committee on Unresolved Whistleblower Cases[4], but its damning contents were not brought into the public spotlight until Mr Grundy accessed it in 2000.

In early 2001, Exhibits 20 and 31 from the Forde Inquiry into the Abuse of Children in Queensland Institutions were accessed by me from the Department of Justice and Attorney-General after access had been initially denied on highly questionable legal grounds.

Their contents revealed serious *prima facie* evidence of criminal assaults against children at the Centre and another detention centre, the Sir Leslie Wilson Youth Detention Centre. What was also revealed was a disturbing connection between the Goss Labor Government's decision to shred the evidence and a major Queensland trade union, the Australian Workers' Union (AWU)[5].

[3] Journalist In Residence Department of Journalism University of Queensland. Without his relentless dedication to establish the truth of the Heiner Affair, the scale and breadth of its corruption would never have been revealed. This is acknowledged by the author without reservation.

[4] See Volume 1 Queensland Government Submissions and Supplementary Submissions and Other Written Material to Senate Select Committee on Unresolved Whistleblower Cases authorised to be published October 1995. Document 23. The existence of the Memorandum in material presented to the Senate in 1995 was not discovered until December 2001 by the author when going over the material again in light of new evidence. The Memorandum was presented to the Senate to Mr Coyne's discredit when in fact it went to his credit when one examines its contents. It is a glaring example of the Queensland Government misleading the Senate in 1995, and reinforces the Greenwood QC submission of 9 May 2001 setting out the Lindeberg Grievance which claims that the Senate was misled by the Queensland Government and CJC requiring a fresh re-examination of all material as contempt may have been committed. (See Senate *Hansard* 8 August 2001 p25783 and 20 August 2001 p26003)

[5] The Australian Workers' Union (AWU) is the largest trade union in Queensland. It is affiliated to the ALP, and highly influential. It was and remains the biggest financial supporter to the ALP. Mr Goss owed his ascendancy to the party's leadership to the AWU faction within the ALP.

The connection was through the JOYC Senior Youth Worker, Mr Fred Feige, the AWU Workplace representative, who made admissions to Mr Coyne on 7 April 1989 about regularly hitting children outside the provisions of the *Children's Services Regulations 23 (10).* He also admitted to knowing about other assaults on children but refused to tell Mr Coyne who was doing it, while being mentioned in the Dutney Memorandum as facing a criminal assault charge dating back sometime upon which the Office of Crown Law had offered advice concerning its progress to some resolution.

However, over and above tbose unresolved matters, Mr Grundy, in a six-month intensive investigative expose` in 2001, discovered that evidence of criminal paedophilia was gathered by Mr Heiner concerning the (hitherto publicly-unknown) pack-rape of a 14-year-old Aboriginal female inmate by four male inmates during a supervised educational bush outing in May 1988 which certain Centre staff claimed was covered up at the time by Centre and departmental management.[6]

Against this background, on 5 March 1990, the Goss Government ordered the shredding so that the evidence gathered could not be used against the careers of JOYC Youth Workers, some of whom, on the face of available evidence, were engaging in *prima facie* criminal conduct against children held in the care and custody of the State in flagrant dereliction of their duty of care, and, perhaps, engaging in a criminal conspiracy to pervert the course of justice in covering up the crime of criminal paedophilia.

Of relevance to the profession of public recordkeeping, it is reasonable to assume that this evidence must have come before the State Archivist too, although she has never been put under oath to find out precisely what she knew or read, particularly in relation to phone conversations she had with the Cabinet Secretary and departmental officials at the time and subsequently.

It is a real-life predicament in which any archivist reading this Declaration may wish place to him or herself, and consider what would be the right course of action to take when an all-powerful Executive Government, in a unicameral system of government, comes seeking the destruction of certain controversial public records.

My persistent quest for justice now lasting more than a decade, together with other extraordinary events and loyal assistance by others and the new evidence mentioned in this document, goes to underlining this Revisited Declaration's significance and relevance to the world mission of the archives profession and the introduction of the Public Records Bill (Qld) into the Queensland Parliament in 2002.

1. INTRODUCTION

Just as it was fitting in 1997 for the inaugural meeting of the International Council on Archives' Committee on Electronic & Other Current Records to have received the Declaration to consider

[6] See *The Courier-Mail* 3 November 2001 (p3) and 7 November 2001 (p2)

at The Hague in the Netherlands – the home of the International Court of Justice – it is fitting now that the *Lindeberg Declaration* should be revisited in the year 2002 and tabled in the Queensland Legislative Assembly during the debate on the new Public Records Bill 2001 because of its direct relevance.

The *Lindeberg Declaration* places the role of archivists at the very centre of the due administration of justice. It also offers a unique opportunity for the International Council on Archives (ICA) to firmly establish that lawful place by taking a public position of opposition to what has been publicly declared as being the archives profession's role in such a matter as the Heiner Affair embodies.

The shredding of the Heiner Inquiry documents and related matters embraces many different facets fundamental to democratic societies governed by the rule of law. In simple terms, it represents systemic corruption at its worst. It touches upon the need for the integrity of the public record, the right to a fair trial, ethical conduct, impartial administration of justice, independence and impartiality of statutory authorities (administrative and law-enforcement), upholding ministerial and Parliamentary propriety and the rights of the individual. Although the shredding of those public records occurred on 23 March 1990 by order of the Queensland Government on 5 March 1990, the act has had a continuing and ever-expanding effect on our justice and public administration systems. That is, gridlock of the utmost gravity has occurred because the systemic corruption remains unresolved infecting the highest levels of State and Federal government; and because the injustice, now known to include criminal abuse of children, remains on the public record as unfinished business.

Anarchy or the Law

It brings to life the nightmare expressed nearly 75 years ago in the United States Supreme Court by Mr Justice Louis D Brandeis[7], Dissenting in *Olmstead v United States*, 277 U.S. 438, 475 (1928):

> ***"Decency, security and liberty alike demand that government officials shall be subject to the same rules of conduct that are commands to the citizen. In a government of laws, existence of the government will be imperiled if it fails to observe the law scrupulously. Our government is the potent, the omnipresent teacher. For good or for ill, it teaches the whole people by its example. Crime is contagious. If the government becomes a lawbreaker, it breeds contempt for law; it invites every man to become a law unto himself; it invites anarchy."***

The chain of maladministration and misconduct, which is also known as *Shreddergate*,[8] has many links in it. One critical link in that chain has been the role of Queensland's State Archivist.

[7] Justice Louis D Brandeis (1856-1941) was appointed to the Supreme Court by President Woodrow Wilson in 1916. His appointment took four months before the United States Senate voted 47-22 with 27 Senators failing to vote. He served on the Bench until retiring in 1939, and died in Washington DC in 1941. He was a graduate in 1877 from Harvard Law School, and earned the highest average in the school's history. Justice Douglas had this to say of him *"…His stature as a man, as an advocate, as a jurist caused him to tower above the scene. He helped America grow to greatness by the dedications of which he made his life."*

[8] "**Shreddergate**" was first coined in mid-1996 by *The Weekend Independent*, the monthly newspaper published by the Department of Journalism of the University of Queensland Brisbane. Its editor Associate Professor Bruce Grundy

Instead of the archivist breaking the chain of systemic corruption by upholding proper archival standards, the following consequences now confront the profession of archives which have the effect of undermining the ICA's Mission Statement and Code of Ethics:-

(i) the role of public archivists has been publicly misrepresented nationally and internationally by the sovereign State of Queensland without proper redress or correction;

(ii) it can be treated like a rubber stamp by Executive Government and agents of the Crown/State when obtaining approval to destroy public records thereby undermining the profession's critical impartial status;

(iii) the *Libraries and Archives Act 1988*, as representative of all similar archives legislation throughout world democracies, may be breached with impunity thereby bringing the ICA's global Mission Statement and Code of Ethics into disrepute, and despite new safeguards being drafted into the Public Records Bill 2001, it offers no cast-iron guarantee that it may not happen again;

(iv) double standards in the application of the archivist's discretion may occur when any request emanates from Executive Government or senior bureaucrats thereby giving rise to doubt about the profession's impartial status which may allow the overriding of a citizen's right to a fair trial or ability to seek judicial review regarding access to public records at issue;

(v) one State Archivist in isolation, while at the same time being representative of the profession as a whole, may be cowered by intimidation into silence and inaction even when the profession is being misrepresented locally for political/legal purposes thereby bringing the independence and impartiality of the profession as a whole and the ICA's world mission into disrepute unless outside remedial action is taken by the ICA or its local and/or national professional association;

(vi) one State Archivist has, by inappropriately exercising her discretion under accepted international archival appraisal processes, so breached the ICA's Mission Statement and Code of Ethics as to cause a notice of immediate and/or foreshadowed sanction to be implemented against that archivist unless remedial action is taken to restore the integrity of the profession otherwise the ICA's own Mission Statement and Code of Ethics may be seen as meaningless.

The State Archivist was a member of her professional body, the Australian Society of Archivists (ASA) which is affiliated with the International Council of Archives. The ASA, after considerable internal debate, finally issued a public position statement in 1997 and again in 1999 when knowledge of the child abuse became public, condemning the CJC's misrepresentation of

through his student journalists carried out an extensive and constant investigative campaign to see the truth emerge on this issue calling for a review of the Criminal Justice Commission and the implementation of the Morris/Howard Report recommendation to hold a commission of inquiry into the matter. The series is on www site: **http://www.uq.oz.au/jrn/twi/twi.html**

the archivist's role. The fresh evidence now suggests, according to the Queensland Crime Commission, that the abuse of children can be categorised as "criminal paedophilia."[9]

It is acknowledged however that a courageous earlier stand opposing the misrepresentation of the archives profession was taken by then Chief Archivist with the Victorian Government in Australia Mr Christopher Hurley in March 1996[10], a past Australian ICA representative. He now works with New Zealand Archives.

My Declaration suggests that the role of State and Federal archivists does not and cannot stand apart from the administration of justice in a democracy. I suggest the position performs a vital link in the administration of justice, by ensuring that public records – the people's records - are accessible to the people and their courts of law, and must not be viewed or allowed to be treated as the sole property of any government of the day to dispose of at its unilateral will, even with an approval of its archivist which may have been achieved (as in the Heiner Affair) by use of deceptive means by only providing an incomplete or partisan disclosure demands for access on such records, or on their alleged usefulness.

In other words, the mere seeking of an approval from the Archivist to destroy records by a party (including executive government), and subsequently receiving it, does not end the matter and place it beyond judicial review. The process must be open, and engaged in honestly in the public interest by all parties because we are dealing with the people's records.

This critical role of impartial keeper of public records, as seen in this matter where it was known ***beforehand*** that the material was the subject of a legally enforceable access statute and critically relevant evidence in foreshadowed court proceedings by those seeking the approval, has been portrayed as encompassing positions which are mutually exclusive in order to declare the act legal.

On the one hand, the role has been relegated to an incidental one by severely limiting the archivist's discretion in the appraisal process to only protect public records of historical value; while on the other hand, it has been portrayed as a predominant role even over the courts in which the archivist has an almost unfettered discretion to approve the destruction of any public record, seemingly even by an apparent whimsical impulse, when knowing that the particular record is the subject of a legally enforceable access statute to be tested in court.

It is a serious misrepresentation and misunderstanding of the archivist's proper role which has the capacity to undermine the integrity of the profession, and public trust in it. If an archivist can be treated as or become a "rubber stamp" to the desires of executive government to destroy certain embarrassing or revealing public records, it gives the State and/or Crown an unfair and *prima facie* illegal advantage over its citizens and their rights concerning access to public records (which may prove a citizen's rights or a government's wrongdoing) in unacceptable contravention of individual rights normally respected by nations governed by the rule of law. It turns the

[9] See Section 6 of the *Crime Commission Act 1997*.

[10] See http://www.caldeson.com/RIMOS/heiner.html This is an appreciation of the shredding by Mr Chris Hurley. It was last updated in 1997. The Heiner Affair is to appear in a book to be published in early 2002 by editors Professor Richard J Cox of Pittsburgh University USA and lecturer David A Wallace of the University of Michigan on great archives scandals of the world. The Heiner Affair is the only example for Australasia. It is to be titled "Archives on Trial: Accountability and Records in Modern Society."

archivist's proper gatekeeping role on its head, and in the process, invites disrespect for the law and all notions of equal justice.

In this case with its latest disturbing revelations, it can now be credibly argued that the Queensland Government was also administratively abusing its State Archivist to obtain her approval to shred public records which revealed evidence of a known serious breach of trust owed to a citizen to limit Crown/State liability by destroying the evidence. It was a sort of illegal culling exercise of the kind seen in Canada in the 1990's with the shredding of Blood Bank records done to limit liability in actions likely to be brought and being brought by citizens infected with HIV/AIDS through tainted blood; and more recently in the United States of America, auditing corporation Arthur Andersen's illegal shredding activity in the Enron scandal, the largest corporate collapse in world history.

In respect of the Canadian shredding experience, the Canadian Government established the Krevers Commission of Inquiry which found wrongdoing but had its commission ended when it got too close to high levels in Government; in respect of the Enron scandal, its wrongdoing is still being revealed but even at this somewhat early stage, the United States Justice Department has brought charges of obstruction of justice against Arthur Andersen over its shredding activity.

In the Heiner Affair, a raped 14-year-old girl, (and other inmates unlawfully handcuffed to fences as the Forde Inquiry established in 1999), held in the Crown/State's care and custody were within their rights to bring a suit for compensation for breach of duty of care against the State, and the evidence lawfully obtained by Mr Heiner would have been highly relevant - and known to be so. In that sense, the victim of this serious breach also had a claim on the records. In my opinion, the State Archivist's consideration, insofar as the records' legal value went when under the appraisal process, especially given the background to their creation, should have extended beyond Mr Coyne, the Centre staff and the Government to the abused children's rights because it can never be in the public interest, even if an Executive Government and Department may think otherwise, to destroy evidence of such heinous conduct against any child, let alone these who were in the care and custody of the Crown/State when the abuse occurred.

The common theme throughout is to get rid of the incriminating or embarrassing evidence as quickly and as secretly as possible, often under the veil of innocence, without any concern for adverse inference being attributed to the Crown or that such conduct could undermine a citizen's right to a fair trial. What makes the Heiner Affair somewhat different is that the State Archivist was brought into conspiracy and used as a legitimizing shielding device behind which other nefarious motives lurked.

State/Federal archivists I suggest stand in the same position in the archives fraternity as do Crown Solicitors/State Attorneys within the legal fraternity in societies purportedly governed by the rule of law. Crown Solicitors/State Attorneys, like all law practitioners sworn in as officers of the court, are obliged to obey the law. However, they have a higher moral and professional duty cast on them because they represent the critical principle of being the model litigant and the font of justice within the justice system. In that setting, they must therefore *always* act lawfully with the utmost probity and fair dealing[11] because they set benchmarks. They should not lend the prestige or trust which the people hold in them while serving in such a public office for the

[11] Vaisey J. in *Sebel Product Ltd v Commissioner of Customs and Excise* (1949) Ch 409 at 413

purposes of misconduct or political sectional interest or advantage, for to do so may inflict a fatal blow on the impartial administration of justice and the right to a fair trial.

Likewise State/Federal archivists, while belonging to the international family of archivists, find their authority from respective Parliaments and act with the full authority of the Crown or State. In the first draft of new Public Records Bill in 1999, it sought to extend the archivist's purview to cover ministerial and Parliamentary records which may have, in the fullness of time, presented new challenges and points of confrontation touching on the supremacy of Parliament. The 2001 Bill redraft has dropped this extension. Like solicitors, State/Federal archivists too have a higher duty cast on them to maintain proper standards and to act lawfully with the utmost probity and fair dealing at all times. It may be argued, with some moral force, that Federal and State archivists carry with them a benchmark of the profession.

The Disturbing Ripple Effect

The on-going position of Queensland's State Archivist and what her role is supposed to be, as applied in the Heiner affair, has created an unacceptable precedent in the world of archives, but not apparently in Queensland itself. The Heiner precedent has created a disturbing ripple effect on the impartial administration of justice by undermining it because the circumstances of the case bring it into a direct interface in the areas of (a) the course of justice; (b) protection of evidence; (c) the right to a fair trial; (d) independence of statutory officers; and (e) reporting suspected official misconduct. However, such is the absurdity of the CJC's position in finding no wrong in the shredding, that the political party[12] now in government in Queensland which benefited from those findings of no official misconduct or criminality, dare not include the same reasoning used by the CJC in the proposed Public Records Bill 2001 (Qld).

This document should be read in conjunction with the *Lindeberg Petition*[13] tabled in the Queensland Parliament on 27 October 1999, the Greenwood QC submission read into the Australian Senate *Hansard* in August 2001[14], and *Hansard* recording the second reading debate on the Public Records Bill 2001 (Qld).

The ICA may wish to consider this submission and its recommendations in the public interest. It is suggested that the Council or one of its appropriate committees upon considering the matter may wish to take whatever action is deemed appropriate to protect the world mission and ethical standards of archivists affiliated to the ICA.

Kevin Lindeberg
11 Riley Drive
CAPALABA QUEENSLAND 4157
16 April 2002
email: kevlindy@tpg.com.au **or** **kevlindy@stargate.net.au**

[12] The Beattie Labor Government
[13] 84-page Petition setting out the facts associated with the shredding and the cover up over the last decade.
[14] See Senate *Hansard* 8 August 2001 p25783 and 20 August 2001 p26003.

2. THE MAIN PLAYERS

Goss Government of Queensland: The Goss Labor Government inherited the Heiner Inquiry from the outgoing Cooper National Party Government. Queensland Premier the Hon Wayne Goss MLA, a solicitor, gained office on 2 December 1989 after his party had been in Opposition for 32 years. It fell from office in February 1996 on the casting vote of an Independent MP. Throughout its term of office the Goss Government constantly insisted that the shredding was legal and it was done on advice of the Crown Solicitor and with (prior) approval by the State Archivist but constantly failed to disclose all the relevant documents associated with the shredding and related matters. In the aftermath of the shredding, it sought to describe the Heiner Affair as a "spat between public servants."

It took a decade of concealment before it was revealed through an extraordinary concatenation of events that the Goss Government knew it was also shredding evidence of suspected abuse of children under the care of the State at the John Oxley Youth Detention Centre. That revelation brought a fresh insight and better understanding into many earlier matters not known by me at the time.

Borbidge Government of Queensland: The Borbidge Coalition Government came to power in February 1996 on the casting vote of an Independent MP[15] in an evenly divided Parliament of 44 seats each. It undertook to investigate the so-called “Lindeberg allegations” in its election campaign. On 7 May 1996 it appointed two independent Queensland Members of the Bar, Messrs Anthony Morris QC and Edward Howard, to carry out that task by examining the evidence “*on the papers*” held by the relevant departments with a view to advising government whether a full open inquiry was warranted. They were not permitted to question or cross-examine any witnesses. Their Report was tabled in Parliament on 10 October 1996 by Queensland Premier the Hon Rob Borbidge MLA. Such was the gravity of their findings that they recommended the establishment of an immediate open inquiry.

Beattie Government of Queensland: The Beattie Labor Government came to office as a minority government in July 1998 on the casting vote of an Independent MP. During the vote of confidence debate on 29/30 July 1998, the Heiner Affair became an issue of prime concern in respect of alleged unresolved wrongdoing which *prima facie* implicated certain Ministers in the Beattie Government and placed in jeopardy the obtaining of the one vote to win government. Just before the vote was taken, Premier Beattie took the unprecedented step of tabling the relevant Cabinet submissions of 12 and 19 February and 5 March 1990, access to which would have been otherwise denied for 30 years under the Westminster system of government of Cabinet confidentiality. The submissions clearly indicated that the Cabinet was aware that the Heiner material was being sought by solicitors acting for Centre manager Mr Peter Coyne for court, but no writ had yet been served. (See later comment on these submissions).

In late January 2001, the Beattie Government called a State election, and was returned to power on 3 February 2001 in an unprecedented landslide with a 40-seat majority.

[15] Queensland, unlike other States in the Commonwealth of Australia, is governed by a unicameral system of Government. Its Upper House was abolished in 1922 by the then ALP Government. Its Legislative Assembly is currently made up of 89 seats.

Queensland Criminal Justice Commission (CJC): The CJC is an independent statutory law-enforcement agency which came into existence in 1989 by enactment of the *Criminal Justice Act 1989* requiring it to always act impartially, honestly, independently and in the public interest[16]. Its creation was one of the main recommendations from the Fitzgerald Commission of Inquiry into Possible Illegal Activities and Associated Police Misconduct[17] which conducted public hearings between May 1987 to June 1989 and which resulted in the Police Commissioner, Assistant Police Commissioner, four Ministers of the Crown and many police facing charges of official misconduct and corruption.

The CJC possesses the full powers of a standing Royal Commission. Its main task is to investigate allegations of official misconduct in units of public administration and misconduct in the Queensland Police Service. It is accountable to the Queensland Legislative Assembly under the *Criminal Justice Act 1989* through an all-party Parliamentary Criminal Justice Committee (PCJC). On 1 January 2002, it amalgamated with the Queensland Crime Commission to become the Crime and Misconduct Commission (CMC).

Queensland Crime Commission (QCC): The QCC was established in 1997 by the Borbidge Queensland Government in the aftermath of the Connolly/Ryan Judicial Review into the Effectiveness of the CJC being closed by order of the Queensland Supreme Court on a finding of demonstrable bias. The QCC's task was to investigate (a) criminal paedophilia; (b) major crime inviting a prison sentence of 14 years and above; and (c) organised crime. Its commission ended on 31 December 2001. Its only chairperson was Mr Tim Carmody SC. On 13 December 2001 Mr Lindeberg met and lodged an official complaint with the Commissioner Carmody SC requesting an investigation into the Heiner Affair. He lodged an additional application on 21 December 2001 with the QCC requesting an immediate investigation into the Affair because the QCC had a standing reference to investigate "criminal paedophilia" under section 46(7) of the *Crime Commission Act 1997*. (See section 15 in this document).

Queensland Crime and Misconduct Commission (CMC): The CMC was an initiative of the Beattie Government to amalgamate the CJC and QCC, with criminal paedophilia returning to the Queensland Police Service to investigate. Its commission commenced on 1 January 2002 under the chairmanship of Mr Brendan Butler SC, who was formerly the CJC's chairperson.

John Oxley Youth Detention Centre (JOYC): An adolescent youth detention centre on the outskirts of Brisbane which housed male and female youth in 1989/90 on remand, detention and others serving prison sentences who were too young to be housed in the mainstream State corrections system. At the time it also held children who had not broken the law but were on care and control orders. The Centre came within the portfolio of the Department of Family Services and Aboriginal and Islander Affairs (DFSAIA) at the time of the shredding. It was opened on 12 February 1987, and closed in mid-2001.

Forde Commission of Inquiry into the Abuse of Children in Queensland Institutions: This Inquiry was promised during the May/June 1998 State election campaign when fresh revelations

[16] Section 22 of the *Criminal Justice Act 1989*

[17] This Commission of Inquiry represented a watershed in Queensland politics, creating what is currently termed the "post-Fitzgerald era" in Queensland politics and public administration. It heralded the introduction of freedom of information, committee systems within the unicameral system of government and other changes which were designed to ensure open and accountable Government in Queensland.

concerning abuse of children at the John Oxley Youth Detention Centre were published in *The Courier-Mail* when former Queensland Police Commissioner Noel Newnham carried out an investigation on behalf of Mr Lindeberg. When challenged to investigate the shredding, Commissioner Leneen Forde A.C. (a former Queensland Governor) declined by claiming that her Terms of Reference were specifically restricted to only look at a certain incident of abuse but not the shredding of evidence of abuse. In July 2000, it was discovered that the Forde Inquiry was aware of the serious allegations contained in the Dutney Memorandum, and Exhibits 20 and 31, and despite having a victim, a perpetrator of abuse and others with knowledge of the allegations, including the author of the Dutney memorandum in the witness box in February 1999, Commissioner Forde failed to inquire. These matters all led back to the shredding, and sitting in the then minority Beattie Government, which set her restrictive Terms of reference, were five senior ministers who ordered the shredding on 5 March 1990. (See section 15 in this document).

Connolly/Ryan Judicial Review into the Effectiveness of the Criminal Justice Commission: The Borbidge Queensland Government established this Inquiry in mid-1996 to look into the conduct of the CJC, particularly in relation to certain cases which included the Heiner matter. It was summarily closed by order of the Queensland Supreme Court in August 1997 having been found to be biased. (See *Carruthers v Connolly, Ryan & A-G.* [1997] QSC 132 (5 August 1997). It never made any findings. Nevertheless, before its sudden closure, it forced the CJC to reveal its files on the Heiner matter which showed the paucity of its investigation, biased notation, and a public admission that it never did the job thoroughly and that if it had done so, it may have reached a different view.

Queensland Professional Officers' Association (QPOA): A major Queensland public sector trade union[18] whose 12,000 members consisted of senior public servants, professional and technical public servants in Queensland's public administration, which included Mr Peter Coyne, Manager of the JOYC and Ms Anne Dutney, his deputy. It was established in 1912. It amalgamated with the QSSU around 1993 to become the State Public Service Federation, which later became known as the Queensland Public Service Union (QPSU).

Queensland State Service Union (QSSU): Another major Queensland public sector trade union with a membership of approximately 23,000 members covering mostly clerical and administrative staff in Queensland's public service, which also included the JOYC Youth Workers who lodged the original complaints against Mr Coyne which brought the Heiner Inquiry into existence.

Australian Workers' Union (AWU): Queensland's largest union which also had coverage of Youth Workers at the Centre. The AWU was highly influential within the Australian Labor Party. It supported the leadership of Mr Goss. At the time of Mr Goss coming to power, an alliance within the ALP between the AWU and Socialist Left existed and dominated its power structure. Mr Fred Feige, JOYC Senior Youth Worker, was the AWU Workplace representative (Note Exhibit 20).

[18] The QPOA and QSSU subsequently amalgamated creating the second largest trade union in Queensland with some 25,000 to 30,000 members, and being renamed the State Public Services Federation Queensland. The largest union in Queensland being the Australian Workers' Union which now dominates the workplace coverage of Youth Workers at JOYC.

Queensland Teachers' Union (QTU): The major union for Queensland public sector teachers. Ms Karen Mersaides, one of its members, taught the detained youth at the Centre and was also seeking access to the material when it was shredded.

Mr Michael A Barnes: A qualified lawyer and former office holder with Queensland Labor Lawyers. As the CJC's Chief Complaints Officer he presented the CJC's evidence to the 1995 Senate Select Committee on Unresolved Whistleblower Cases on the shredding, and in particular announced the alleged proper role of archivists. In 1999 he was appointed as Head of the new School for Criminal Justice Studies at the Queensland University of Technology.

Mr Ian Berry: Mr Coyne's solicitor in 1990.

Messrs Ian D F Callinan QC and Roland D Peterson: Counsel for Mr Lindeberg during his appearance before the Senate Select Committee on Unresolved Whistleblower Cases in 1995 and the Senate Committee of Privileges in 1996**.** Mr Callinan QC was subsequently elevated by the Howard (Australian) Government in February 1998 to fill a vacancy on the Bench of the High Court of Australia. Both counsel represented Mr Lindeberg and Mr Coyne before the Connolly/Ryan Judicial Review into the Effectiveness of the CJC until Mr Lindeberg was forced to instantly dismiss them over a conflict of interest in the presentation of evidence over the payment of $27,190 to Mr Coyne which they refused to elaborate on as it may have jeopardised Mr Coyne's interests.

Mr Peter Coyne: JOYC Manager at the time of the establishment of the Heiner Inquiry and in 1988. He requested throughout the period of the inquiry, and afterwards, to be given the opportunity of seeing the specific complaints laid against him so that he could properly defend himself pursuant to procedural fairness principles. That right was denied him. On the same day the Inquiry was publicly terminated he was seconded to special duties at DFSAIA Headquarters. Through his solicitors and union he immediately sought lawful access to parts of the Heiner Inquiry transcript relating to himself and the original complaints pursuant to *Public Service Management and Employment Regulation 65*. His solicitor also served due notice on the Queensland Government that unless access was given he would seek a review of the matter through court proceedings.

In February 1991 he was involuntarily retrenched from the public service in highly controversial circumstances which also saw an additional payment of $27,190 being paid conditional upon his signing a Crown Settlement Deed requiring lifetime silence on matters *"…leading up and surrounding his relocation"* from the JOYC. That payment was described in the Morris/Howard Report of October 1996 as illegal and designed to buy the silence of a public official. Events which occurred in the lead-up to the establishment of the Heiner Inquiry and Mr Coyne's relocation included unlawful handcuffing of children to fences overnight, and an 1988 pack-rape of an 14-year-old female Aboriginal inmate by four male inmates during a supervised bush outing.

After Mr Lindeberg dismissed their joint-counsel (Messrs Ian Callinan QC and Rowland Peterson) at the July 1997 hearings of the Connolly/Ryan Inquiry and represented himself before the Inquiry, Mr Coyne never communicated with him again; and in 2000, Mr Coyne held the position of Assistant Manager of Borallan Correctional Centre which he no longer holds.

Ms Anne Dutney: Former Deputy Manager of the Centre under Mr Coyne, and QPOA member. On 1 March 1990 she put in writing to DFSAIA's directorate that the conduct of certain staff was putting the lives of the children at risk. Those staff gave evidence to Mr Heiner, as indeed did Ms Dutney and Mr Coyne. Her Memorandum was hidden from public view and scrutiny for nearly a decade. Her career in corrections went on unhindered; and in 2000, she served as Deputy Director-General of the Queensland Corrections Department for the Beattie Labor Government. In 2001, after the landslide victory of the Beattie Government, she was appointed as Director-General of the Disability Services and Aboriginal and Islander Policy but has since resigned.

Mr Bruce Grundy: Investigative journalist, now Journalist in Residence in the Department of Journalism at the University of Queensland. Without his fearless dedication to pursue the truth in the finest traditions of his profession, no matter how long it took, where it led, whom it affected or the political consequences, the scale and breadth of the systemic corruption associated with the Heiner Affair would never have reached public attention.

Mr Noel O Heiner: Retired Stipendiary Magistrate appointed by the Cooper Queensland Government in October 1989 to inquire into complaints against Mr Coyne and the management of the JOYC. While the Inquiry was lawfully established, it was later considered that the witnesses and possibly Mr Heiner were vulnerable to suit. Although this concern had no substance in law, the Goss Government indemnified him. It was discovered in November 2001 that he took evidence on matters of "criminal paedophilia" – but has resolutely refused to speak publicly about his inquiry ever since.

Mr Christopher Hurley: Former Chief Victorian Archivist and former Australian representative on the International Council on Archives who independently analysed the shredding from an archival perspective and produced his public Report on 15 March 1996. He now works as Records Manager with New Zealand Archives.

Mr Pierre Mark Le Grand: Former CJC Director of the Official Misconduct Division.

Mr Kevin Lindeberg: QPOA trade union official of some six years experience. He was responsible for the industrial interests of DFSAIA members. He was dismissed on 30 May 1990 in controversial circumstances with one charge being his handling of "the Coyne case" after DFSAIA Minister the Honourable Anne Warner[19] complained to the QPOA General Secretary that his negotiations were allegedly "*inappropriate and over-confrontationalist*". The complaint was lodged after he inadvertently learnt of the plans to shred the Heiner material during a phone conversation with the Minister's Private Secretary and challenged the action. He took his dismissal to the CJC on 14 December 1990 which enlivened its jurisdiction because "the Coyne case" impacted on the running of the Department of Family Service and Aboriginal and Islander Affairs - a unit of public administration under the *Criminal Justice Act 1989*.

[19] Hon Ms Anne Warner resigned from Parliament at the July 1995 State Elections. The Goss Government was initially returned with a one-seat majority which was subsequently challenged in the Court of Disputed Returns successfully bringing about a fresh by-election for the disputed seat of Mundingburra in North Queensland in February 1996 which was won by the Coalition causing the Legislative Assembly to be evenly divided 44 seats each. The validity of this crucial by-election later came under investigation in late 2000 by the Shepherdson Commission of Inquiry into Possible Electoral Rorting by the ALP which revealed that the AWU faction within the ALP may have attempted to rig the ballot. The Inquiry concluded in 2001 finding one ALP MP staffer open to a charge in criminal conspiracy. After the February 1996 by-election result, the Independent Member for Gladstone Ms Liz Cunningham cast her deciding vote with the Coalition which brought about a change in government after six years of Goss administration.

In late 1997, he went back into JOYC as a professional cartoonist to teach the detainees his art, and while there he discovered the true nature of what was shredded: allegations of misconduct and suspected child abuse which had been hidden for years. He never accepted the injustice of his dismissal.

Mr Donald Martindale: QPOA General Secretary who dismissed Mr Lindeberg using as one charge a complaint from Minister Warner laid against him while he (Lindeberg) was carrying out his lawful duties to protect his members' industrial interests and rights. Mr Lindeberg claimed that all the charges were contrived. He left the union soon afterwards to become Assistant General Secretary of the Queensland Council of Trade Unions for a brief period before moving on to a senior industrial relation position in the Queensland Health Department for the Goss Government.

Ms Ruth L Matchett: DFSAIA's Director-General which brought the Centre under her administrative control.[20] She is now the professorial Head of the School for Human Services at the Queensland University of Technology and was appointed by the Beattie Government to the Board of Queensland Legal Aid for a statutory period.

Ms Karen Mersaides: Education Department schoolteacher at the Centre and went on the bush outing when the 1988 pack-rape occurred. She also sought access to the Heiner Inquiry documents through her trade union, the Queensland Teachers' Union. She wrote a ministerial report on the incident but alleged her report was solely about the (alleged) absconding of the inmates for a time during the outing, and only learnt about the pack-rape the following day.

Mr Gary Clarke: Formerly the DFSAIA Director of Organisational and Financial Services who oversighted the additional payment of $27,190 and took receipt of the Dutney memorandum on 1 March 1990 revealing that the welfare of children at the Centre was being put at risk, and that an alleged assault of a child by a Youth Worker, Mr Fred Feige, remained unresolved. He also took possession in September 1988 of a confidential report from Mr Coyne stating that 57% of JOYC Youth Workers were below standard and should be dismissed immediately. He did nothing to address the matter. It has since been discovered that in November 1996, Messrs Donald Smith, Trevor Walsh and Clarke sought a meeting with the DPP to dissuade him in his considerations of the Morris/Howard Report to hold an inquiry into the shredding. It is still not known whether a meeting took place but it is suspected that it did. He took a redundancy package under the Beattie Government. He would have been aware of the 1988 pack-rape incident.

Ms Lee McGregor: Former Queensland's State Archivist who retired around February 2000. Throughout the whole affair's history to date, she was never once approached and questioned by the CJC and yet it continued to claim that the matter had been investigated to the "nth degree".

Messrs Anthony J H Morris QC and Edward J C Howard: The independent barristers appointed in May 1996 by the Borbidge Queensland Government to examine "the Lindeberg allegations" on the papers held by various Government Departments. Their report was tabled in

[20] Ms Matchett resigned from the Queensland Public Service in August 1995. She currently holds a professorial position as Head of the Department of Human Services at the Queensland University of Technology.

the Queensland Parliament on 11 October 1996 recommending an immediate public inquiry into the allegations.

Mr Noel F Nunan: The barrister selected in 1992 to review "the Lindeberg allegations" whose findings the CJC still acknowledge, including his description of the role of the archivist as being an "*almost unfettered*" ability to shred any public record. He was later elevated in 1994 by the Goss Queensland Government to the Magistrate's Bench and now serves on the Brisbane Bench. He was a former activist in the Australian Labor Party, member of Queensland Labor Lawyers, and working colleague with Mr Goss at the Caxton Street Legal Service. He did not declare these connections to Messrs Lindeberg and Coyne when he reviewed the case (against the Goss Cabinet) in August 1992 on behalf of the CJC (*Livesey v New South Wales Bar Association* [1983] 151 CLR 288 at 294-294 Re apprehended bias). In finding no wrongdoing, he misquoted and misrepresented the law in all the key elements associated with the allegations.

On 11 September 1993 in an unsolicited phone call, Mr Nunan called Mr Lindeberg "a pathetic bastard" and threatened defamation proceedings if Mr Lindeberg persisted in saying that his conduct was biased. In July 1997, his counsel at the Connolly/Ryan Judicial Review, argued that Mr Lindeberg's public submission (Exhibit 394) be withdrawn from public scrutiny after enjoying the status of a public record for two months by the Inquiry's own ruling under the *Commissions of Inquiry Act*. By an extraordinary back flip, Commissioner Connolly QC granted a non-publication an interim order on published Exhibit 394. The Inquiry was closed down by the Queensland Supreme Court before it could reconsider whether or not its non-publication order should be lifted. The order was seen by many as unique and a serious attack on freedom of the press because once an order to publish "to the world" has been made, it cannot be reversed.

Mr Kenneth M O'Shea: The Crown Solicitor, who together with other solicitors in the Division of Crown Law, advised the Goss Queensland Government throughout asserting that no law was breached. He retired around the same time the Government changed in Queensland in February 1996. He died suddenly in early 2001.

Mr Barry J Thomas: Former legal officer in the Office of Crown Law who offered the advice that the material could be shredded providing no court proceedings were on foot. In May 1990 he provided further advice which assisted the Department in knowingly avoiding its legal obligation to provide Mr Coyne with access to the relevant material when both he and the department knew that Mr Coyne enjoyed such a right of access. He left Crown Law to work in the CJC's Official Misconduct Division under Mr Michael Barnes. This covered the period during the CJC's appearance before the Senate Select Committee on Unresolved Whistleblower Cases in 1995. He now practises as a barrister at the Queensland Bar specialising in administrative law.

Mr Donald A C Smith: Ms Matchett's Principal Liaison Officer and qualified in law. Also the DFSAIA's liaison officer with the CJC and Internal FOI Reviewing Officer who denied Mr Lindeberg access to critical documents in 1994 whose contents incriminated him (i.e. Smith) in illegal conduct. One such document (Crown Solicitor advice of 18 April 1997) was later described in the Morris/Howard Report as the "smoking gun" leaving it open to conclude that Mr Smith[21] himself had broken the law. He resigned shortly after the tabling of the Morris/Howard report.

[21] Mr Don Smith resigned from the Queensland Public Service in early March 1997.

Mr Stuart P Tait: The Cabinet Secretary who liaised with the Queensland State Archivist in February/March 1990 which saw the Heiner Inquiry documents shredded on the false pretext that the material was not required.

Ms Janine M Walker: Queensland State Service Union Industrial Relations Director who brought about the Heiner Inquiry and got her members to put their complaints in writing against Mr Coyne. She had earlier worked as an Industrial Relations Officer with the Australian Workers' Union. She later had those public records returned to her by Ms Matchett on 22 May 1990 without lawful approval from the State Archivist. She left the QSSU to take up similar work in the Queensland Health Department, and now works as director of human resource management at the Griffith University.

Mr Trevor Walsh: Ms Matchett's Executive Officer who personally knew the Heiner documents were critically relevant in foreshadowed court proceedings and the subject of a legally enforceable access statute at the time Cabinet ordered their shredding, and he oversighted the actual shredding on 23 March 1990. He assisted in the preparation of relevant Cabinet submissions.[22] He resigned shortly after the tabling of the Morris/Howard report.

Hon Anne M Warner: As Minister she attended the relevant Cabinet meetings in early 1990 at the same time as her Director-General knew what the legal status of the Heiner Inquiry documents was. She later told Parliament in May 1993 that Cabinet ordered the shredding to stop the material being used in litigation. She informed the media that her DFSAIA Director-General kept her fully informed throughout, just as Mr Walsh kept Ms Matchett fully informed. She claimed that the material could be shredded at the time because court proceedings had not actually commenced. She left Parliament upon the calling of the July 1995 State election. Evidence obtained in 1999 revealed that she had firsthand knowledge about the abuse of children in the Centre in October 1989 before becoming the responsible Minister in December 1989, and therefore must have known that detail of the abuse would have been contained in the Heiner Inquiry documents at the time the Cabinet ordered their destruction.

3. BACKGROUND

The basic outline is as follows:

The Heiner Inquiry was established by ministerial directive[23] in the Queensland Department of Family Services in late September 1989 to investigate specific written complaints concerning the management style of Mr Peter Coyne, the manager of an adolescent youth detention and remand centre, called the John Oxley Youth Centre located on the outskirts of Brisbane.

It was a lawfully established inquiry under the *Public Service Management and Employment Act 1988* and retired Stipendiary Magistrate Noel Heiner was appointed pursuant to section 12 of the Act to the task with specific Terms of Reference.

[22] Mr Trevor Walsh resigned from the Queensland Public Service in February 1997.
[23] The Hon Beryce Nelson MLA, Minister in the National Party Queensland Government.

The Inquiry's genesis can be traced back to the calibre of staff transferred from Sir Leslie Wilson Youth Centre to work at JOYC, and the culture they brought into the institution when it opened in February 1987.

Mr Coyne wanted to see the specific details of the complaints in order to defend himself pursuant to his rights under procedural fairness. That right was denied him. Instead, a summary of the complaints was provided upon which he was expected to base his defence.

Through sources he learnt that potential criminal and official misconduct allegations were being made against him. He sought access to the original complaints, in the possession of the Crown/Department pursuant to an access statute: *Public Service Management and Employment Regulation 65.*

Shortly after the Government of Queensland changed in December 1989, the Inquiry was terminated purportedly because the new Government (allegedly) saw no purpose in its continuation and, although it was lawfully established, there was an alleged concern that Mr Heiner and the witnesses were open to suit for defamation, despite the Government being advised that qualified privilege could be claimed by witnesses and Mr Heiner. On the same day its termination was announced to the staff, Mr Coyne was transferred to special duties away from the Centre.

The Heiner Inquiry documents were taken into the possession of the Crown. Mr Coyne sought access to the complaints and parts of the transcript relating to and/or held on himself via his solicitor Mr Ian Berry of Rose Berry Jensen Solicitors and me as his trade union advocate[24] through his membership in the Queensland Professional Officers' Association. The Government acknowledged his legal action and falsely indicated that nothing he was seeking was held on his personal file. His Department said that his request was the subject of on-going Crown Law advice.

Immediately being told of his secondment, Mr Coyne instructed his solicitor to serve notice on the Crown of his intention to seek access to the public records previously nominated on 8 February 1990 through foreshadowed court proceedings if access was not granted pursuant to his entitlements under *Public Service Management and Employment Regulation 65*. This notice was conveyed over the telephone and followed up with a letter from his solicitors to Ms Matchett, which was recorded by the Crown in a Departmental memorandum, and acknowledged by return letter.

Unbeknown to Mr Coyne and his solicitor, the Government, while aware of the Mr Coyne's lawful demands, sought urgent approval from the State Archivist to shred the Heiner Inquiry material on the written basis to her (as far as it was concerned) that the material was not required or pertinent to the public record. The Archivist gave her approval on the same day to shred the material (over 100 hours of taped evidence, computers disks, notes and submissions) pursuant to

[24] Mr Lindeberg was the QPOA's Senior Organiser having worked with the union for six years. He was responsible for industrial matters in the Queensland Department of Family Services for just on six years, and knew the workings of the Department comprehensively. Prior to his returned to Australia while in London studying opera singing, he worked with the London Electricity Board (LEB) and held the position of LEB union branch secretary for NALGO (National and Local Government Officers Association - the largest white collar union in the United Kingdom covering clerical worker in councils and utilities throughout Great Britain - now called UNISON) for some eight years.

the *Libraries and Archives Act 1988* appraising them within five (5) hours as having no permanent or temporary value. The Government later secretly shredded the material to stop its use in litigation while Mr Coyne and his solicitors were still waiting for the Crown's promised final position regarding access to be made known.

When the shredding became known to Mr Coyne's solicitor, Mr Berry, he recorded his strong objection with the Government. The State Archivist was also officially informed of the true status of the material afterwards by Mr Coyne in May 1990 but did nothing to correct the wrong.

My union advocacy in handling the "Coyne Case" was used shortly afterwards as a specific charge to terminate my six-year employment with the union. At the beginning of March 1990, I had inadvertently earlier learnt of the secret plan to shred the material and challenged it, and was immediately removed from the case by my union's General Secretary on the insistence of the Department of Family Service and Aboriginal and Islander Affairs Minister the Hon Anne Warner.

My twelve-year search for justice has been constant. I brought the shredding to the attention of the Queensland Criminal Justice Commission (CJC), Queensland Police Service (QPS), the Office of the Information Commissioner, Ombudsman, Queensland Audit Office, the Australian Senate and Queensland Parliament, the Queensland Governor, and, latterly, in December 2001, the Queensland Crime Commission.[25]

In that search, the so-called proper role of the State Archivist was publicly defined by the CJC, the Office of Crown Law, and the Goss Queensland Government before the Australian Senate. However, in February 1996 the government of Queensland changed, and, on 7 May 1996, the new Borbidge Queensland Government appointed independent barristers Messrs Anthony Morris QC and Edward Howard to investigate my allegations "on the papers" held by various departments to establish whether or not sufficient grounds existed to conduct a public inquiry. On 10 October 1996, the Morris/Howard Report was tabled by the Queensland Premier in Parliament. It substantiated my long-standing allegation that the shredding was illegal and found that it was open to conclude that serious criminal and official misconduct offences may have been committed, and recommended an immediate public inquiry be held.

At page 215 of their report they made the following comment:

> *"...Whilst we are of the view that the events which occurred between January 1990 and February 1991 involve very grave and serious matters, we are even more concerned that*

[25] On 13 December 2001 the author met with Crime Commissioner Tim Carmody SC, and lodged a complaint (via a formal submission) seeking a referral from the Queensland Crime Commission's management committee to the QCC to investigate the "serious crime" associated with the Heiner Affair in light of the November 2001 Grundy revelations. The Commissioner indicated that he would attempt to get a referral to hold a public inquiry into the matter before the QCC's commission ended on 31 December 2001 when it was to amalgamate with the CJC to become the Queensland Crime and Misconduct Commission (CMC). On 19 December 2001, the author received a letter from Assistant Crime Commissioner John Callanan stating that the QCC's management committee could not convene because of the sudden resignation of a community member, and that the author should make a fresh application on 2 January 2002 to the CMC. He pointed out, nevertheless, that the QCC had a standing reference to investigate "criminal paedophilia" – which the new Heiner evidence constituted under the *Crime Commission Act 1997*. On 21 December 2001 the author hand-delivered a fresh complaint to the QCC calling on it to commence immediately an investigation into the Heiner Affair because, by the QCC's own admission, it had a standing reference and ***did not require*** any referral from its management committee. He called on the QCC to act up to 31 December 2001, and to open a file. (See Section 15)

> *those matters have remained successfully covered up for so many years. In what is commonly referred to as the "post-Fitzgerald era", there are many people in our community who feel a measure of confidence that serious misconduct by senior public officials cannot go undetected. Even the Criminal Justice Commission's strongest supporters, like Mr. Clair and Mr. Beattie, must now have cause to reconsider their confidence in the exhaustiveness - to say nothing as to the independence - of the Commission's investigation into this matter"*

The anticipated public inquiry never took place.

The Borbidge Government inexplicably referred a known limited brief (i.e. the Morris/Howard Report) to the then Director of Public Prosecutions, Mr Royce Miller QC which he seems to have considered. However, instead of rejecting it as an incomplete brief, he declared that as a great many people had been pursuing the truth for a great period of time that it was not in the public interest to pursue the matter any longer. He purportedly said that he could charge certain public officials with abuse of office but it was not in the public interest to do so.

In reality, a great many people, inside the system, had been hiding the truth for a great period of time, and instead of the public getting answers and accountability from its elected and appointed servants, it was denied them in 1997, and to all intents and purposes, the matter was dead and buried.

However, the so-called proper role of the State Archivist, publicly espoused for years by the CJC to legitimise the shredding, remains. The CJC has not recanted its position, and nor has the Queensland Government.

It is that position which this submission highlights and attempts to address in the public interest as the new Public Records Bill 2001 (Qld) is being debated in the Queensland Legislative Assembly in 2002. It is my public declaration that the CJC's position severely misrepresents the mission of archives in civilised societies governed by the rule of law.

In my opinion, this Affair, unavoidably, remains unfinished business for the International Council on Archives, and the archives world in general, to consider and take a public position on, especially when new legislation is about to be brought into law in Queensland, and the guidelines on what represents "retentionary archives values" remains unstated in the Public Records Bill 2001 and therefore leaving the integrity of recordkeeping in Queensland open to assault on the whim of or intimidation by outside forces on any current or future State Archivist.

4. KEY ELEMENTS OF THE LAW

The following extracts are the relevant laws applicable in the role of the State Archivist in this affair. Attached to some of the extracts is a commentary to assist the ICA, and others, in the particular law's relevancy to the shredding and related matters.

It is suggested that ICA member nations may and/or would have equivalent laws applicable to their respective archivists and the due administration of justice in their own countries where the

rule of law applies. Queensland functions under a criminal code as does Canada. There may be legal argument which can be mounted or precedents cited which equate section 129 of Queensland's *Criminal Code* - destruction of evidence - to other criminal codes like, for instance, Section 341 of Canada's *Criminal Code* [fraudulent concealment], Section 429 [wilfully causing event to occur] or Section 430 [Mischief]. The USA tort of spoliation of evidence is relevant, just as contempt of court appears to be relevant too because destruction of evidence may jeopardize a citizen's right to a fair trial.

The universal archival standards and relevant legislation it is suggested cannot stand alone in any legal sense. It must find its ultimate strength in criminal (and supporting administrative) law because societies governed by the rule of law cannot permit the wilful destruction of real or foreseeable evidence in the possession of the Crown/State in particular or in the possession of any party to known court proceedings, Parliamentary committee hearing, or tribunal hearing to be done with impunity otherwise respect for the administration of justice would be a meaningless legal principle.

The protection of evidence is a central plank in the administration of justice, and the world mission of archives is critical in sustaining and underpinning that process.

1. ***Libraries and Archives Act 1988 (Qld):***

> The expression "public records" is defined in section **5(2)** of the Act, which refers to:
>
> "...the documentary, photographic, electronic, mechanical or other records of a public authority and includes -
>
> > (a) records brought into existence by a public authority as records for future reference;
> >
> > (b) a matter or thing kept by a public authority as a record of its activities or consequent upon a function, power or duty to keep records;
> >
> > (c) public records of one public authority held by another public authority."

Commentary:

It was first thought that the Heiner Inquiry documents were Mr Heiner's own private property, and the Crown Solicitor's advice of 23 January 1990 was predicated on that false and reckless view. However, it was remedied in subsequent advice to the Goss Cabinet on 16 February 1990 when the Crown Solicitor took "a better" – and correct - view that the Heiner Inquiry material was ***always*** the Crown's property (i.e. public records) because Mr Heiner was an agent of the Crown. The Crown Solicitor cited *Halsbury's Laws of England* (4th Edition). This view concerning ownership of the material became quite inescapable once Mr Heiner handed all the documents over to the Crown on or about 19 January 1990 for safekeeping.

The ownership of records brought into existence by agents of the Crown/State (i.e. commissions of inquiries, tribunals, contracted bodies like corporations and persons like solicitors and barristers) and held in the possession of those agents is often overlooked as coming under the umbrella of definition of "public record." The current definition in the Public Records Bill 2001, although expanding the scope of records to include some ministerial records, is deficient in recognising documents brought into existence by private enterprise in the doing of contracted-out work for government.

Those records are just as relevant in holding government to account in financial and administrative respects as are those records actually held in the possession and control of the Crown/State. Unless addressed in legislative form to be covered within the definition of "public record" a large resource of relevant information may be lost to the Crown/State and public. In that respect the role of the State/Federal archivist inevitably must encroach into the records held by the private sector in all its forms just as the reach of freedom of information may if the paper-trail leads there and is resolutely followed.

Section **55(1)** of the *Libraries and Archives Act 1988* provides for that:

> "A person shall not dispose of public records other than by depositing then with the Queensland State Archives -
>
> (a) unless -
>
> (i) the State Archivist has authorized the disposal; or
>
> (ii) notice in writing of his intention to do so has been given by him or on his behalf to the State Archivist and -
>
> (A) a period of at least 2 months has elapsed since the giving of the notice; and
>
> (B) the State Archivist has not exercised his power under subsection (2) to take possession of the public records or direct that they be deposited with the Queensland State Archives;
>
> and
>
> (b) unless, in the case of public records to which subsection (4) and (5) apply, the period prescribed therein has expired.
>
> "A person who disposes of public records in contravention of this section commits an offence against this Act and shall be liable to a penalty not exceeding 100 penalty units."

2. *Criminal Code (Qld)*:

Section **129** - 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 for 3 years."

Commentary:

This law is critically relevant in this affair. It is equally relevant to the role of the State Archivist when appraising the retention/destruction of public records because he or she may, wittingly or unwittingly, breach the law and obstruct the administration of justice.

The official Queensland position (CJC and former Crown Solicitor) was that judicial proceedings only commenced upon the issuance of a writ, and consequently, as Mr Coyne did not issue one (in fact because of deception by the Crown to delay its issuance until after the evidence had been destroyed), the law was allegedly not breached. The Morris/Howard Report argues that the key element in this section of the *Criminal Code (Qld)* is the "state of knowledge of those who destroy any such material." If there is knowledge that judicial proceedings are imminent and/or impending and it is known that the material is required for such proceedings, then it is open to conclude that the law has been breached irrespective of whether or not a writ had been served. (See Point 8.5: *R v Rogerson* (1992) 174 CLR 268 F.C. 92/021 (1992) 60 A Crim R 429 and *R. v. Wijesinha* [1995] 3 S.C.R. 422 at 48). The barristers argued that the term "judicial proceedings" in section 129 of the Code could not be read down to only mean judicial proceedings "…then pending" because if it were so, the Parliament had the opportunity to so restrict the term and add those words which it did not do in 1898 when the *Criminal Code (Qld)* came into force. The openness of the term "judicial proceedings" is validated in the other key words of section 129, namely *"…is or may be required"* and goes to the notion that the state of knowledge is the undoubted triggering element;

To suggest otherwise, is to approve a villain's conduct wherein he or she may possess knowledge that the police are coming with a search warrant to obtain incriminating evidence held by him/her but until the search warrant has been executed, he/she may deliberately destroy the sought-after evidence in his/her possession. No doubt such nefarious conduct occurs every day of the week somewhere in Australia and elsewhere, and thwarts many a police inquiry because of lack of evidence. However, in this matter, the CJC has effectively endorsed that conduct by suggesting that had a writ been in the Crown's hands at the time the shredding occurred, it may have then enlivened section 129 of the *Criminal Code (Qld)*, but as it was not, the law is and must remain silent.

The manner of its speaking was explained by Messrs Morris QC and Howard at Page 90 of their report:

> "10. The language of Section 129 does not lend support to the view that proceedings must be "pending" at the relevant time for an offence to be

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

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

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

13. It may be argued that a "wide" construction of s.129 would create a very onerous situation for persons in the possession of books, documents and other things in respect of which there is a remote possibility that such items may be "required in evidence in a judicial proceeding" at some future time. But the language of the Section itself affords ample protection to those innocently involved in the destruction of books, documents and other things. To be criminally liable, the person must know that the book, documents or thing "is or

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

It seems to follow that the Crown, the model litigant and font of justice, can conduct itself in a self-serving manner when the purpose suits, even to the extent of jeopardizing a fair trial if this section can be "read down" as the CJC seems to suggest.

Destroying Evidence before a Writ is issued

However, in *McCabe v British American Tobacco* [2002] VSC 73 the matter of destroying records before a writ was issued came under close judicial examination. It was found that the British American Tobacco's 1985 'document retention policy' statement was a means by which records were deliberately destroyed with the intent of thwarting anticipated litigation not yet signaled or commenced by prospective litigants but carried out with a state of knowledge when the company knew that litigation was inevitable by people adversely affected by smoking tobacco. It was found that the shredding of the company's records had the effect of denying a citizen his or her right to a fair trial, which caused the company's defence to be struck out by the court and a finding was made for the plaintiff.

In his landmark *McCabe* ruling – which is reported as going to appeal – the issues central to the Heiner Affair in which the Crown/State destroyed evidence before a writ was issued after it had

been placed on notice of foreshadowed judicial proceedings, came under examination by Justice Eames. It is quite clear, in applying the *McCabe* ruling, that the conduct of the Executive Government of Queensland, certain legal officers in the Office of Crown Law and officers in the Department of Family Services and Aboriginal and Islander Affairs and potentially reaching as far the State Archivist (depending on her state of knowledge which still remains somewhat under a cloud) was *prima facie* contempt of court because the shredding, under the circumstances prevailing at the time, deprived Mr Coyne of his constitutional right of a fair trail through a wide spread conspiracy.

It might also be argued that as those same parties had a state of knowledge concerning the abuse of children held in the care and custody at John Oxley Youth Detention Centre, even going to the crime of criminal paedophilia and dereliction of a duty of care by the State and certain individuals when they ordered and carried out the shredding of the Heiner Inquiry documents which they knew contained evidence of such conduct, that they purposely deprived the victims of the child abuse of their right to a fair trial too.

It is to be remembered in this matter that in advice offered to the Goss Cabinet on 16 February 1990, the matter of "discovery" was specifically addressed, and whether or not the Heiner Inquiry documents could attract "Crown privilege." In other words, there was a state of knowledge in existence which was acutely aware of the foreshadowed/anticipated litigation placed before the department, and a real concern that records in the Cabinet's possession may be adduced in evidence. The advice from the Crown Solicitor to Cabinet was that any claim of "Crown privilege" would fail because the records were not brought into being for a Cabinet purpose. It seems that the records were deliberately transferred from the department to the Office of Cabinet to provide an artificial device to prevent their access under the discovery process.

In *McCabe* at 385 Justice Eames said this:

> "…In the course of his judgment District Judge Eschbach referred to *Societe Internationale v Rogers* which was a case concerning an alleged failure to comply with a pre-trial discovery order. The U.S Court of Appeals in that case recognised that proven deliberate conduct of placing documents under the control of another so that there would be legal impediments to their production might justify dismissal of an action. Judge Eschbach held in <u>*Bowmar*</u>:
>
> > "The most extreme legal position taken by the defendant is that the court is powerless to punish the wholesale, wilful destruction of relevant evidence where the destruction takes place prior to the specific court order for their production. Surely this proposition must be rejected . The plaintiffs are correct that such a rule would mean the demise of the real meaning and intent of the discovery process provided by the federal Rules of Civil Procedure.
> >
> > It has long been recognised that sanctions may be proper where a party, before a lawsuit is instituted, wilfully places himself in such a position that he is unable to comply with a subsequent discovery order. Cf., e.g. *Societe Internationale v Rogers* 357 U.S. 197, 208-09 (1958). Although

> a potential litigant is under no obligation to preserve every document in its possession, whatever its degree of relevance, prior to the commencement of a lawsuit, see *United States v International Business Machines Corp.*, 66 F.R.D. 189, 194, some duty must be imposed in circumstances such as these lest the fact finding process in our courts be reduced to a mockery.
>
> The proper inquiry here is whether the defendant, with knowledge that this lawsuit would be filed, wilfully destroyed documents which it knew or should have known would constitute evidence relevant to this case."

At 395 in *McCabe*, Justice Eames addressed the court's duty to protect the administration of justice:

> "…The courts have an overriding concern to protect the administration of justice, that concern being reflected in both the Rules and in the common law principles concerning such matters as the criminal offence of perverting the course of justice, and the laws of contempt. An attempt to pervert the course of justice can be committed even though there is no particular case in contemplation by the person committing the offence: see *The Queen v Rogerson*[26]. Whilst it is recognised that it is a power which should be exercised sparingly, and only when no other available means are available to remedy the situation, the superior courts have an inherent power to stay both criminal and civil proceedings which constitute an abuse of process, where not to do so will result in a trial which is unfair[27].

Anticipated Court Proceedings

In respect of the notion advanced by the CJC (and Queensland's DPP in respect of this matter at a particular time when asked by the Shadow Attorney-General[28] whether section 129 had been breached) that judicial proceedings only commence, in civil proceedings, upon the issuing of a writ, as if, in turn, to suggest that the notion of "anticipated or foreshadowed court proceedings" has no standing before the courts or in law, Justice Eames states this in *McCabe* at 355-357:

> "…The destruction of a document four days before proceedings commenced and in anticipation of receiving a subpoena to produce the documents has been held capable of constituting contempt of court[29]. In *Lane v Registrar of the Supreme Court of New South Wales (Equity Division)*[30], a decision of the High Court which was discussed in the Clayton Utz advice to Wills, the court recognised that where a person acted with an intention to interfere with the course of justice that could turn conduct which was lawful into conduct constituting contempt of court. McHugh JA in *The Prothonotary v Collins*[31] observed that their Honours in *Lane* clearly intended their remarks to apply to acts "likely to interfere with the course of justice as a continuing process", a concept not far removed from the conduct of a defendant expecting (as this defendant was) to be engaged in continuing

26 *The Queen v Rogerson* (1992) 174 CLR 268, at 280, 293

27 *Williams v Spautz* (1992) 174 CLR 509, at 518-519.

> litigation by many, but presently unknown, plaintiffs, in various jurisdictions, over many years.
>
> The notion of anticipated proceedings is also well recognised in the laws of privilege Documents relevant to obtaining advice brought into existence "in anticipation or contemplation of litigation" are privileged: See *Cataldi v Commissioner for Government Transport*[32]. The question in that regard is whether, viewed objectively, litigation can be said to have been reasonably anticipated at the time when the document came into existence: see *Grant v Downs*[33]. Privilege may be claimed for documents brought into existence when litigation was "reasonably apprehended"[34].
>
> In my view, it is apt that similar principles with respect to privilege might be applied with respect to discovery. The rationale for legal professional privilege has been said to be that it promotes the public interest in that it facilitates the administration of justice by ensuring that a client will make full and frank disclosure to his solicitor as to all relevant issues[35]. If the client is to gain that protection when proceedings are merely apprehended then a decision not to make full and frank acknowledgment to the court as to relevant issues (such as what became of documents) which occurred when proceedings were contemplated (and to do so for purposes of denying a fair trial to a litigant), and at a time when the client was in receipt of legal advice, might be thought to also reasonably attract sanctions by reference to public policy considerations. As was held in *Grant v Downs*: "The existence of the privilege reflects, to the extent to which it is accorded, the paramountcy of this public interest over a more general public interest, that which requires that in the interests of a fair trial litigation should be conducted on the footing that all relevant documentary evidence is available"[36].

In the Heiner Affair, during a prolonged freedom of information process which saw dissembling engaged in by the Office of the Information Commissioner and an internal reviewing officer[37] in the Families Department, and a senior official[38] in the Department of Justice and Attorney-General which had the effect of drawing out my application over many years, certain advice from the Office of Crown Law was exempted on the grounds of "legal professional privilege". That

---

28 The Hon Denver Beanland MLA

29 *Registrar of Supreme Court v McPherson* [1980] 1 NSWLR 688, at 700, 711.

30 (1981) 148 CLR 245, at 258.

31 (1985) 2 NSWLR 573, at 568.

32 *Cataldi v Commissioner for Government Transport* [1970] 1 NSWR 65, at 67

33 *Grant v Downs* (1976) 135 CLR 674, at 682, 689, per Stephen, Mason, Murphy JJ,.

34 *Collins v London General Omnibus Co* [1891-1894] All ER 213.

35 *Grant v Downs*, supra, at 685.

36 *Grant v Downs*, at 685.

37 Mr Donald A C Smith who also had legal qualifications.

38 Dr Ken Levy, then Deputy Director General, sought special advice from private counsel on the matter of whether or not "a date" on a letter from Crown Law was covered by "legal professional privilege." The advice was that it did which "permitted" its exemption, which, in turn, prevented public exposure of the fact that further advice was in the system after the shredding. It was later established that these "exempted" advices went to the second and third waves of illegal disposal of documents in May 1990 in this Affair. *The plain fact is that "a date" can never be considered legal advice*.

privilege can only be claimed when the advice was obtained for the purpose of anticipated/pending litigation, and yet, we then find those parties seeking and providing the advice actually participate in the shredding of the evidence which brought the advice into existence, and did so for the express purpose of preventing its use in those anticipated proceedings for which it later claimed privilege.

In this case, it appears that the State Archivist was unaware of the true status of the Heiner Inquiry material when she approved the shredding on 23 February 1990. Her true state of knowledge however has never been tested by the CJC or in any forum while under oath despite its claim that the matters has been investigated to the "nth degree". However, indisputable evidence shows that on 17 May 1990 her state of knowledge changed when she was officially made aware by Mr Coyne in his letter (See Point 6.7) to her about his legal claims on the records, but she chose not to act in his interests, albeit after the fact.

That inaction and silence persisted for a decade, and she carried it into retirement in early 2000 while the archives world raged around her for all that time.

Section **132** - Conspiring to defeat justice - provides for:

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

Section **140** - Attempting to pervert justice - provides for:

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

Section **92(1)** - Abuse of Office - provides for:

> "Any person, who, being employed in the public service, does or directs to be done, in abuse of the authority of the person's office, any arbitrary act prejudicial to the rights of another is guilty of a misdemeanour, and is liable to imprisonment for 2 years."

3. *Criminal Justice Act 1989*:

Section **31** of the *Criminal Justice Act 1989* - Official misconduct - describes same:

"**31.(1)** For the purposes of this Act, official misconduct is -

(a) conduct that is in the general nature of official misconduct prescribed by section 32;

(b) a conspiracy or attempt to engage in conduct referred to in paragraph (a).

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

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

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

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

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

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

(a) where the conduct is engaged in;

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

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

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

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

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

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

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

(c) conduct that involves the misuse by any person of information or material that the person has acquired in or in connection with the

> discharge of his or her functions or exercise of his or her powers or authority as the holder of an appointment in a unit of public administration, whether the misuse is for the benefit of the person or another person;

and in any such case, constitutes or could constitute -

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

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

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

Section **37(2)**(b) Referral of matter to section of the *Criminal Justice Act 1989* provides for:

> "(2) <u>It is the duty of each of the following persons to refer to the complaints sections all matters that the person suspects involves, or may involve, official misconduct</u> -
>
> (b) the principal officer (other than the commissioner of police service) in a unit of public administration.

Commentary

The obligation cast on principal officers in units of public administration to report all suspected misconduct is unequivocal. It is mandated. The *Criminal Justice Act 1989* was replaced by the *Crime and Misconduct Act 2001* on 1 January 2002, and reflects the aforesaid provisions.

In my opinion, that duty to report suspected misconduct extends to *all* servants of the Crown in Queensland under contract of employment law[39] and criminal law because the Crown/State must always ascertain the law, obey it and not engage in cover-ups.

[39] See *Ansell Rubber Co Pty Ltd v Allied Rubber Industries Pty Ltd* [1967] VR 37. Under a contract of employment an employee is obliged not to injure his employer by acts showing an abuse or betrayal of trust reposed in him or her. Also see Sykes and Yerbury "Labour Law in Australia" Volume 1 Butterworth 1980 Chapter 5 Rights and Duties of the Parties pp 48-67.

Any discretion not to report suspected misconduct or corruption is a highly questionable one as it is unlawful for any agent of the Crown/State to knowingly engage in the cover-up of illegal acts and it could not be categorised as furthering of interests of the Crown/State in any employment arrangement. Nevertheless, the State, in many parts of the world, has recognised the greyness of this discretionary area by introducing whistleblower protection legislation[40] in order to afford protection to its workers making public interest disclosures. In Queensland, Crown employees must follow prescribed whistleblowing processes within the system and are not permitted to involve the media. In that respect, the Heiner affair reveals how worthless whistleblower legislation can be when the allegations of official misconduct touch the highest levels of government, notwithstanding my reporting of the suspected misconduct occurred on 14 December 1990, several years before the *Whistleblowers Protection Act 1994* was proclaimed.[41]

In April 1990 then CJC Chairman Sir Max Bingham QC indicated that all secrecy and confidentiality provisions of other public service Acts were overruled by the *Criminal Justice Act 1989*.[42]

The law does not differentiate between future, present or past knowledge or suspicions of official misconduct. In other words, it became applicable when the State Archivist gained first-hand knowledge on 17 May 1990 (See 6.7) when she received Mr Coyne's letter, in which he set out his legal demands on the same material she had given approval to shred on 23 February 1990 on the pretext, according to the Goss Cabinet letters, that it was not required. In simple terms, the deception was exposed, or, at the very least, she was given good cause to make relevant inquiries of Cabinet concerning the accuracy of its 23 February 1990 letter.

This obligation becomes an important factor in deciding what was the State Archivist's lawful duty then, just as it did again in April 1997 when she confirmed to *The Weekend Independent* that approval pursuant to section 55 of the *Libraries and Archives Act 1988* to dispose of the original complaints and the photocopies in May 1990 was not obtained by Ms Matchett.

4. Crime Commission Act 1997:

Section 6 (1) states:

"Criminal paedophilia" means activities involving –

(a) offences of a sexual nature committed in relation to children; or
(b) offences relating to obscene material depicting children.

Commentary:

[40] *Whistleblowers Protection Act 1994 (Qld).*
[41] The Act has been roundly criticised by whistleblower groups as too constraining on any would-be whistleblower, and to date, has had little positive effect in protecting whistleblowers thereby keeping the activity as a very dangerous step for anyone to take in Queensland.
[42] See the May 1997 edition of *The Weekend Independent* - "**The Shreddergate Commission**" on the above www site where this newspaper article is reproduced.

The QCC avenue could not be entered (as an agency capable of receiving a complaint) until *prima facie* evidence of sexual abuse against children became an element in the Heiner Affair. This first occurred in a substantive way when a former Youth Worker contacted me around the end of April 2001 after hearing an *ABC-Radio* interview between presenter Andrew Carroll and retiring Queensland Police Inspector Colin Dillon in which he (Dillon) declared that the Heiner Affair was far more serious than matters that came before the famous Fitzgerald Commission of Inquiry into Possible Police Misconduct in which he was the key whistleblower.

The source agreed to meet with investigative journalist Bruce Grundy and me. He provided credible new leads. Mr Grundy resolutely followed the trail for months and discovered a covered-up incident of criminal paedophilia which he also discovered came before the Heiner Inquiry. The fruits of his labour appeared in *The Courier-Mail* on 3 November 2001 which immediately unlocked the QCC's jurisdiction because it had a standing reference under section 46(7) of the *Crime Commission Act 1997* to investigate all criminal paedophilia, but, as I later found out, the QCC remained inactive. (See Section 15 in this document).

The existence of "criminal paedophilia" in the Heiner material gives rise to fresh legal questions of considerable seriousness. One of the reasons the Goss Cabinet gave for shredding the evidence was to prevent its use against the careers of staff at the Centre. If that purpose was undertaken when it was known, or even suspected, that an incident of criminal paedophilia (i.e. pack-rape of a minor) was an issue of concern in evidence gathered by Mr Heiner, then, *prima facie*, the shredding decision opens up new concerns that a conspiracy to pervert the course of justice in respect of this most heinous of crimes may have been entered into by the Executive Government of Queensland and others.

The role of the QCC, and its replacement, the Crime and Misconduct Commission, remains an unfinished story in respect of the Heiner Affair at this point in time, notwithstanding what role His Excellency the Queensland Governor may ultimately play in the matter remains open too having been presented with the *Lindeberg Petition* on 19 January 2001[43], and still actively considering its contents as this Declaration is being compiled.

However, it now becomes an open question as to whether or not the archivist was aware that complaints (i.e. various aspects of the Centre's management style) in the Heiner Inquiry material when she inspected it on 23 February 1990 concerned unresolved child abuse, even going towards the allegation of a cover up of criminal paedophilia. If so, she may have also aided in covering up those unlawful acts and, if proven in a proper forum, should be held to account. If not, it highlights further the need for archivists to pay due care and attention to documents and other materials during the appraisal process for destruction, particularly taking into account the origins of their creation.

[43] The *Lindeberg Petition* was presented, by the hand of the author, to His Excellency the Queensland Governor, at Government House, on 19 January 2001, four days ***before*** Queensland Premier the Hon. Peter Beattie MLA sought the closing of Parliament to call a State Election. By official response, the Governor indicated that he did not have the power to investigate the Heiner Affair, and nor could he (properly) take advice from the Queensland Attorney-General under the circumstances. The author informed His Excellency that he could take a wider advice, under these circumstances, and that he might consider approaching His Honour the Chief Justice of the Supreme Court of Queensland. His Excellency acknowledged that the *Lindeberg Petition* involved allegations of child abuse, and no further response has been forthcoming from him despite further Grundy revelations about evidence of pack-rape being present the shredded material.

In my view, the circumstantial evidence is highly suggestive that she knew that the welfare of children at the Centre was a major issue before the Heiner Inquiry, and therefore, she should have been aware or had suspicions that the records under appraisal possessed well-established archival values warranting their retention.

In her internal report dated 30 May 1990, Ms McGregor described the records she appraised in these words:

> *"…I examined the records. They consisted mainly of tapes and transcripts of interviews with staff of the John Oxley Youth Centre plus a small quantity of related notes and correspondence. In general the interviewees complained of various aspects of the style of management in operation at the Centre. I did not feel that the records were of permanent value and accordingly authorised their destruction. The records were shredded."*[44]

On 8 November 2001, *The Courier-Mail* published an article (page 2) stating that Mr Heiner knew about the pack-rape incident and asked questions of interviewees about it. The Grundy article read in part:

> "A former centre youth worker said yesterday that he had been interviewed in 1989 by Mr Heiner, who had specifically asked about the rape.
>
> He said the interview "was about Peter Coyne (the manager of the centre) basically" but the rape "was one of the incidents that came out."
>
> When asked if he had volunteered information about the rape claim or had been questioned about it, the man said; "He (Mr Heiner) asked...he knew about it already."
>
> The man said everyone in the centre knew about the rape allegation."

It is now an open question requiring attention as to whether or not Queensland's State Archivist was reading evidence about the offence of criminal paedophilia, and yet still gave approval to destroy everything.

In my opinion, these matters become relevant questions for the ICA to decide upon. Do archivists play a role in protecting the administration of justice ***even after*** the obstruction has occurred and been subsequently discovered by themselves that deceptive means were used against their impartial office as the keepers of public records so that foreseeable evidence could be destroyed to prevent its use in those pending proceedings? Can or should any archivist remain silent in the face of such abuse of the office? Can or should any archivist assist in covering up serious misconduct by approving the shredding of evidence just because a government may want it to occur for whatever political reason (excluding national security), including protecting the Crown from compensation claims which might be lodged, at some future time, by victims of known child abuse while in the care of the Crown?

[44] Exhibit 17 Lindeberg's List of Exhibits **"The Shredding**" to the Australian Senate Select Committee on Unresolved Whistleblower Cases 25 January 1995.

4. ***Public Service Management and Employment Act and Regulations 1988***:

Public Service Management and Employment Regulation 65 provides for:

"Access to officer's file:

65 (1) At a time and place convenient to the department, an officer shall be permitted to peruse any departmental file or record held on the officer.

(2) The officer shall not be entitled to remove from that file or record any papers contained in it but shall be entitled to obtain a copy of it."

Commentary:

This Regulation holds the key to the shredding. All those involved in the shredding of the Heiner Inquiry documents, the original complaints and the photocopies of the original complaints ***knew*** that Mr Coyne was seeking access to those public records pursuant to this regulation.

It was discovered by Messrs Morris QC and Howard, for the first time in 6 years, that the Crown Solicitor had recognised Mr Coyne's lawful right of access to the original complaints in advice to Ms Matchett on 18 April 1990 which was ultimately denied him by the unlawful means of breaching the *Libraries and Archives Act 1988*, and leaving it open to conclude that certain parties had breached sections 129, 132 and/or 140 and 92(1) of the *Criminal Code (Qld).*

When Mr Nunan examined this regulation in 1992-93, he misquoted it and then applied his narrow misquotation by suggesting that access only applied to a record when it was placed on *"…the officer's file"* when, in fact, the law said that it was broad in scope embracing *"…any department file held on the officer"*, not just *"…the officer's file."* This extraordinary finding based on an inexplicable misquoting of the relevant law itself was adopted by the CJC in its letter of 23 January 1993 signed by its then Chief Complaints Officer, Mr Michael Barnes. What makes this all the more extraordinary, against the CJC's authority to issue disclosure orders on parties under investigation (which it never did in this case), is that sitting within the Families Department was Crown Law advice received on 18 April 1990 confirming the applicability of *Public Service Management and Employment Regulation 65* to Mr Coyne's request.

The *Wixted* case

In short, the CJC – the so-called impartial watchdog against official misconduct in Queensland's public service in "post-Fitzgerald" Queensland - made a ruling based on a misquotation and misrepresentation of the relevant law sitting at the heart of the Heiner Affair, which went against Crown Law's interpretation of the same law which was accepted throughout the public service (and public sector unions) as a means to access records held on public servants which were not on their personal files. In one foul blow, while at the same time offering relief to the wrongdoers, the CJC turned back the clock in the public service to the old *Public Service Act 1922-78* days when it was a common feature for Queensland Government departments to keep secret detrimental files on public servants which were non-accessible by the aggrieved officer because the law, as it stood for over 50 years, only permitted access to one's personal file. This mischief was first laid bare in the Supreme Court of Queensland before Justice Macrossan in *Wixted v the*

State of Queensland in 1983. In this important test case, brought by Queensland Museum librarian Mr Ted Wixted at his own expense, it was ruled that although the file he was seeking was detrimental to his interests, access under the *Public Service Act 1922-78* was not lawful and therefore not available because it was held away from his personal file and in another place within the Museum. The *Public Service Management and Employment Act 1988,* introduced as a recommendation flowing out of the 1987 Sir Ernest Savage Inquiry[45], was based on the principles of procedural fairness, and had Regulation 65 included to address the mischief revealed in the *Wixted* case.

The new *Public Service Act and Regulation 1997* at section 16(2) is a mirror of *Public Service Management and Employment Regulation 65*.

Mr Nunan went on to suggest that because there was no offence under the *Libraries and Archives Act 1988* of misleading the archivist, no offence could therefore be made out. He just stopped at that point. In fact, he failed to apply the law comprehensively. It was known at the time that under the sections 31 and 32 of the *Criminal Justice Act 1989* dealing with suspected official misconduct that it was an offence to mislead any public official in the performance of his or her duties to cause that official not to act honestly, impartially and in the public interest. In this regard, it is my view that the specific offence of deliberately misleading the State Archivist and his or her authorized agents in the performance of their statutory duties should be inserted in the Public Records Bill 2001 so that it is plain and unequivocal to all.

In his 23 January 1993 findings, adopted by the CJC under Mr Barnes' signature, Mr Nunan claimed that the State Archivist had an *"…almost unfettered"* discretion under the *Libraries and Archives Act 1988* to destroy any public records she wanted to. It is to be remembered just two years later, the same Mr Barnes, before the Australian Senate on 23 February 1995, said that the same State Archivist, under the same legislation, was limited in exercising her appraisal discretion (i.e. to retain or dispose) to only consider whether or not the record in question had "historical" value, and even if there were legal demands on the record, it was not relevant to the exercise of that discretion. More disturbingly is the fact that in its submission to the Electoral and Administrative Review Commission (EARC)[46] in 1991, on the question of the exercise of the Archivist's discretion, the CJC stated that it should cover a "wide audit."

In short, the CJC recognized that the Archivist worked within a framework of values covering accountability factors including administrative, data, legal values and so on, and it always knew this.

In my view, it is open to conclude that both contradictory positions, as expressed by Messrs Nunan and Barnes with the full authority of the CJC, were adopted to suit the purpose of finding no official misconduct, especially when one knows that the CJC never interviewed the State Archivist at any stage to hear what her view was on the subject as the responsible statutory officer. The archives profession itself (save for the silence of Ms McGregor for a decade which was not obligatory) has roundly and publicly rejected both claims, especially the one put forward

[45] Established by the Bjelke-Peterson Government to eradicate red tape in Queensland's public administration.

[46] EARC came into Queensland's public life as recommendation from the Fitzgerald Commission of Inquiry together with the CJC. During its brief life, it put forward important issue papers (e.g. codes of conduct, archives legislation, protection of whistleblowers, Bill of Rights, independence of the Attorney-General etc) to the public as part of the formulation process of legislation to enhance accountability within Queensland's system of government.

by Mr Barnes to the Senate in February 1995, which, disturbingly, still stands on the public record. Accordingly, the archival values exercised in the appraisal process should be set out in the Public Records Bill 2001 under Clause 7(1)(b) so that the mischievous nonsense peddled by the CJC on different occasions to different audiences on the same matter may be more easily exposed and stopped in its tracks.

Knowledge of suspected child abuse

A highly disturbing feature in this affair is the role of the Office of Crown Law. The legal officers paid no heed to Mr Coyne's legal rights throughout, presuming even to know what he wanted – without even talking to him or his solicitors. It became presenter of arguments, judge and jury. Of more recent revelation, it is clear that the Office of Crown Law had knowledge of suspected abuse of children at the Centre, and through its advice, aided in covering it up for over a decade.

A serious question does arise under the Public Records Bill 2001 on whether or not, in the public interest, any legal advice the archivist or the new Public Records Review Committee (see Clause 29) may require, from time to time, should be obtained from counsel away from the Office of Crown Law as that Office may, by perception or reality, be serving two distinct masters in a single matter of record management and protection: namely, the Government of the day; and the archivist who must give primacy to the public interest. Both parties may come into conflict from time to time, which may find itself having to be resolved in court and under those circumstances the Office of Crown Law cannot serve two clients.

What is also relevant is that the Heiner Inquiry documents (at least certain parts of the transcript relating to and/or held on Mr Coyne) were also "*departmental files or records held on the officer* (i.e. Mr Coyne)" when the Goss Cabinet ordered their destruction. That lawful right was never specifically addressed by the Crown Solicitor despite the Crown informing Mr Coyne and his solicitors on 16 February and 19 March 1990 that the Crown's position was "**interim**" and a final position was being worked on but never came. On the weight of the evidence, there appears little doubt that had access been denied by the Department/Crown, a court of law would have upheld his access rights.

But irrespective of what the Crown and/or State may have thought concerning Mr Coyne's access entitlement to either the Heiner Inquiry documents or the original complaints, the Australian system of justice gave him an unequivocal right to seek a judicial review of *Public Service Management and Employment Regulation 65* concerning its interpretation before these public records were destroyed, or to sue for defamation. For that matter, the Archivist's decision approving the destruction of the Heiner Inquiry documents pursuant to the *Libraries and Archives Act 1988* was not beyond judicial review. Either way, the State Archivist could and should have safeguarded that constitutional right guaranteed under administration of justice in a free democratic society by refusing to approve to destroy the material until this known legal claim had been satisfactorily resolved for all parties concerned, and that also meant, in this case, the victim of the criminal paedophilia which occurred while the girl was being held in custody under the care and protection of the Crown by court order.

My declaration is that this critical role lies at the heart of any archivist's mission.

5. THE ROLE OF THE STATE ARCHIVIST *BEFORE AND UP TO* THE SHREDDING

Statutory Access Sought

5.1. On 8 February 1990 Mr Coyne instructed his solicitors Rose Berry Jensen to officially inform Ms Matchett that he wished to exercise his lawful rights of access pursuant to of *Public Service Management and Employment Regulation 65* to:

> **"As you know we act for the above persons who wish to exercise their rights as contained in Regulation 65 of the Regulations to the above Act.**
>
> > **(i) Statements of allegations made to the Department by employees appertaining to complaints against our clients and which may be the subject of Mr Heiner's enquiry; and**
> >
> > **(b) Transcripts of evidence taken either by Mr Heiner or in respect of the complaints which specifically refer to allegations or complaints against our clients.**
>
> **We are of the opinion that Regulation 65 includes such documents as they are within your control as such an enquiry was implemented by a direction from your predecessor the then Director General."**[47]

5.2. On 12 February 1990, the Heiner Inquiry documents, having been in the Department of Family Services and Aboriginal and Islander Affairs' possession from about 19 January 1990, were secretly transferred from the Department to the Office of Cabinet. It seems that this was done as a calculated move to create a legal barrier to thwart Mr Coyne's efforts to access relevant parts of the transcript and original complaints pursuant to this lawful entitlement under of *Public Service Management and Employment Regulation 65* by removing them from his Department to another;

5.3. The Cabinet meeting of 12 February 1990 decided to seek advice from the Crown Solicitor as to whether the Heiner Inquiry documents could be accessed should a writ be issued to obtain such information. Acting Cabinet Secretary Mr Stuart Tait wrote the letter on 13 February 1990 which stated in the main:

> **"...Advice is sought as to what action might be taken should a writ be issued to obtain information that is considered to be part of the official records of Cabinet. The information was gathered during the course of a Departmental investigation and will be submitted to Cabinet and retained within the Cabinet Secretariat..."**[48]

[47] Exhibit 4 Lindeberg's List of Exhibits **"The Shredding**" to the Australian Senate Select Committee on Unresolved Whistleblower Cases 25 January 1995.

[48] See Volume 1 Queensland Government Document 4 Submissions and Supplementary Submissions and Other Written Material to Senate Select Committee on Unresolved Whistleblower Cases authorised to be published October 1995.

Crown Liability acknowledged

5.4. It is relevant to point out that on 13 February 1990 Ms Matchett, acting DFSAIA Director General, convened a special meeting of JOYC staff at the Centre, and informed them that the Inquiry had been terminated. She gave the following assurances to the staff in her address:

> **"...there will be no report. Thus the risk of staff being exposed to legal action is reduced.**
>
> **I want to remind you all however of the current Government policy regarding the legal liability of Crown employees - which you all are.**
>
> **In short the Crown will accept full responsibility for all claims arising out of a Crown employee's due performance of his/her duties provided these duties have been carried out conscientiously and diligently..."**[49]

The Crown put on due, proper and honourable notice

5.5. Having given those assurances to the staff, she then immediately seconded Mr Coyne to special duties at DFSAIA Head Office in Brisbane Central to commence the following day. Mr Coyne forthwith instructed his solicitor Mr Ian Berry to serve notice on his Department of his intention to commence court proceedings to gain access to the material already identified in his solicitor's letter of 8 February 1990. On 14 February 1990 Mr Berry phoned Mr Walsh putting the Crown on notice, which he (Walsh) recorded in a Departmental memorandum to Ms Matchett dated the same day. Of particular relevance he 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."**[50]

5.6. On 16 February 1990 the Crown Solicitor returned his advice to the Goss Cabinet. He indicated that the Heiner Inquiry documents could not be reasonably described as material gathered in order to formulate a Cabinet submission and therefore he advised that "Crown Privilege" would have little chance of success in resisting access once a subpoena was issued after the matter had been set down for trial. He went on to say that the Heiner Inquiry documents would have to be described as "public records" in terms of Section 5(2) of the *Libraries and Archives Act 1988* because they were now in the possession of the Crown, and because:

[49] See p92 Submissions and documents Senate Committee of Privileges 63rd Report December 1996: The Hurley Analysis Point 5.6 page 16.
[50] See p18 ibid.

"...The overwhelming difficulty in relation to this matter (i.e. deciding whether the material could be defined as "public records" or Mr Heiner's private property) is that the precise terms of engagement of Mr Heiner remain vague but at the very least, he must have been acting as a consultant or agent of the Crown and in those circumstances, it would appear that the documents prepared during the course of his consultancy or period of agency were prepared for and are held on behalf of the Crown.

Whilst it is not directly on the point, the position in a normal solicitor and client relationship is instructive. In Halsbury's Laws of England (4th Edition), the following is stated concerning the ownership and use of documents in the solicitor and client situation:-

> **"Documents coming into existence in the course of business transacted under a retainer, and either prepared for the benefit of the client or received by the solicitor as agent for the client belong to the client. However, documents prepared by the solicitor for his own protection or benefit and letters written by the client to the solicitor belong to the solicitor."**

After considering the matter further, I am of the view that notwithstanding that Mr Heiner was primarily engaged to prepare a report, the Crown would be entitled to claim possession of the documents brought into existence by Mr Heiner in the course of undertaking his Inquiry. This is particularly so in relation to statements or transcripts of evidence upon which his final report was to be based..."[51]

5.7. Having reached that view, it may be of relevance for the ICA to pay attention also to the Crown Solicitor's final bracket of advice. He indicated that it was therefore necessary to seek the approval of the State Archivist pursuant to section 55 of the *Libraries and Archives Act 1988* before disposing of the material, and then stated the following in respect of private solicitors engaged by the State/Crown to perform contracted tasks which I suggest may have applicability to other member nations of the ICA on an archival matter not previously considered:

"In reaching the foregoing conclusions, I acknowledge the difficulty that this may cause in that there may be potentially defamatory material contained in the documents now held. However, that cannot affect the legal position in terms of the operation of the *Libraries and Archives Act 1988* and there is no doubt that the Act binds the Crown and accordingly must be complied with.

One other consequence of the foregoing conclusion is that the files now held by private solicitors who are or have in the past undertaken work on behalf

[51] Exhibit 6 Lindeberg's List of Exhibits **"The Shredding**" to the Australian Senate Select Committee on Unresolved Whistleblower Cases 25 January 1995.

of the Crown may also contain public documents and accordingly would be subject to the provisions of the *Libraries and Archives Act 1988*."[52]

5.8. This advice was considered by the Goss Cabinet on 19 February 1990. It is important to recall that in between Cabinet seeking the aforesaid advice on 13 February 1990 and receiving the Crown Solicitor's opinion dated 16 February 1990, Mr Coyne's solicitor served notice on the Crown (i.e. the Department) by phone (14 February 1990) and letter (15 February 1990) seeking access to the Heiner Inquiry documents (and original complaints) pursuant to *Public Service Management and Employment Regulation 65* and recorded his clear intention to seek a court ruling if access was denied by the Government, and not to destroy anything;

5.9. It is recorded that Mr Walsh, who took the phone call on 14 February 1990, informed Ms Matchett over the phone about the solicitor's call while she was in Hobart Tasmania on departmental business. She later initialled the departmental memorandum on 21 February 1990 on her return to Brisbane, and the solicitor's letter was in the possession of the Crown Solicitor on 22 February 1990 together with Mr Coyne's solicitor's letter of 8 February 1990;

The Crown's position was "interim"

5.10. On 16 February 1990 Ms Matchett acknowledged receipt of Mr Coyne's solicitor's letter of 8 February 1990, and indicated that a file of complaints allegedly could not be found. Of critical importance, she informed them that the Crown position was "interim" and that legal advice was on-going and it would be relayed to them in due course once the final position was known. She gave that final advice on 22 May 1990 ***after*** everything had either been shredded or disposed of **[Note Point 19 in the Chronology of Events which demonstrates that a file plainly existed];**

5.11. Mr Stuart Tait, the acting Secretary of Cabinet, sent a copy of a draft letter (dated 19 February 1990) to Mr O'Shea, the Crown Solicitor, to be sent to the State Archivist seeking her approval for the urgent destruction of the Heiner documents. The Crown Solicitor, while in possession of Mr Coyne's solicitor's letters, unquestionably placing a legally enforceable access request on the material in question, indicated that he saw nothing objectionable in the letter, which failed to mention Mr Coyne's known demands on the material;

5.12. The other side of this equation is that Minister Warner attended the Cabinet meeting of 19 February 1990 which undertook to take this urgent course of action to shred the Heiner Inquiry documents. As the Cabinet submissions have now been tabled in State Parliament, we now know that Cabinet was informed that solicitors (for Mr Coyne and Ms Dutney) were seeking access to the records in question but had not yet served a writ. We now know, following the admission by former Goss Environment and Heritage Minister the Hon Pat Comben, on Channel Nine's current affairs program *Sunday* on 21 February 1999, that Cabinet was also told that suspected abuse of children was going on at the Centre and the records contained such evidence. The recent Grundy revelations published in *The Courier-Mail* in November 2001 concerning the pack-rape of a 14-year-old Aboriginal girl at the Centre, and that Mr Heiner asked questions about the incident during his Inquiry, raises even more serious concerns about what was the full scope of Cabinet's state of knowledge when it ordered the shredding. It seems inconceivable that Mr Heiner, (a former Children's Court Magistrate) would not have informed the Department about

[52] ibid.

such questioning when he handed over his commission (and records) at the end of January 1990 to Minister Warner and Ms Matchett. As the Departmental CEO, Ms Matchett had a statutory duty under the *Children's Services Act 1965* to care for children placed into her care and custody, and, arguably, that should have been her first duty throughout instead of deferring to political considerations coming out of Cabinet which may have clashed with that duty.

Executive Government knew

5.13. In evidence before the Senate Select Committee on Unresolved Whistleblower Cases at Parliament House Canberra on 29 May 1995, Mr Michael Barnes for the Criminal Justice Commission was in no doubt that the Goss Cabinet ***was fully aware*** that Mr Coyne was seeking access to the material when it decided to seek urgent approval to shred to stop its use in litigation.[53] There was some considerable bewilderment as to how he could be so sure on this important legal point, and it took until March 1999 to discover why he knew. (See 5.14) There are several places where this confirmation occurred but this is one such extract from Australian Senate *Hansard* 29 February 1995 at p682:

> "***Senator ABETZ*** **- Did that not alert you or the CJC that there was something of importance to Mr Coyne there? Documents had been shredded, but the official advice to him that they had been shredded and the final advice received was two months after the event?**
> ***Mr Barnes*** **- I do not see that the delay is either here or there. <u>There is no doubt that the documents were destroyed at a time when the cabinet well knew that Coyne wanted access to them. There is no doubt about that at all</u>.**
> ***Senator ABETZ*** **- Are you saying that there is no doubt about that in your mind?**
> ***Mr Barnes*** **- No, the**
> ***Senator ABETZ*** **- Is there no doubt in your mind that cabinet knew that Coyne wanted the documents?**
> ***Mr Barnes*** **- <u>I am confident that is the case.</u>**" (Underline added).

An undisclosed visit

5.14. It was discovered in March 1999, through my freedom of information application against the CJC, that in fact Mr Barnes had paid the Department several visits and inspected the Heiner files around late 1994/early 1995 ***before*** giving evidence to the Senate Select Committee on Unresolved Whistleblower Cases and compiling the CJC's February 1995 submission. He withheld knowledge of those visits from the Senate and my counsel at the time. Later on, he astoundingly confirmed that during those visits he became aware of the allegations of child abuse but did not pursue them because of their alleged time-lag. The above interplay between him and Senator Abetz concerning his certainty about Cabinet's state of knowledge becomes understandable, and yet his visit and what he saw remained hidden until years later when he was forced to disclose it because of my FOI application against the CJC, and Mr Grundy's journalistic activities;

[53] The admissions put to the Senate by Mr Barnes in May 1995 that Cabinet knew that the records were required by Mr Coyne at the time the decision to shred was made gave sufficient evidence for Mr Lindeberg's counsel Messrs Ian Callinan QC and Roland Peterson to present a special submission to the Australian Senate on 7 August 1995 that it was open to conclude that the Cabinet may have breached the *Criminal Code (Qld).*

5.15. On the morning of 23 February 1990, the Goss Cabinet faxed its letter to the State Archivist and had the Heiner Inquiry material delivered to State Archives Building at Dutton Park, an outer suburb away from the Executive Building. The letter advised Ms McGregor that the material was of a defamatory nature, and she was further advised:

> **"...that the material could not be fairly described as "Cabinet documents" unless they were created for the purposes of submission to Cabinet. This appears not to be the case and any claim by the Crown for "Crown Privilege" would therefore, have little chance of success in order to maintain the confidentiality of the material.**
>
> **The Government is of the view that the material, which I understand includes tape recordings, computer discs and hand-written notes, <u>is no longer required or pertinent to the public record</u>.**
>
> **The question of the destruction of the material therefore falls within the responsibility of the State Archivist under Section 55 of the *Libraries and Archives Act 1988* and your <u>urgent</u> advice is sought as to the appropriate action to be taken in this regard." (**Underline added**).**[54]

5.16. The letter did ***not*** inform the archivist that the Government had been served with due notice of impending court proceedings (on 14 and 15 February 1990) in which the Heiner Inquiry documents were critically relevant, or that the Crown had been served with a notice by Mr Coyne (on 8 February 1990) that he wished to exercise his statutory right of access to the certain parts of the material under examination. The relevant Cabinet submissions reveal that Cabinet was informed of these unresolved legal demands on the documents. The letter did ***not*** expressly state that the Government was wishing to destroy the material to prevent its use in litigation but merely that the material was not required as far as it (the Government) was concerned;

5.17. It is known that the taped evidence gathered by Mr Heiner consisted of approximately 100 hours of evidence. By approximately 1.45pm of the same day, Ms McGregor had reached her decision that the material could be destroyed. She faxed the following letter back to Mr Tait on 23 February 1990 in the following terms:

> **"...Thank you for your letter of 23 February 1990 regarding the disposal of certain records of an enquiry by Mr N J Heiner in November 1989 into certain matters relating to the John Oxley Library Youth Centre.* These records were delivered to my office on 23 February 1990. They were examined by myself and Ms Kate McGuckin, Senior Archivist, Users Services. The records consisted mainly of tapes and transcripts of interviews and some associated notes and correspondence. I am satisfied that they are not required for permanent retention. I hereby give approval, under the terms of Section 55 of the *Libraries and Archives Act 1988*, for the destruction of these records.**

[54] Exhibit 8 ibid.

Arrangements have been made for the records to be returned to the Cabinet Secretariat."[55]

***** This appears to be a typing error as there is also a public library in Brisbane called the John Oxley Library**.** John Oxley was one of Queensland's famous pioneer explorer/settlers.

5.18. On 5 March 1990 the Cabinet took the decision on a number of reasons with one such reason being ***"...to reduce the risk of legal actions against all the parties involved..."*** In a passage from a submission presented by the Queensland Government to the Senate Select Committee on Unresolved Whistleblower Cases in early 1995, it records that the following matter came before Cabinet just prior to the decision being taken. It reveals the state of knowledge present in the Cabinet at the time when it was asking the State Archivist to exercise her discretion concerning the continuing welfare of the material. The Cabinet submissions of 19 February and 5 March 1990, now publicly available, confirm that members of Cabinet knew about legal demands on the records at all relevant times. The passage stated:

"...On 5 March 1990, prior to giving approval for destruction of the material, Cabinet was informed that representations had been received from a solicitor representing certain staff at the Centre.[56] However, while these representations had sought production of the material, Cabinet was advised that no legal action had actually been instituted (nor was any legal action subsequently instituted)..."[57]

5.19. It needs to be understood that the above statement was written some five years ***after*** the event. It is suggested that not only is the statement quite disingenuous but a rewriting of the chronology of events with critical omissions when recording that no legal action (i.e. court proceedings) was ever instituted without pointing out that there was no purpose in such a costly legal venture against the Crown when the reason for the foreshadowed action (i.e. access to the documents) could not be achieved once the evidence had been shredded. The chronology of events shows that, at the time Cabinet ordered the shredding, and when the shredding was carried out, court proceedings were still anticipated and being worked on by Mr Coyne's solicitors;

5.20. On 19 March 1990 Ms Matchett sought further advice from the Crown Solicitor regarding Mr Coyne's letter of 8 February 1990 and enclosed a copy of the Walsh Memorandum of 14 February 1990 which set out, in unequivocal terms, the scope of the foreshadowed court proceedings. Mr Coyne and his solicitors (including the two relevant trade unions, the Queensland Professional Officers' Association and Queensland Teachers' Union) were being led to believe that the Crown's position was still ***"interim"*** thereby believing that access would be achieved out-of-court because the Department would ultimately have to comply with its obligations under *Public Service Management and Employment Regulation 65*. They took the

[55] Exhibit 9 ibid.

[56] This admission is quite critical in the affair because it gave an insight into the state of knowledge of the Cabinet at the time. It was ultimately revealed when Mr Beattie tabled the relevant Cabinet submissions on 30 July 1998. On examining the material, leading Australian criminal barrister Mr R F Greenwood QC advised in August 1998 that it was sufficient to inculpate all members of State Cabinet in a breach of section 129 of the *Criminal Code (Qld)* and sections 31 and 32 of the *Criminal Justice Act 1989*. He later reaffirmed this view nationally on Channel Nine's current affairs program *"Sunday"* on 21 February 1999.

[57] See Volume 1 Queensland Government p17 Submissions and Supplementary Submissions and Other Written Material to Senate Select Committee on Unresolved Whistleblower Cases authorised to be published October 1995.

reasonable view that a writ at such a stage of on-going legal discussions would be unnecessarily provocative and premature, and not for a moment believing that the Crown would be secretly destroying the evidence while such assurances had been given and were being repeated;

5.21. On 22 March 1990 the Secretary to Cabinet wrote to Ms McGregor in the following terms:

> **"I refer to previous correspondence concerning the disposal of certain records of an enquiry conducted by Mr N J Heiner in November 1989 into matters relating to the John Oxley Library Youth Centre (sic)*.**
>
> **On 5 March 1990, Cabinet decided that the material be handed to the State Archivist for destruction under the terms of section 55 of the *Libraries and Archives Act 1988.* Accordingly, I am forwarding the material to you for necessary action."**[58]
>
> * This is a repeat of a previous typing error as it should have said John Oxley Youth Centre.

True motives withheld from the archivist

5.22. It is relevant to note in the above Cabinet letter that even then the archivist was not fully informed of its real motives for destroying the material. Notwithstanding that lack of frankness, it is submitted that the archivist's professional standards and duty to be impartial should have caused her to ask, at the time, as to whether anyone was actually threatening legal action or had some legal claim on the material, albeit for a temporary period. Instead, it appears that she failed to pay any attention whatsoever to any citizen's lawful claim on the material inherent in her public duty as independent keeper of public records and only focused on what the Executive Government wanted done;

5.23. The events of 23 March 1990, when the actual shredding occurred, were recorded in two documents obtain under freedom of information from the Department of Administrative Services. The first State Archives memorandum dated 23 March 1990 was written by Ms McGuckin, senior archivist, which states:

> **"Ken Littleboy from Cabinet Office collected me from Queensland State Archives on 23 March 1990 at 2.30pm. We went to the Executive Building and collected the records of the Inquiry by Mr N J Heiner, that Lee McGregor and myself had inspected on 23 February 1990.**
>
> **We took the box of records to the Family Services Building where I took possession of the records and myself and Trevor Walsh from the department destroyed them in a shredding machine.**
>
> **All the records were destroyed - paper, cassettes and computer disc."**[59]

[58] Exhibit 13 Lindeberg's List of Exhibits **"The Shredding**" to the Australian Senate Select Committee on Unresolved Whistleblower Cases 25 January 1995.
[59] Exhibit 14 ibid.

No transparency before an irreversible act

5.24. The shredding was carried out in secrecy. No public notice was given. Neither Mr Coyne nor his solicitor, both interested parties in the welfare of the records, were officially informed that this irreversible act was about to happen. They were first officially told on 22 May 1990 despite their known interest in the continuing existence of those public records upon which their foreshadowed court proceeding was based;

5.25. Their democratic and lawful right under the rule of law to seek injunctive relief through the court to stay the shredding and seek a judicial interpretation of the statute in question was denied them by the willful act of destroying the evidence and using deceitful information as a delaying tactic. The Government's deception that the Crown Solicitor was still considering whether access would be granted pursuant to *Public Service Management and Employment Regulation 65* was the key instrument used, along with an accompanying deception perpetrated against its own State Archivist;

5.26. It is my declaration that the State Archivist was lawfully and professionally entitled to be informed ***beforehand*** of ***all*** the relevant known facts in the possession of the Crown/State associated the records she was appraising for retention and/or disposal in order that he or she might perform his/her duties impartially in the public interest;

5.27. Furthermore, had full disclosure occurred, the proper impartial functioning of her role in accordance with the law and ICA standards would and/or should never have permitted her to approve the shredding, which in turn would have seen the archivist being instrumental in ensuring and protecting the administration of justice instead of being party to its obstruction, albeit unknowingly;

5.28. The Goss Cabinet had three Ministers qualified in law, with the new Queensland Premier the Hon Wayne Goss MLA being a practising solicitor. Then Queensland Attorney-General the Hon Dean Wells MLA was in attendance at the critical Cabinet meetings. It is difficult to understand how such a reckless course of action to destroy public records known to be required by a citizen could be embarked on unintentionally. It is ***now known***, through the tabling of relevant Cabinet submissions[60], that the Cabinet was fully aware that the records in question were being sought by Mr Coyne's solicitors but a writ was yet to be served. *This critically relevant information was withheld from the archivist in Cabinet correspondence with her*.

Hidden motives and outside influences

5.29. Put at its best, had full and frank disclosure to the archivist occurred, it may have stopped the Government – assuming its motives were in fact pure and *bona fide* throughout - embarking on a such reckless venture and allowed the administration of justice to take its proper course. However, more disturbing evidence has emerged concerning child abuse within a State-run institution, and now, it remains an open question that perhaps the Goss Government may have had another hidden agenda to fulfil when coming to office. The shredding permitted the known

[60] See State *Hansard* 30-31 July 1988.

staff misconduct to be destroyed and not used against those Youth Worker staff[61], whose unions (the Australian Workers' Union (AWU),[62] and the Queensland State Services Union) had direct lines of communication into and considerable influence within the new Labor Government (before and after coming to office), particularly the AWU. The Australian Labor Party (ALP) had been in the political wilderness in Queensland for close on 32 years and for the first time had the opportunity to wield unfettered power in Queensland's unicameral system of government. Also, within the high ranks of the public service across several departments, self-interest existed to ensure that the May 1988 pack-rape of a female JOYC inmate, which was covered up by the system at the time, never saw the light of day. In respect of the pack-rape incident, it brought the Queensland Teachers Union into the equation given that one of the teachers, Ms Karen Mersiadies, was seeking access to the Heiner Inquiry records too when we now know, a decade later, she was on the outing and that the incident was a feature in the Inquiry;

5.30. The approval to shred has been sheeted back to the archivist by the Goss Cabinet and Beattie Labor Government without recognising that the process, in which it (i.e. the Goss Cabinet) played a vital and initiating part, was itself far from being transparent and honest;

5.31. It is quite clear that a disposal document with a thorough checklist of "archival-value" questions should accompany every appraisal application in the sentencing of public records, and made a schedule under the proposed Public Records Bill (See Point 11). It should include a declaration to be signed by the applicant that the required information is answered honestly and to the best of the applicant's knowledge with a legal understanding that if discovered to be untruthful, appropriate penalties will follow. An offence of deliberately misleading the State Archivist and his/her agents in the performance of their duties should also be included;

5.32. Over the years, as this Affair has been attempted to be explained away, the discarded and redundant advice of 23 January 1990 offered to the Department when it was thought that the records belonged to Mr Heiner and were not the subject of legal proceedings became the "final" advice to justify the shredding. On 16 February, 19 March and 8 May 1990, the Department promised the prospective litigants - even ***after*** the decision to shred had been taken and carried out - that once the "final" advice arrived they would be given it; however, when one remains applies the chronology of events honestly, they already had in it on 23 January 1990, but never disclosed it or described it as "final" at the time. It became recycled advice to suit their purpose as the questions mounted about the shredding. At page 2 of the 23 January 1990 advice, Crown Law says that it enclosed suggested draft letters to be sent to the parties who were seeking access to the (Heiner Inquiry) records telling them that the records had been destroyed. The letter was never used because the Department knew the legal scene had changed, bringing forward a new set of legal questions and consequently the records were kept for another 8 weeks;

5.33. In evidence to the Senate Select Committee on Unresolved Whistleblower Cases in 1995, the "final" Crown Law advice letters to the parties, dated 22 May, were presented as originating from the 23 January 1990 Crown Law advice because the other relevant Crown Law advices of 18 April and 18 May 1990 remained concealed did not become public until late 1996 and in March 1997 respectively. It was suggested by the CJC that this key communication of 22 May 1990 was held back by Ms Matchett for reasons which were *"…less than frank with the union"*

[61] See Forde Commission of Inquiry into the Abuse of Children in Queensland Institutions section.
[62] Queensland's largest trade union and affiliated to the ALP. Mr Goss, although non-aligned, owed his elevation to the ALP leadership to the AWU and its factionally aligned MP's.

but which, although undesirable, did not, in the CJC's view, give rise to suspected official misconduct because the CJC did not *"…imagine that would be unusual*."[63] In fact, they were different letters constructed with a different state of knowledge at a different time. They were constructed by the Department and the Office of Crown Law in May 1990 when it was known that *Public Service Management and Employment Regulation 65* had always applied but was not publicly acknowledged and deliberately perverted by Government (including the Office of Crown Law) by using delaying-tactics and dissembling of the highest order which allowed everything to be destroyed.

6. THE ROLE OF THE STATE ARCHIVIST *AFTER* THE SHREDDING

6.1. It is submitted that the role of the State Archivist is just as critical in this Affair ***after*** the event as it was before the shredding occurred. While it is clear that the Heiner Inquiry documents were irretrievably lost once they were shredded, her duty to uphold the law pursuant to the *Libraries and Archives Act 1988*, *Criminal Justice Act 1989*,[64] *Criminal Code (Qld)* and archival professional standards and public sector ethical standards was not at the time or has never been relieved or diminished since if the law and archival standards were breached, or suspected of being breached in February 1990 when she was first approached by the Secretary of Cabinet to exercise her sentencing discretion;

An enduring public duty

6.2. If one takes the reasonable view that a deception/fraud was perpetrated against Ms McGregor by Executive Government and others ***before*** 23 March 1990 to achieve a desired outcome, then it is the other arm of my declaration that once the deception was discovered by her or revealed to her in her capacity as a public official and official keeper of public records, her non-transferable obligation to the protection of public records, and, more particularly, the administration of justice (insofar as State/Federal Archives play a role regarding the records of the Crown/State when facing known impending and/or pending litigation) should have been awakened within her;

6.3. However, on the face of the evidence, she has never been moved in either regard to break the chain of misconduct. It is this additional "accessory-after-the-fact" area in respect of the shredding of the Heiner Inquiry documents and related matters which the ICA must consider otherwise proper archival standards and ethics and the ICA's mission would appear to have no relevance ***after*** an illegal shredding has occurred and brought to the archivist's or public's attention;

6.4. This important point was addressed by Mr Chris Hurley in his independent analysis in the following manner:

> **"6.13 If the CJC's view goes unchallenged, it helps to lower the benchmark for archival responsibility. If that is allowed to happen, government**

[63] See Senate *Hansard* 23 February 1995 p124 Senate Select Committee on Unresolved Whistleblower Cases
[64] Now replaced with the *Crime and Misconduct Act 2001*.

> **archivists had better watch out. <u>Aggrieved whistleblowers come from behind</u>. All the forces of established interests are ranged against them. But they keep coming and each case prepares the ground better for the next one. Next time someone is aggrieved in a disposal case the issues will be better defined because of what has happened in the Heiner Case.**
>
> **6.14 The Heiner Case helps define the issues for the next person who is aggrieved by destruction of public records which denies them the opportunity to take their case further. Sooner or later someone in that position is going to make the connection between the wrong they feel when the records needed to make their case are denied them and the compliant archivist who made that possible. When that day comes, archivists better have answers on where their responsibility lies." (**Underline added**)**[65]

6.5. The revelations about the shredding first occurred on Wednesday 11 April 1990 when one of Brisbane's morning newspapers *The Sun* [now closed] splashed across its front page "**Labor Blocks Secret Probe**" and of relevance the Hon Minister Warner made the following public statement justifying the shredding:

> **"Because the inquiry was terminated there was no point in retaining the information." [66]**

6.6. It is worth noting that the Minister did not say that the material was shredded to prevent its use in litigation in accord with the Cabinet's decision (which was subsequently confirmed in State Parliament in May 1993 and confirmed on 30 July 1998 when the Cabinet submissions were tabled in State Parliament). Instead she falsely portrayed to the public the myth that the records were not required by the State or anyone else. She failed to inform the public also that her Department held the Dutney memorandum of 1 March 1990 spelling out that the lives of children were at risk because of the unacceptable conduct of certain staff, and yet, the Cabinet went ahead and shredded the material recording this unacceptable conduct (even recording an incident of alleged criminal paedophilia) in order to protect the careers of Centre staff so that it could never be used against them.

Undoubted knowledge after the event

6.7. On 17 May 1990 Mr Coyne wrote the following letter under a DFSAIA letterhead to Ms McGregor which, by any standard, must have alerted her to the true status of the documents she had approved to be destroyed on 23 February 1990. He said:

> **"Dear Ms McGregor**

[65] See p97 Submissions and documents Senate Committee of Privileges 63rd Report December 1996: The Hurley Analysis page 21.

[66] Exhibit 15 Lindeberg's List of Exhibits **"The Shredding**" to the Australian Senate Select Committee on Unresolved Whistleblower Cases 25 January 1995.

Re: THE INVESTIGATION OF COMPLAINTS BY CERTAIN MEMBERS OF STAFF AT JOHN OXLEY YOUTH CENTRE BY MR N HEINER

Mr Heiner conducted an investigation of complaints by certain members of staff at John Oxley Youth Centre in late 1989 and early 1990. Documents associated with this investigation are held by the Department of Family Services and Aboriginal and Islander Affairs.

My solicitor and I have made legitimate requests for a copy of these documents. The Director-General is still seeking legal advice and has been fully aware of the possibility of legal action.

According to *The Sun* newspaper of 11th April 1990, all documents and material tendered at the Inquiry were destroyed. The destruction of documents has never been confirmed in writing by the Department.

I feel certain the Director-General would not request the destruction of documents before legal advice was received and when legal action was known to be forthcoming if documents were not provided to me.

Given that the State Archivist has the power to dispose of public records, I request that these documents not be disposed of before my request for a copy is decided. It is my intention to have my request determined in a court if necessary.

If you are unable to comply with this request please contact me."[67]

No authority to direct the archivist

6.8. In documents released to me under freedom of information in May 1996 after considerable delay in that process during the Goss regime – immediately, and oddly, after the Borbidge Government announced the appointment of two barristers to investigate my allegations - it revealed that Ms McGregor immediately phoned and faxed the Coyne letter to Mr Walsh of DFSAIA. ***He was not her accountable officer***. State Archives at the time came under the Department of the Premier and Minister for Economic and Trade Developments, and Minister for the Arts. State Archives came within the Arts portfolio. Mr Walsh had no legislative authority to instruct her in how to perform her public duties honestly and impartially under the *Libraries and Archives Act 1988*, and it is open to conclude that his unauthorised interference and her compliance with it, may have breached sections 31 and 32 of the *Criminal Justice Act 1989*, She said on the fax dated 18 May 1990:

"Trevor

[67] See p20 Submissions and documents Senate Committee of Privileges 63rd Report December 1996.

> **This is a letter received from Peter Coyne. I spoke to him briefly by phone yesterday before receiving this letter & indicated that I could not comment on the matter.**
>
> **Lee McGregor."**

On the same fax sheet Mr Walsh handwrote:

> **"I rang Lee McGregor & advised that there is no need to respond to Mr Coyne's letter but that she should refer him back to me if he re-contacts her. I advised Ms McGregor that the matter is being handled by the Crown Solicitor.**
>
> **Trevor Walsh 18/5/90."**

6.9. On a State Archives memorandum dated 30 May 1990 under the heading "**Disposal of Records - John Oxley Youth Centre"** of particular relevance to this bracket of evidence Ms McGregor recorded:

> **"...On 17 May 1990 I was contacted by phone by Mr Peter Coyne, who had been manager of the John Oxley Youth Centre at the time of the enquiry, asking for confirmation that the records had been destroyed. Acting on the advice from Mr Trevor Walsh, a senior Officer of the Department of Family Services and Aboriginal and Islander Affairs. I declined to make any comment to Mr Coyne beyond suggesting that his lawyer should deal directly with the Department or with the Crown Solicitor's Office.**
>
> **Lee McGregor**
> **State Archivist."**[68]

Betrayal or intimidation

6.10. The question arising is where did the archivist's impartial public duty lie? There is no doubt that she was made aware that Mr Coyne had a legal claim on the documents. The fresh information (if indeed it was fresh to her) could and should have been verified by her by either further questioning Mr Coyne, his Department or the Office of Cabinet. In fact, her action at that point had the potential to see an archivist capable of triggering a major constitutional crisis in Queensland because the integrity of her office had been *prima facie* abused if she was satisfied or even if she had a mere suspicion that a deliberate deception had been perpetrated against her designed to cause her to act in a partisan manner as part of a wider conspiracy to obstruct Mr Coyne's known legal rights in destroying known and/or foreseeable evidence;

6.11. From that point, she was obliged to report her suspicions pursuant to (now) section 37(2)[69] of the *Criminal Justice Act 1989*, in order to uphold the integrity and independence of her public

[68] Exhibit 17 p2 Lindeberg's List of Exhibits **"The Shredding**" to the Australian Senate Select Committee on Unresolved Whistleblower Cases 25 January 1995.
[69] Formerly section 2.23 of *Criminal Justice Act 1989*

office. Notwithstanding that ignorance of the law is no defence, it is not clear whether the archivist even realised that the *Criminal Justice Act 1989* had to be considered in the performance of her task as the *Libraries and Archives Act 1988* does not forbid deceptive conduct being foisted on the archivist by anyone. The new Public Records Bill 2001 is still deficient in that regard;

6.12. Instead she liaised with the Department and was advised by the very same public official, Mr Walsh, who (i) had been served with notice of impending litigation by Mr Coyne's solicitor on 14 February 1990; (ii) had first-hand knowledge of Mr Coyne's demand for statutory access pursuant to *Public Service Management and Employment Regulation 65*; (iii) knew that some of the complaints concerned suspected abuse of children, possibly including the 1988 pack-rape incident; and (iv) had assisted in shredding the material on 23 March 1990 which he knew Mr Coyne was still seeking access to thereby obstructing his (Mr Coyne's) legal rights;

6.13. However, there is another disturbing twist in the sequence of events which cannot be ruled out other than putting Ms McGregor under oath before a properly constituted tribunal in order the air of suspicion can be cleared. The twist is this: If she reported the Cabinet over its on-the-record deception against her own office, would she be reporting on herself if she enjoyed that same state of knowledge obtained by other means like telephone calls from the Cabinet Secretary? Ms McGregor was apparently unaware of Mr Coyne's legal rights before the shredding and therefore had nothing to worry about if she complied with her duty to report the suspected official misconduct involved, but she did not, and, on the weight of compelling evidence, only worsened the situation when she took advice and assistance of another public official who had other *prima facie* motives in keeping Mr Coyne in the dark, and who had no lawful authority whatsoever to advise her in how she should properly perform her duties under the *Libraries and Archives Act 1988.* Notwithstanding she may seek advice from whomsoever, but under these circumstances it was imperative for her to maintain and be seen to maintain her statutory independence and it could hardly be said that Mr Walsh came to the matter with an impartial mind disinterested in the outcome, and perhaps all were joined in a conspiracy to defeat Mr Coyne's known course of justice;

6.14. On the face of compelling evidence, there can be little doubt that she knew, as from 17 May 1990, that the Heiner Inquiry documents in fact ***were required*** contrary to the official information given to her by the Goss Cabinet on 23 February 1990, and that the material was also foreseeable or foreseen evidence, and that she had approved its destruction - but she did nothing to preserve the impartial administration of justice. It is submitted that at that point she had an unequivocal lawful and professional duty to act to protect the integrity of her role pursuant to the *Libraries and Archives Act 1988* and the ICA's mission, and to act pursuant to the lawful obligations of the *Criminal Justice Act 1989.* It remains open that Mr Coyne may not have been telling her anything new concerning the legal demands on the records she had approved to be shredded, and therefore, she, along with Mr Walsh (and others) had a vested (joint-inculpatory) interest in the outcome of who knew what, when and what was done with a certain state of knowledge to the records Mr Coyne was seeking information on;

6.15. It is submitted that the following extract from the ICA's Code of Ethics is relevant:-

> 1. **Archivists should protect the integrity of archival material and thus guarantee that it continues to be reliable evidence of the past.**

> The primary duty of archivists is to maintain the integrity of the records in their care and custody. In the accomplishment of this duty they must have regard to the legitimate, but sometimes conflicting, rights and interests of employers, owners, data subjects and users, past, present and future. The objectivity and impartiality of archivists is the measure of their professionalism. They should resist pressure from any source to manipulate evidence so as to conceal or distort facts."

Continuing silence

6.16. Instead, Ms McGregor steadfastly refused to publicly repudiate the shredding and the subsequent CJC misrepresentation of her proper role for as yet unknown reasons over a decade, despite the issue constantly rearing its head in the media, various Parliaments, professional literature and seminars. She carried her silence into her recent retirement. It is recognised that the potential legal/political and *prima facie* criminal ramifications flowing out of a rejection of the so-called official Queensland position of her role were and remain extremely grave. These consequences are now evident in the findings of the Morris/Howard Report with the unresolved questions of whether the open criminal findings may ultimately encompass the entire Goss Cabinet and others, and the more recent revelations of child abuse at the Centre throwing a new light on everything. Nevertheless, while she remained silent for a decade, others have not. This important gap has been filled by contradictory notions coming from the CJC and former Crown Solicitor, all publicly misrepresenting her statutory duty, which has been necessary to cover up the illegality of the shredding in which all now have a stake in keeping it buried;

6.17. It is suggested if the archives link in the chain of maladministration and misconduct in the administration of justice is not broken by a relevant State or federal archivist, then the task may have to fall on fellow archivists in the world community bound by the ICA's Code of Ethics. It should also concern the media, civil liberties, the law society and Barristers' Bar if principle counts for more than just looking after mates. It is plainly impermissible that the profession's mission be abused or used as a device to unlawfully destroy evidence, cover up child abuse, obstruct the administration of justice and deny any citizen in a democracy his/her right of access, by statute or court order, to public records held, at the relevant time, under an archivist's lawful control;

6.18. It is submitted that the following extract from the ICA's Code of Ethics is also relevant:-

> **8. Archivists should use the special trust given to them in the general interest and avoid using their position to unfairly benefit themselves or others**.
>
> Archivists must refrain from activities which might prejudice their professional integrity, objectivity and impartiality. They should not benefit financially or otherwise personally to the detriment of institutions, users and colleagues...."

7. THE ROLE OF STATE ARCHIVIST *POST* THE CJC'S ARCHIVAL STANDARDS DECLARATION

7.1. The shredding was brought to the attention of the CJC by me on 14 December 1990 to investigate its legality under a charge - known as "the Coyne case" - used to dismiss me from my job as a trade union official. Throughout the entire period of this affair, the CJC never interviewed the State Archivist once (as far as the public record indicates), and permitted her to retire in late 1999/early 2000 without having to explain her extraordinary conduct associated with the shredding and its aftermath reaching back over a decade;

7.2. The CJC did not and has never issued orders on any Government Department or the Cabinet Office pursuant to Part 3 of the *Criminal Justice Act 1989* to hand over all relevant documents associated with the shredding. In the first instance it wrote to the Cabinet Secretary in April 1991 seeking details associated with the shredding and they were provided in part in return. Of relevance to this submission, the Cabinet Secretary pointed out that prior approval was sought and obtained from the State Archivist before the shredding occurred but mentioned nothing of the lawful demands on the material at the time;

7.3. On 31 May 1991[70] the CJC dismissed the complaint asserting that the records were destroyed lawfully because approval from the State Archivist pursuant to the *Libraries and Archives Act 1988* was sought and obtained before the shredding occurred. In my response[71] I argued that it was not just a matter of whether the Archivist gave his/her approval beforehand but on what information her decision was based;

7.4. The CJC officially responded on 23 August 1991[72] by indicating that the Archivist was informed beforehand by Cabinet that the material was not required which brought an immediate response from me that the records were in fact being sought by Mr Coyne (and his union), and consequently the approval was obtained by deceptive means.

Misrepresenting the archivist's proper role in 1993

7.5. In mid-1992 the CJC contracted then barrister Mr Noel Francis Nunan[73] [now a Stipendiary Magistrate in Brisbane] on a "pro-tempore" basis to the review my complaint. Once again, he did not interview the State Archivist but did interview Mr Coyne and myself at CJC Headquarters in August 1992. On 20 January 1993 the CJC's first position (which still remains relevant to the CJC) in respect of the role of the State Archivist in this affair was put in writing. It stated:

[70] Exhibit 24 ibid.
[71] Exhibit 25 p1. ibid.
[72] Exhibit 26. ibid.
[73] It was unknown to Mr Lindeberg at the time that Mr Nunan was formerly an ALP activist, member of the Association of Labor Lawyers (just as Mr Barnes of the CJC was along with Mr Goss), and former working colleague of Mr Goss (prior to him entering Parliament) at the Caxton Street Legal Service which was centre run on a *pro bono* basis by solicitors for the general community who could not afford their prospective legal expenses. This relationship, known by the CJC and Mr Nunan himself, plainly giving rise to apprehended bias, did not concern the CJC when contracting Mr Nunan to investigate *prima facie* misconduct by the Goss Cabinet. Neither did it cause him to declare this connection to Messrs Lindeberg and Coyne in August 1992, nor cause him to decline the commission so that any perception of possible bias could be avoided, hence he may have knowingly brought his profession into disrepute.

> **"...When interviewed you (i.e. Mr Lindeberg) could not point to any specific section of the *Libraries and Archives Act 1988* which had been breached but you thought that the State Archivist had been misled because she was not informed that the documents were required for the purposes of litigation. There is no offence of misleading the State Archivist and under the Act he or she would appear to have an almost unfretted (sic) discretion to decide which public records should be preserved and which records can be destroyed. Therefore I can see no breaches of this Act..."**[74]

7.6. It remains my constant position that the State Archivist could not perform her public duties honestly and impartially pursuant to the *Libraries and Archives Act 1988* if all relevant facts were not provided to her when deciding the fate of public records under the appraisal process. This position was argued publicly for years and in 1994, for the first time, before the Australian Senate in the form of its Select Committee on Public Interest Whistleblowing chairman by Senator Jocelyn Newman[75] My first submission was called "Unprincipled Conduct in Many High Places";

7.7. The aforesaid Senate Select Committee unanimously recommended in its report that the Heiner Affair be investigated by the Goss Government. It refused. The Australian Senate then established the Senate Select Committee into Unresolved Whistleblower Cases in December 1994 which specifically cited the Heiner document shredding within its Terms of Reference for examination. The Committee was chaired by Tasmanian ALP Senator Shayne Murphy[76] and met throughout 1995. Its first public hearings occurred in Brisbane on 23 February 1995. The CJC appeared before the Committee as I did with one of Australia's most eminent senior counsel Mr Ian Callinan QC (now Justice of the High Court of Australia) and junior counsel Mr Roland D Peterson.

Misrepresenting the archivist's proper role in 1995

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

> **"...We have to look at the archivist, because Mr Lindeberg is concerned that her actions in authorizing the destruction were inappropriate. You are aware that the advice of the archivist was sought because the Crown Solicitor said that these documents could be public records. The archivist's duty is to preserve public records which may be of historical public interest; her duty is not to preserve documents which other people may want to access for some personal or private reason. She has a duty to protect documents that will reflect the history of the state. Certainly she can only**

[74] Exhibit 36 p2 Lindeberg's List of Exhibits **"The Shredding**" to the Australian Senate Select Committee on Unresolved Whistleblower Cases 25 January 1995.

[75] This Committee took evidence from whistleblowers throughout Australia, as well as State Governments and bodies and academics interested in the issue to assist the Federal Parliament formulate national whistleblower protection legislation. Senator Jocelyn Newman produced a unanimous report **"In The Public Interest"** in August 1994. Federal legislation in the area of whistleblower protection has yet to be presented to the House of Representatives.

[76] In 2001, Senator Murphy defected from the ALP to become an Independent.

> **preserve public records, but there is no commonality necessarily between public records and records to which Coyne and other public servants may be entitled to access pursuant to regulations made under the *Public Service Management and Employment Act.***
>
> **In my submission, the fact that people may have been wanting to see these documents - and there is no doubt the government knew that Coyne wanted to see the documents - does not bear on the archivist's decision about whether these are documents that the public should have a right to access forevermore, if necessary. That is the nature of the discretion that the archivist exercises. The question about whether people have a right to access these documents is properly to be determined between the department, the owner of the document and the people who say that they have got that right. That is nothing to do with the archivist, so I suggest to you that the fact that was not conveyed to the archivist is neither here nor there. That has no bearing on the exercise of her discretion."**[77]

and

> **"...Mr Lindeberg has a view about the obligation of the archivist. The commission does not share that view. Its view is based on legal advice it obtained from the barrister it retained to do the job"**[78]

An unthinkable act - especially for a Government

7.9. In a submission before the Senate Select Committee on my behalf, Mr Callinan QC set out what he saw the law required in relation to the Heiner Inquiry documents with Mr Coyne's solicitor's letters in the system:

> **"Although in turn there is no reference to defamation, there are only two possible types of proceedings that could possibly be contemplated at that stage. Those proceedings would either be defamation or proceedings by way of prerogative writ or judicial review to get access to the documents. So, in either case, those documents were critically important and critically relevant to any proceedings that Mr Coyne might take."**[79]

Mr Callinan QC said further:

> **"...The real point, on any view of this matter, is that legal proceedings that were threatened would inevitably involve necessary recourse of the documents. The documents ought not, for that reason, to have been destroyed."**[80]

[77] Evidence to the Murphy Select Committee Senate *Hansard* 23 February 1995 p108.
[78] ibid.p137.
[79] ibid. p38
[80] ibid.

7.10. Mr Callinan QC gave further expression on legal arguments concerning the course of justice which appears not to have exercised the minds of the CJC in any depth during its examination of the evidence, despite this issue being one of the core elements in my allegation. He said:

> **"...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 them. That is unthinkable. If one had commercial litigation between two corporations and it emerged that one of the corporations knowing or believing that there was even a chance it might be sued, took a decision to destroy evidence, that would be regarded as conduct if the greatest seriousness - much more serious, might I suggest, if done by a government."**[81]
>
> (*The CJC's view in its February 1995 submission p46.)

7.11 The CJC gave contradictory evidence to the Senate Select Committee which I contended misrepresented the proper role of the archivist in both cases. My junior counsel Mr Peterson wrote to the Committee on 26 May 1995 informing the Senators that:

> **"...the significance of shredding "public records" with haste is, to say the least, monumentally indefensible in our system of justice..."**[82]

Destroying public records in an allegedly free society

7.12. Former Crown Solicitor Mr Ken O'Shea had a Memorandum tabled in the Queensland Parliament on 21 March 1995 relating to this bracket of evidence which also went to the Senate Select Committee. He said:

> **"The *Libraries and Archives Act 1988* reposes a wide discretion in the Chief Archivist to authorise destruction of "Public Records" (which is what the Crown's ownership of the Heiner Documents made them). Cabinet clearly had a right to seek their destruction and, although I did not advice her on the question, the Chief Archivist was clearly within her rights in authorising their destruction.**
>
> **In a free society, a person (and this includes the Crown) does not need to find an enabling law to enable that person to destroy his or her own property. In a free society a person (which, as I said, includes the Crown) may do what he**

[81] ibid.p39.

[82] See Volume 3 Shredding of the Heiner Documents Murphy Select Committee Submissions, Supplementary Submissions and Other Written Material authorised to be published by Australian Senate October 1995.

> **likes with his property, including destroying it, unless there is some positive law preventing its destruction."[83]**

7.13. In my Submission in Reply dated 3 July 1995 to the Senate Select Committee, I made the following comment challenging the Crown Solicitor's notions of the "unfettered ownership of public records" (which I suggest is of particular relevance in the independent mission of archives) and about his concept of a so-called "free society":

> **"…Mr O'Shea speaks about the Government's right to destroy its "own" property in accordance with a Statutory regime permitted under the *Libraries and Archives Act 1988*. He opens up an astounding range of questions concerning the real ownership of public records, and on what factual basis such records may be destroyed while avoiding the reality that the records in question had a statutory demand on them, and were required for foreshadowed litigation of which the Departmental Director-General Ms Matchett, who took them into her possession from Mr Heiner, unquestionably knew about.**
>
> **Mr O'Shea seems to believe that one individual's right to seek a judicial review of a statute concerning access to certain (or any) public records, within the rule of law, can be thwarted by the Crown wilfully destroying such official records in full knowledge of such a demand because the Government of the day allegedly owns public records. He then boldly calls such an act as a pointer of "a free society!"**
>
> **The government of the day, their servants and their legal officers are the mere custodian in bailment of such records on behalf on the Crown in perpetuity."[84]**

The Hurley Challenge

7.14. Despite the CJC's misrepresentation of the archivist's proper role, it was not challenged by the Committee and remains on the public record before the Australian Federal Parliament. However, in March 1996 then Chief Victorian Archivist Mr Chris Hurley (and then Australian representative on the International Council on Archives) independently took up the challenge in his expert analysis of the shredding based in evidence provided to the Murphy Select Committee. A copy of his analysis was provided to the CJC and Queenland's State Archivist bringing no public response. Of relevance to the ICA and others, he made the following significant and compelling conclusions:

[83] See Volume 1 Queensland Government Submissions and Supplementary Submissions and Other Written Material to Senate Select Committee on Unresolved Whistleblower Cases authorised to be published October 1995.

[84] See Volume 3 Shredding of the Heiner Documents. Lindeberg's Submission in Reply dated 3 July 1995 p22 Murphy Select Committee Submissions, Supplementary Submissions and Other Written Material authorised to be published by Australian Senate October 1995.

"9.1 The original destruction appears to have been the incautious act of a newly-elected government trying to escape the consequences of an ill-conceived decision of its predecessor. Like a mini-Watergate, the real harm came not from the original decision but from subsequent efforts to justify it and to minimise the damage.

9.2 The Goss government was ill-advised to have undertaken document destruction in this way. It is highly unusual, after all, for the disposal of a particular set of records (usually an administrative housekeeping matter) to be dealt with at cabinet level. The advice from Crown Solicitor O'Shea said the State Archivist's concurrence was mandatory but neither he nor any other adviser seems, at that early stage, to have considered the question whether the Archivist's discretion involved a consideration of issues in any way related to the government's reasons for wanting to destroy the records or any reasons citizens (historians apart) might have for wishing them to be preserved. So far as those reasons were concerned, the Archivist appears to have been treated as rubber stamp.

9.3 It was only subsequently, when the whistleblowers concerned voiced their objections and refused to be put off, that the Queensland Government, the Crown Solicitor, and the CJC developed and articulated theories about the nature of the Archivist's discretion and her proper role. At each stage in the development and defence of their position, the persistence of the whistleblowers compelled them to advance more and more outrageous arguments in order to sustain the flawed logic of the official Queensland position.

9.4 Finally, the official Queensland position collapses under its own internal contradictions. On the one hand, the State Archivist has an unfettered discretion to destroy records, potentially the power to retain or approve the destruction of official records on any grounds she chooses, arbitrarily, or by whatever whim takes her fancy in the passing moment. On the other hand, she is most severely limited to a consideration of historical value and it is not her proper function to consider any other ground for retention. The first proposition is based on the absence of any "legal/legislative provision" bearing on the matter and the second is advanced despite the absence of such provision restricting the archivist's discretion in the way suggested.

9.5 The professional associations - the Australian Society of Archivists (ASA) and the Records Management Association of Australia (RMAA) have long argued the propriety of submitting records disposal practices to professional review in the interests of public accountability (not just preservation of an historical record). Nowhere has the opposing case (that governments are free to destroy records at their own discretion subject only to a consideration of historical value and that State archives authorities have no role to play in support of accountability) been so strongly and persistently placed on the public record. <u>It cannot be allowed to stand</u>.

> **ASA and RMAA should take up the challenge and do whatever is necessary to place on the public record their opposition to the stance taken by the Queensland authorities in the Heiner case." (**Underline added**)**[85]

7.15. It is this challenge which I suggest still confronts the international community of archivists, and the Queensland Legislative Assembly. In my opinion, unless it is roundly rejected, as Mr Hurley has suggested, it has the potential to pervert and misrepresent the ICA's mission, its Code of Ethics and the Public Records Bill 2001 (Qld) in a profound manner.

8. THE ROLE OF THE STATE ARCHIVIST *POST* THE MORRIS/HOWARD REPORT

8.1. On 7 May 1996 the Borbidge Queensland Government appointed two independent barristers-at-law, Messrs Anthony Morris QC and Edward Howard, to investigate (on the papers held by various Government Departments and agencies) the Lindeberg allegations and the Harris/Reynolds allegations. They were to establish the legality or otherwise of my allegations, and recommend to the Queensland Government whether a public inquiry was warranted. On 10 October 1996 Queensland Premier the Hon Rob Borbidge MLA tabled the Morris/Howard Report;

8.2. I understand that Mr John McDonald[86], of Canadian National Archives and Chairman of the ICA's Committee on Electronic and Other Current Records has a copy of the Report;[87]

8.3. Messrs Morris QC and Howard found that the shredding was illegal, and went on to find that it was open to conclude that serious criminal and official misconduct offences had been committed involving:

> (i) the destruction of evidence which may have been required for judicial proceedings [section 129 of the *Criminal Code (Qld)*];
> (ii) obstructing justice and/or perverting the course of justice; [section 140 and 132 of the *Criminal Code (Qld)*]
> (iii) abuse of office; [section 92(1) of the *Criminal Code (Qld)*]
> (iv) official misconduct within the meaning of Sections 31 and 32 of the *Criminal Justice Act 1989*.[88]

8.4. The offences invited prison sentences ranging from one to seven years. They found that the *Libraries and Archives Act 1988* and the *Public Service Management and Employment Regulation 65* had been breached. They recommended the establishment of a public inquiry to

[85] See pp77-106 The Hurley Analysis Submissions and documents Senate Committee of Privileges 63rd Report December 1996.
[86] Mr John McDonald was the invited international keynote speaker for the 1999 Australian Society of Archivists' Annual Conference held in Brisbane in July 1999. He mentioned the Heiner Affair as an example of improper recordkeeping.
[87] A copy of the Report was sent to the Royal Canadian Mounted Police to assist in legal argument in their investigation into alleged wrongdoing associated with evidence given to the Krevers Commission of Inquiry into the shredding of Canadian Blood Bank records. This illegal shredding aided in covering up Canadian Government culpability in HIV/AIDS infection of the Canadian community in the 80's through the Red Cross's tainted blood supply.
[88] See pp203-205 Morris/Howard Report Conclusions and Recommendations: Criminal Offences.

thoroughly investigate my allegations but, on seeking advice on the report (which was an incomplete brief by any standard, and both unsuitable and premature for reference to the DPP) from the Queensland Director of Public Prosecutions (DPP), the Borbidge Queensland Government decided not to hold an inquiry. The DPP's advice still remains hidden from public scrutiny but, in earlier advice to then Shadow Justice Spokesman on this point, the DPP appeared to suggest that section 129 of the *Criminal Code (Qld)* was only enlivened when court proceedings were on foot. That view remains hotly contested by eminent jurists throughout Australia, including Justice Ian Callinan QC of the High Court of Australia, Messrs Anthony Morris QC and Robert F Greenwood QC and university law lecturers. The DPP purportedly advised the Borbidge Government in early 1997 that as a great many people had spent a great deal of time pursuing the truth that it was no longer in the public interest to continue. Aside from the fact that the Morris/Howard report was not a proper brief for the DPP to consider, his extraordinary view gives rise to many questions given that the right to a fair trial had been placed in jeopardy and by continuing to pursue the truth Mr Grundy and I discovered in 2001 that the crime of criminal paedophilia was being covered up in this affair which many people inside government knew about all along;

8.5. Case law is clear that the course of justice does not commence upon the issuing of a writ but turns on the state of knowledge of any would-be conspirators or individual at the time the act occurs or is planned. Mason CJ in *R v Rogerson* (1992) 174 CLR 268 F.C. 92/021 (1992) 60 A Crim R 429 is relevant to the facts in this affair. He said:*"… It is well established at common law and under cognate statutory provisions that the offence of attempting or conspiring to pervert the course of justice at a time when no curial proceedings are on foot can be committed* (12) *Reg. v. Murphy* (1985) 158 CLR, at p 609; *Vreones; Sharpe; Kane*; *Reg. v. Spezzano* (1977) 76 DLR (3d) 160; *Reg. v. Thomas. That is because action taken before curial or tribunal proceedings commence may have a tendency and be intended to frustrate or deflect the course of curial or tribunal proceedings which are imminent, probable or even possible. In other words, it is enough that an act has a tendency to frustrate or deflect a prosecution or disciplinary proceeding before a judicial tribunal which the accused contemplates may possibly be instituted, even though the possibility of instituting that prosecution or disciplinary proceeding has not been considered by the police or the relevant law enforcement agency* (13) *Reg. v. Spezzano* (1977) 76 DLR (3d), at p 163."

8.6. The Heiner Affair, at this time, is currently under consideration by a special sub-committee of the Australian Chapter of the International Commission of Jurists[89]. It possesses a 34-page submission dated 25 April 2000 by Mr R F Greenwood QC which sets out, in detail, compelling evidence revealing open to conclude acts of criminality and official misconduct undermining fundamental human rights and the rule of law.

Archives law within the administration of justice

8.7. Of particular significance, Messrs Morris QC and Howard made the following comment concerning the former Crown Solicitor's view of the *Libraries and Archives Act 1998* in this affair. At Page 97 of their report they say:

[89] Current Australian President is His Honour Justice John Dowd AO of the New South Wales Supreme Court.

"…The fact that a document is the Government's "own property" certainly affords no defence to a charge under s.132 or s.140 (or, for that matter, s.129) of the *Criminal Code*; the gravamen of the offence does not consist in a wrongful interference with another person's property rights (which may constitute, for example, stealing under s.391 of the *Criminal Code*, or willful destruction of property under s.469 of the *Criminal Code*), but in the fact that the destruction of property (whether it belongs to the person who destroys it, or to anyone else) may interfere with the due administration of justice.

Nor is the fact that the destruction occurred "in accordance with a Statutory regime which permitted ....destruction" of any relevance. The State Archivist's authorization for the disposal of a public record under s.55 of the *Libraries and Archives Act 1988* does not over-ride ss.129,132 or 140 of the *Criminal Code*; it merely over-rides the general prohibition which Section 55 contains against disposing of public records without such authorization. Section 55 does not confer on the State Archivist the power to confer a plenary indulgence, authorizing the destruction of any document even if its destruction is prohibited by s.129 of the *Criminal Code* or would have the effect of obstructing, preventing, perverting or defeating the course of justice within the meaning of ss.132 or 140 of the *Criminal Code*; it merely empowers the State Archivist to exempt a document from the general requirement of section 55 that "a person shall not dispose of public records other than by depositing them with the Queensland State Archives".

8.8. The Morris/Howard Report made the following comments concerning the provisions of the *Libraries and Archives Act 1988*, which being a representative piece of legislation for the archives profession, may be of relevance to the ICA and others concerning proper archival standards. It states:-

" Section 33. One final matter may be thought deserving of consideration by any public inquiry is the question whether the provisions of the *Libraries and Archives Act,* and the procedures adopted by the State Archivist in applying the provisions of that Act, are adequate to prevent the inappropriate destruction of public records. Again, it would be inappropriate for us to pre-empt any views which may be formed by a person conducting a public inquiry into these matters. However, one possibility which occurs to us is that introduction of a statutory requirement that, prior to destroying any public record, the person seeking to destroy them must sign a certificate to the effect that:

33.1. All information provided to the State Archivist in support of an application for authorisation to destroy the relevant records is true and correct;

33.2. The certifying officer is not aware of any facts or circumstances, relevant to the exercise of the State Archivist's

> **statutory powers, which have not been disclosed to the State Archivist;**
>
> **33.3. The certifying officer has no reason to suppose that the records in question are or may be required for evidence in any pending or future proceedings of any judicial tribunal; and**
>
> **33.4. The certifying officer is not aware of any outstanding application to inspect the records, by any person who has a lawful right to do so (for example, under the *Freedom of Information Act,* or under Reg 65 - now Reg 103 - of the *Public Service Management and Employment Regulations*).”** [90]

8.9. It is relevant to point out that subsequent to the tabling of the Morris/Howard Report which discovered what was termed the “**Smoking Gun**” (pp74-76) concerning the unlawful shredding of photocopies of the original complaints on 23 May 1990 and the unlawful disposal of the original complaints on 22 May 1990 to a private citizen by the Department when it was known that Mr Coyne enjoyed a lawful access entitlement, the University of Queensland’s monthly newspaper *The Weekend Independent* [91]established in its April 1997 edition from the State Archivist that she did not approve either act pursuant to the *Libraries and Archives Act 1988*;

8.10. To my knowledge, this *prima facie* breach of the *Libraries and Archives Act 1988* confirmed by the State Archivist herself has been allowed to stand without redress under her Act, the *Criminal Justice Act 1989* or the *Criminal Code (Qld).* It appears that the State Archivist is in breach of section 8 of the ICA’s Code of Ethics set out at Point 8.17 which may warrant action and sanction pursuant to Point 06 of the Code;

8.11. The significance of the archivist’s role in the administration of justice becomes quite evident and critical. In summary, if an archivist’s role, as the independent keeper of public records, is capable of being abused through means of deception or purportedly misunderstood by suggesting that his/her approval to shred public records is extremely limited just because the Crown/State (i.e. the Government of the day) allegedly owns them and because it no longer wants them when a member of the public does and is prepared to seek access through the courts, and their destruction desired by the Crown/State’s must prevail, then it fundamentally changes what it means to be an archivist. It turns the archivist into a “rubber stamp” for the desires of executive government, and an unfettered obstructer of justice;

[90] See p217 Morris/Howard Report Conclusions and Recommendations: Criminal Offences.

[91] It is relevant to point out that former Queensland Police Commissioner Noel Newnham in his submission to the Connolly/Ryan Inquiry indicated that the acts represented *prima facie* evidence of a conspiracy to obstruct justice, and called the affair “*monumentally serious*”. His view was reported in the May 1997 edition of *The Weekend Independent* p8 **“Former police chief alleges conspiracy in Shreddergate affair.”** In May 1998 he returned to Queensland and interviewed several of the key players for the first time on the author’s behalf, and confirmed that allegations of child abuse were at the heart of the Inquiry. In February 1999 he appeared on Channel Nine’s national current affairs program “*Sunday*” - “Queensland’s Secret Shame” - and discussed his findings and the belief of the existence of a *prima facie* conspiracy to obstruct justice in the shredding.

8.12. Conversely, it is also being suggested that the State Archivist's discretion was so "almost unfettered" under the provision of the *Libraries and Archives Act 1988*, that even with the knowledge of all demands on records under appraisal, including a statutory demand, she could have still lawfully authorised their destruction;

8.13. The proposition inherent in the CJC's position is that an archivist can lawfully shred records even when they are known to be required in foreshadowed litigation up to the point of a writ being issued. In my opinion, it is an extremely dangerous notion and misrepresents the law. Unless firmly rejected, it may leave archivists facing potential penalties under the criminal law as being a party to destroying evidence and obstructing justice if they do so with full knowledge of the status of the material. It should be recorded that the CJC's senior counsel at the Connolly/Ryan Judicial Review into the CJC disingenuously argued that it was nonsense to suggest that an archivist should be required to check the Supreme Court rolls every time a record was about to be destroyed. The simple answer lay in an archivist having a legal entitlement to be fully informed by government and its departments, in a binding form, of all relevant facts associated with particular records under sentence. In my view, such a schedule should be attached to this Bill.

A duty to the law

8.14. It is therefore submitted that the archivist's overriding duty, because of his/her unique role as keeper of public records which may be real, foreseeable or foreseen evidence, is not to the Executive Government of the day, but to the law in the same manner that Attorneys-General are supposed to be duty bound as guardians of the public interest over and above any party political considerations;

8.15. If State/Federal archivists cannot be trusted by the public implicitly to maintain a vital link in any system of justice by acting independently and impartially in the protection of public records, then inevitably, evidence, which is or may be required for court proceedings or lawfully accessible, will be irretrievably lost through the shredder with no apparent redress available, and the right to a fair trial undermined;

8.16. In such circumstances, it would be open to conclude that justice could be obstructed by the State for the State to the detriment of the individual and society at large. It is also open to suggest that open and accountable government could be placed in great jeopardy at the hands of a reckless, compliant and recreant State/Federal archivist. In plain terms, it is suggested that the role cast on the archivist in this compelling case by the Queensland authorities sees a direct attack on the ICA's mission, brings the profession into disrepute, and renders the archivists' Code of Ethics to the status of a meaningless document which can be ignored when the archivist in question is either:

(1) isolated from his or her national and international colleagues;
(2) intimidated by the local political processes without the necessary support from his or her national and international colleagues;
(3) more concerned about local job security than upholding the ICA's mission and the profession's reputation; or
(4) shielded from admonishment by his/her local and/or national professional Archives Society/Association as a member rather than being seen as the

> custodian of a great tradition and upholder of the profession's independence and impartiality required to always act in the public interest.

8.17. It is submitted that the following extract from the ICA's Code of Ethics is relevant:-

> **8. Archivists should use the special trust given to them in the general interest and avoid using their position to unfairly benefit themselves or others**.
>
> Archivists must refrain from activities which might prejudice their professional integrity, objectivity and impartiality. They should not benefit financially or otherwise personally to the detriment of institutions, users and colleagues...."

An independent Public Records Review Committee

8.18. Under Clause 29 of the Public Records Bill (Qld) 2001, it is proposed to establish a Public Records Review Committee comprising of nine persons, eight of whom are appointed by the relevant Ministers, while the remaining one is nominated by the Chief Justice of the Queensland Supreme Court;

8.19. The Committee's function pursuant to Clause 29(2) is to advise the archivist and Minister about issues affecting the administration and enforcement of the Act; and to hear appeals by public authorities from decisions made by the archivist not to authorise the disposal of particular public records or classes of public records;

8.20. It is suggested that the right of appeal as it currently exists in the Bill under clause 19(2) is too restrictive and should be amended to permit the general public's right of appeal after all the matter under consideration is "the people's records" held in trust by the government of the day under the independent stewardship of its archivist. If the Heiner matter were to revisit Queensland's public administration under another name, it may eventuate that the Committee's independence could become a critical issue, and the current Bill does not appear to guarantee it. It would be wholly undesirable if an archivist could not rely on support from his or her advisory Committee in moments of considerable legal, political and constitutional controversy as the Heiner Affair evoked, and may yet still create on the profession in Queensland;

The Archivist as an Officer of the Parliament

8.21. It is my view that a State or Federal archivist should, by legislative requirement, be appointed in such a manner as to be deemed an officer of the Parliament in the same way the Clerk of Parliament, Ombudsman and Auditor-General are. Interestingly, under the Public Records Bill 1999, it was proposed that the Parliamentary record come under the archivist's control, but under the amended Bill this proposal has been dropped;

8.22. The matter of impartiality and independence in this area of decision-making concerning the fate of public records is of paramount concern. Relevant principles are well-enshrined in case

law. A leading decision of the European Court of Human Rights and of the European Commission in *Findlay v United Kingdom* (1997) 24 E.H.R.R. at para 73 appears to be relevant:

> *"In order to establish whether a tribunal can be considered as 'independent', regard must be had inter alia to the manner of appointment of its members and their term of office, the existence of guarantees against outside pressure and the question whether the body represents an appearance of independence.*
>
> *As to the question of 'impartiality', there are two aspects to this requirement. First, the tribunal must be subjectively free of personal prejudice or bias. Secondly, it must also be impartial from an objective viewpoint, that is, it must offer sufficient guarantees to exclude any legitimate doubt in this respect."*

8.23. In another leading case on judicial and quasi-judicial independence Le Dain J in *Valente v The Queen* (1985) 24 DLR 161 at pp169-170 said this:

> *"The word 'independence' in section 11(d) reflects and embodies the traditional constitutional value of judicial independence. As such, it connotes not merely a state of mind or attitude in the actual exercise of judicial functions, but a status or relationship to others, particularly to the Executive Branch of Government, that rests on the objective condition or guarantees*."

9. THE LEGAL STATUS OF PUBLIC RECORDS

9.1. In the course of this affair, the legal status of the Heiner Inquiry documents became a material factor. The CJC made a particular public claim on how public records were to be (allegedly) processed before becoming lawfully accessible, and therefore, it is respectfully suggested that the ICA and others may wish to consider the matter and take a position on this important process in the administration of justice and public administration because it impacts on the role of archivists and society at large;

9.2. When Mr Heiner handed his material in a sealed box to Ms Matchett in late January 1990 it was said at one stage that they were not filed, and suggested to me as being in a "state of limbo", that is, a curious law-free zone;

9.3. The subsequent inference being put was that Mr Coyne's rights under *Public Service Management and Employment Regulation 65* were only applicable when "a record or file" was placed on his personal file. Mr Coyne, his solicitors and his union strongly asserted that Regulation 65 had the broad scope of **"any departmental file or record held on the officer"**, and this interpretation was supported in advice of 18 April 1990 by the Crown Solicitor, and interestingly, in June 1989 by Mr O'Shea (the Crown Solicitor) when he was temporarily acting in the position of Queensland's Solicitor-General;

9.4. Nevertheless, before the 1994 Senate Select Committee on Public Interest Whistleblowing I argued, as a layman, that all public records have the "potential" to become a departmental record or file and a personal file. That view was incorrect as it was too lenient, and it provided the CJC, which had access to senior counsel's advice, to mischievously misrepresent the true nature of what is a public record and when it gains that status.

The CJC's public record metamorphosis

9.5. Of relevance to this issue the CJC informed the Senate Select Committee on Unresolved Whistleblower Cases in its February 1995 submission (pp52-53) that:

> **"In paragraph 10.3. of his submission, Lindeberg acknowledges that the true situation was that the Heiner Inquiry material was a "public record" and then goes on to note, "*All public records...have the potential to become a departmental record or file and a personal file*."**
>
> **That may well be true. Until that metamorphosis takes place, however, neither regulations 46 and 65 have any application.**
>
> **In paragraph 10.5. he suggests that all public records are covered by the regulations in question. This assertion has no basis in law or reason.**
>
> **Before either of the regulations come into play the records in question have to be placed on files relating to the officer. That did not happen in respect of the Heiner Inquiry and material. In the Commission's view therefore no right for Coyne to access the material arose and the Commission did not mislead the Senate Select Committee about the effect of these regulations.**
>
> **Lindeberg seeks to rely upon "a Crown Law general instruction" to further this argument. Indeed he says that the advice made it "mandatory on Ms Matchett (under *PSM&E Regulation 65*) to provide Mr Coyne with access to the original charges laid against him and any other documents generated on him during the course of the Heiner Inquiry."**
>
> **The opinion to which Mr Lindeberg refers advises that "given that each matter will, substantially turn on individual facts situation, it is not possible to provide an absolute and definitive advice to this question." It goes on to anticipate that the reports of officers who conducted grievance hearings under regulations (63)(6) would in accordance with common sense and good administrative practice be placed on official files or records, at which time such reports would become amenable to the rights conferred by regulation 46 and/or 65.**
>
> **As mentioned previously, the material generated by Mr Heiner was placed in sealed boxes and conveyed to the Acting Director-General. No report was produced and it cannot be said that at any time documents became records held on any particular officer."**

9.6. Further research on this point in order to address the CJC's assertions and set out a more comprehensive view in my Submission in Reply of 3 July 1995 to the Senate Select Committee on Unresolved Whistleblower Cases (p52) permitted this to be put:

> **"<u>A Wide Discretion cannot be Limited</u>**

7.10. The *Libraries and Archives Act 1988* while offering the State Archivist what may be deemed as a wide discretion on what may be destroyed, under statutory law interpretation she has no right to "read down" that discretion to only consider a public record's historical value against and in spite of other public interest considerations (e.g. legal, informational, data values) which pertain to such records under active consideration for destruction.

7.11. Mr Ian Callinan QC in his submission to the Committee stated:

> ***"...there are only two possible types of proceedings that could possibly be contemplated at that stage. Those proceedings would either be defamation or proceedings by way of prerogative writ or judicial review to get access to the documents. So, in either case, those documents were critically important and critically relevant to any proceedings that Mr Coyne might take."***

7.12. For the CJC to introduce the notion of "a metamorphosis" pertaining to public records opens up avenues of obstructing access to public records to a Government and/or public official by refusing to file identifiable documents in order to legitimise non-access by a claimant. It places the life of a record solely into the hand of the creator which may not always accord with the public interest or accountability. That is, there are inevitably many potentially embarrassing public records which could be destroyed between the moment of creation and/or receipt and their filing, which could and would undermine public confidence in open and accountable government and any government's record management and retrieval practices.

7.13. A public record is, and must be, a departmental record or file from the moment of its creation and/or receipt and possession by a Government agency, and be fully protected by the law from that moment.

<u>No Such Thing As An "Unofficial" File</u>

7.14. The Queensland Education Department, Administrative Law and Legislative Operations Branch issued guidelines* to its staff in "Education Views" 10 December 1993 (p.5) addressing subject matters of (i) what is a document for FOI access purposes; (ii) do "unofficial" files and documents have to be disclosed:

7.15. The Queensland Education Department officially described "a document" in the following manner:

"A document is any paper or other material on which there is writing, marks, figures, symbols and perforations having a meaning to a person qualified to

interpret them. It includes any disc, tape or other article or material from which sounds, images, writings or messages are capable of being reproduced.

Some common examples are files, correspondence, reports and working papers, jottings, diary entries, computer printouts, maps, and electronically stored data (including "E mail"). "Private" diaries are also covered if they contain entries about an officer's activities for work purposes.

These documents are also "public records" controlled by the Libraries and Archives Act 1988 (no matter where, when or why created or stored). That legislation prohibits dealing with any public record inconsistent with the department's approved Retention and Disposal Schedule. Improper dealings can attract substantial penalties and disciplinary action.

The Director-General can compel disclosure of departmental documents for inspection."

7.16. The Queensland Education Department officially answered the notion of the CJC's alleged "metamorphosis" having to occur with a public record in the following manner:

"...There is no such thing as an "unofficial" document or file. All documents received or created by the department are official documents."

*** These guidelines would be officially sanctioned by the Crown Solicitor as a matter of common practice.**

7.17. The central issue, is not whether the Heiner Inquiry documents were filed, but that they were (i) created and identifiable, (ii) officially defined as "public records" and (iii) the Department took them into its possession. Ms Matchett attempted to have me believe when she had taken the documents into her possession that they were "in limbo", and not a file or record.

7.18. Once Mr Coyne served the Government with official notice on 8 and 15 February 1990, the documents had other public interest considerations legitimately pertaining to and lawfully enforceable on them over and above any desire the Government may have had to destroy them even if it (and the Archivist) considered that they were of no historical value, and for that reason they ought not to have been shredded until, at least, the interests of Mr Coyne were satisfactorily resolved."

Thwarting the archivist's independent role

9.7. In my opinion, the CJC's understanding of when access law applies to document/s legally defined as "public records" warrants rebuttal by the ICA. Left as it is, public officials and Executive Government may ultimately deny archivists their proper statutory function by culling embarrassing

public records in the possession of the Crown/State by some extraordinary metamorphosis taking place *before* reaching the archivist. Therefore, unless it is reaffirmed that protection begins from creation and receipt of a transaction of any kind, irrespective of whether the document/s is officially filed or not, and that unless it is reaffirmed that a final right-of-access decision resides in court which requires any State/Federal archivist to be a vital partner in protecting evidence required in the administration of justice and in the public interest, a considerable mischief may have been created by the CJC flowing out of the Heiner affair.

10. RECOMMENDATIONS

RECOMMENDATIONS:

It is respectfully submitted that the following recommendations may be considered by the ICA in one of its appropriate forums or sub-committees given the increasing globalisation of record-keeping, its importance to open and accountable government, and the interaction between national governments, corporations and individuals in a technologically advanced new millennium:

1. That the ICA, pursuant to its Mission Statement and Code of Ethics, rejects the Queensland Criminal Justice Commission's (presumably supported in continuum by the Crime and Misconduct Commission) public assertion concerning its understanding of what the proper role of State/Federal Archivists is as expressed in its findings in respect of the shredding of the Heiner Inquiry documents;

2. That the ICA, pursuant to its Mission Statement, concurs with the Lindeberg Declaration, founded in the archives experience of the shredding of the Heiner Inquiry documents, that the role of State/Federal Archivists is a critical link in the administration of justice wherein public records known to be foreseeable or foreseen evidence in pending or impending court proceedings or the subject of a legally enforceable access statute shall not be destroyed by authorisation of any archivist affiliated to the ICA until the requirements of the law or the rights of the individual concerned have been satisfied to the law's full extent;

3. That the ICA, pursuant to its Mission Statement, requires any State/Federal archivist affiliated to the ICA, be provided beforehand by the relevant government department/agency/public official with a signed lawfully recognised certificate setting out all known relevant facts pertaining to any records under the appraisal process for disposal, in order that the archivist may be fully appraised of the facts before approving their disposal to ensure the integrity of the ICA's Mission Statement and the requirements of the law are upheld;

4. That the ICA be assured by the relevant Queensland authorities that its hithertofor public position in respect of the so-called proper role of Queensland's State Archivist in regard to the shredding of the Heiner

Inquiry documents and related matters has been reversed; and that the Queensland State Archivist's proper role as set out pursuant to the *Libraries and Archives Act 1989 (Qld*), and in the new Public Records Bill (Qld) 2001, other relevant laws and ICA Mission Statement will be recognised and respected, and that such notification be forthcoming within 90 days to the ICA in Paris, failing which, in accordance with its Mission Statement, the ICA may exercise appropriate sanctions in order to protect the integrity of the world mission of archives.

11. THE SMOKING GUN

In a Disposal Authority form (Form QSA-TS-026) used by Queensland State Archives and brought into existence by Queensland's State Archivist, Ms McGregor, while the war raged over this Affair, and the CJC's public misrepresentation of her role went unchallenged by her, it states this:

> "Authorisation for the disposal of public records is given under and subject to the provisions of Section 61 of the *Libraries and Archives Act 1988* (Reprint No.2) ("Section 61"). Public records must not be disposed of if disposal would amount to a contravention of Section 61. Particular care should be taken before disposing of public records of a Court or a Commission within the meaning of the *Commissions of Inquiry Act 1959 - 1989.*
>
> Public records must not be disposed if they are required:
>
> > (i) for any court action which involves or may involve the State of Queensland or an agency of the State; or (Underlining added)
> >
> > (ii) because the State holds documents which a party to litigation may obtain under the relevant Rules of Court, whether or not the State is a party to that litigation, or (Underlining added)
> >
> > (iii) pursuant to the *Evidence Act 1977*, or
> >
> > (iv) for any other purpose required by law. (Underlining added)
>
> Documents which deal with the financial, legal or proprietorial rights of the State of Queensland or a State related Body or Agency viz-a-viz another legal entity and any document which relates to the financial, legal or proprietorial rights of a party other than the State are potentially within the category of public records to which particular care should be given prior to disposal. Internal documents which strictly relate to uncontentious matters and do not involve areas of controversy (staff employment, discipline issues etc.) are unlikely to be required.
>
> If in doubt about the legality or probity of the disposal of any document which may fall within these categories you should obtain legal advice."

This form underpins the truth of the Lindeberg Declaration. It might be argued that the existence of Disposal Authority form makes my declaration superfluous, however, that would be to miss the point. The declaration restates what the law and proper archival principles demand, and it is recognised that this is not new.

However, what is new and of concern is that the State Archivist did nothing to correct the situation after learning that she approved the disposal of Heiner records (which on the plain reading of her own words in the Disposal Authority form could not have been given) on the basis of being supplied with false and misleading information by a Cabinet of the day.

Other material confirming the content of the Disposal Authority form exists in the draft International Organization for Standardization guidelines on "Information and documentation - Records management" being finalised as this document is being written. Its content is of direct relevance to the profession of archives, and its final structure is to be confirmed by a vote from interested parties throughout the world on 24 January 2001.

Of direct relevance to this affair and the Queensland Archives Disposal Authority, the draft states the following at page 16 covering the area of disposition of records:

> "9.9. Implementing disposition
>
> Disposition authorities which govern the removal of records from operational systems should be applied to records on a systematic and routine basis, in the course of normal business activity. No disposition action should take place without the assurance that the record is no longer required, that no work is outstanding and that no litigation or investigation is current or pending which would involve relying on the record as evidence." (underlining added)
>
> It goes on to state at page 17:
>
> "The following principles should govern the physical destruction of records:
>
> - Destruction should always be authorized;
> - Records pertaining to pending or actual litigation or investigation should not be destroyed…; (underlining added)

In effect, her decision not to uphold the impartiality and integrity of her office brought the administration of justice into deep crisis.

In my opinion, the aforesaid Disposal Authority form should be made a schedule under the Public Records Bill 2001 so that the nonsense still being inflicted on us by the CJC (now known as the CMC) in respect of giving a clearance to the shredding of the Heiner Inquiry documents is exposed and completely demolished once and for all;

Nevertheless, the disturbing aspect of the Declaration is the continuing existence of this black mark – the Heiner Affair - on recordkeeping in Queensland. It shows that despite all the apparent

legislative safeguards on the statute books, they can be reduced in effectiveness if an archivist does not have the courage to act impartially and in the public interest, and is not prepared to stand firm and hold all persons or bodies to account (no matter how high or low within a public administration including officers in law-enforcement watchdog agencies) who may dare to abuse or misrepresent this critical office in any democracy for narrow self-interested purposes.

12. CHRONOLOGY OF EVENTS

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

Readers need to understand that this chronology, in its present form, has taken over a decade to compile. The system resolutely withheld important information every step of the way, and is still doing so. Significant documents, (Exhibits 20 and 31 to the Forde Inquiry) were accessed in February 2001 after an initial attempt by the Queensland Department of Justice and Attorney-General to refuse Mr Lindeberg access to them on highly questionable, if not unlawful, grounds.

It is now beyond question that the existence of child abuse behind the Centre's walls was knowingly covered up for nearly a decade. The abuse of children was ***always known*** by public officials in the system going back to 1988, and this state of knowledge reached the Goss Cabinet and relevant Minister at the time the shredding was ordered in March 1990.

Exhibits 20 and 31 confirm the existence of abuse, or, at the very least, sufficient *prima facie* evidence to suggest that it may have been going on quite regularly and warranted a proper investigation. Exhibit 20 reveals admissions that abuse of children reached back to the Sir Leslie Wilson Youth Detention Centre from where many Youth Workers came to work at the JOYC when it was opened in February 1987, and, unhappily, the abuse continued at the new institution.

However, in an intensive 6-month investigative expose` by investigative journalist Bruce Grundy in 2001, he discovered that the pack-rape (i.e. the offence of criminal paedophilia) of a 14-year-old Aboriginal girl by four male inmates occurred in 1988 and was covered up by the management and possibly others in Departmental Head Office and in other places. He discovered that evidence of the cover-up was a matter covered by Mr Heiner in the course of his inquiry. This critical information had been hidden for over a decade. The incident occurred under Mr Coyne's management of the Centre during a bush outing conducted by professional staff at the Centre with no Youth Workers in attendance. Mr Grundy learnt that the alleged crime was not reported to the police until three days after the incident when the evidence would have gone.

The year mentioned on each entry of the chronology shows when the information first became public and by which means.

JOYC=John Oxley Youth Detention Centre DFS=Department of Family Services DFSAIA=Department of Family Services and Aboriginal and Islander Affairs QSSU=Queensland State Services Union QPOA=Queensland Professional Officers Association, Union of Employees QTU=Queensland Teachers' Union AWU=Australian Workers' Union SLWYDC=Sir Leslie Wilson Youth Detention Centre

POINT:

1. **24 May 1988.** The pack-rape of a 14-year-old female Aboriginal inmate by four male inmates occurs during a supervised bush outing controlled by JOYC staff with no Youth Workers in attendance. **(Answer provided on 5 January 2002 to Question on Notice No 725 dated 25 November 2001 and from sources contacted by Mr Grundy)**

2. **26 May 1988.** Department (allegedly) informs mother of the incident, but, in 2001 the mother states that she has no knowledge of any such notification by Centre staff; (**Answer provided on 5 January 2002 to Question on Notice No 725 dated 25 November 2001 and *The Courier-Mail* 17 November 2001);**

3. **27 May 1988.** The pack-rape incident – i.e. an incident of criminal paedophila – is referred to the Queensland Police Juvenile Aid Bureau, and the police call in a paediatrician to examine the girl. Police interview girl on 28 May 1988. The CJC, on 16 November 2001, claim that the matter was referred to the police ***"…at the time"*** and that the incident was not covered up (**Answer provided on 5 January 2002 to Question on Notice No 725 dated 25 November 2001 and CJC Media Release 16 November 2001**);

4. **29 September 1988.** Mr Coyne drafts a confidential report (Exhibit 31 to the Forde Inquiry) to Mr Gary Clarke, DFS Director of Organisational Services, and Mr Ian Peers, DFS Executive Director (Youth Support) in which he analyses the level of competence of JOYC Youth Workers, many of whom came from SLWYDC. Mr Coyne rates all staff against a set criteria which includes whether staff verbally, physically or sexually abuse resident children. He finds that 57% should be dismissed immediately. In a further breakdown, he finds that 43% were allegedly highly incompetent, and 14% were allegedly unsatisfactory enough to warrant their dismissal.**(2001 - Mr Lindeberg's application to the Department of Justice and Attorney-General);**

5. **7 April 89.** Mr Coyne records a conversation between himself and Mr Fred Feige, Senior Youth Worker and AWU/JOYC Workplace representative. According to the official record (Exhibit 20 to the Forde Inquiry), Mr Feige admits to hitting children outside the *Children's Services Regulation* 23(10), and states he is aware of other assaults by other staff outside the law, and of a recent assault against a child in the time-out room. Mr Coyne records that Mr Feige admits that he is only giving 25% effort towards his job. The record indicates that Mr Coyne informed Mr Feige that he intended contacting the Departmental Redeployment Team about him. **(2001 - Mr Lindeberg's application to the Department of Justice and Attorney-General)**

6. **23 June 89.** A JOYC management memorandum is sent Mr Gary Clarke, DFS Director of Organisational Services, regarding an alleged criminal assault of a child by senior Youth Worker Mr Fred Feige. Legal advice is sought on the matter. (See Point 54). **(2000 – Journalists Mr Bruce Grundy's Freedom of Information application on the Department of Families)**

7. **14 September 1989.** Meeting between DFS and Ms Janine Walker QSSU Director Industrial Relations on behalf of the concerned Youth Workers re. Mr Coyne's management of the JOYC. Director-General Mr Alan Pettigrew insists complaints must be put in writing before any investigation will be considered (1990);

8. **26 Sep 89.** Incident occurs at JOYC that sees three children, two girls aged 12 and 16 and a boy aged 14, handcuffed to a tennis court fence all night on the orders of Mr Coyne because of their alleged disruptive behaviour. Mr Coyne orders a male Youth Worker to work a double-shift knowing that the officer had established an improper relationship with one of the handcuffed girls and was facing disciplinary action as a consequence. **(1995 [in part] before the Senate Select Committee on Unresolved Whistleblower Cases and 2000 [completely] by journalist Mr Bruce Grundy by FOI application against the Department of Families);**

9. 28 Sep 89. Mr Pettigrew visits JOYC and tells staff that he intends to hold an independent investigation into any written complaints **(1990);**

10. **10 Oct 89.** Written complaints against Mr Coyne handed to DFS. Documents immediately acquire status of "public record" and become "*a departmental record/file held on the officer (i.e. Mr Coyne*)" thus subject to *Public Service Management and Employment (PSME) Regulation 65.* The original complaints *never* left the DFS's possession until 22 May 1990, and therefore never lost their legal status (See Points 17, 19, 75, 79 and 80). **(1990);**

11. **18 October 1989.** Union delegation meets with the Hon Mrs Beryce Nelson MLA Minister for Family Services in her office at Parliament House to discuss concerns about JOYC. **(1990);**

12. 23 Oct 89. Hon Mrs Beryce Nelson MLA announces that there will be an investigation into the operations of the Centre. **(1990);**

13. **2 Nov 89.** Retired Stipendiary Magistrate Mr Noel Heiner's appointment is approved by the Hon Mrs Beryce Nelson MLA. She also expects him to investigate allegations of sexual abuse as well as physical abuse. **(1990 [in part] and 1998 [more completely] by interview with retired Queensland Police Commissioner Noel Newnham but Mr Heiner mentions nothing about the pack-rape incident only confirms the handcuffing matter);**

14. 6 Nov 89. Mr 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 admitted that she was mistaken in her complaint. **(1990);**

15. **13 Nov 89.** DFS appoints retired Stipendiary Magistrate Mr Noel O Heiner to carry out a Ministerial Inquiry ordered by the Hon Beryce Nelson MLA Minister for Family Services

(See The Nelson Statement of 15 May 1998 tabled in State Parliament on 25 August 1998). He is provided with specific terms of reference and required to investigate and report back on the specific written complaints against Mr Coyne, and on other matters touching JOYC security and treatment of detainees. Original complaints remain in the possession of the department **(1990);**

16. **22 November 89.** Mr Heiner takes written submissions and oral evidence from JOYC staff, which is placed on tape recordings, computer disks, and transcribed to hard copy. **(1990);**

17. **27 Nov 89.** Mr Coyne approaches Mr Pettigrew seeking (1) a copy of all the written complaints; (2) written advice on the process of how the complaints were going to be investigated; (3) the opportunity to organise and conduct a defence against the complaints laid. (These requests were later refused). He also indicated that it was impossible for him to defend himself without knowing what the specific complaints were. **(1990);**

18. **28 November 1989.** Mr Coyne approaches departmental staff assigned to assist Mr Heiner and registers his concerns as put to Mr Pettigrew. **(1990);**

19. **29 November 1989.** Mr Coyne is given a brief one-page outline of written complaints. He is refused access to specific written complaints handed to the Department on 10 October 1989. **(1990);**

20. **2 December 1989.** The Queensland Government changes. The Australian Labor Party wins office for the first time in 32 years. Hon Mr Wayne Keith Goss MLA, a qualified solicitor, becomes Premier and Minister responsible for State Archives. Hon Anne M Warner MLA becomes the Minister for DFSAIA, having been Shadow Spokesperson and aware of activities inside JOYC. The Minister replaces Mr Pettigrew with Ms Ruth L Matchett as acting DFSAIA Director-General. **(1990);**

21. **14 & 18 December 1989.** Mr Coyne officially requests of Ms Matchett copies of the original complaints and transcripts of evidence gathered by Mr Heiner in order to defend himself. He questions the legal validity of the inquiry, and informs Ms Matchett that he will sue for defamation if his career suffers as a consequence of the inquiry. **(1990);**

22. **2 Jan 90. Ms Matchett officially informed by Mr Ian Peers acting Deputy DFSAIA Director-General in a memorandum that original complaints against Mr Coyne are held on an official file in the department's possession created by Mr George Nix. It is described as "*…a file compiled by Mr Nix including the original letters of complaint.*" Mr Nix tells Mr Peers where it can be found while he (Nix) is in Adelaide; (Accessed in May 1996 from Mr Lindeberg's FOI June 1994 application on the Department of Family Services and Aboriginal and Islander Affairs);**

23. **5 Jan 90.** Mr Coyne becomes aware that Mr Heiner has evidence of possible criminal conduct concerning an alleged illegal entry by him into a JOYC worker's house. **(1990);**

24. **11 Jan 90.** Mr Heiner confirms to Mr Coyne that allegations of criminal conduct have been made against him. Mr Coyne gives evidence to Mr Heiner for the entire day. He is also accused of having an affair with JOYC Deputy Manager Ms Anne Dutney. He is told by Mr

Heiner that he (Heiner) only held copies of the original complaints, and that they (the original complaints) were in the department's possession. **(1990);**

25. **15 Jan 90. Mr Coyne seeks access to original complaints in a memorandum to Ms Matchett pursuant to *Public Service Management and Employment Regulation 65.* (1990);**

26. **17 Jan 90. Ms Matchett asserts that no complaints are on Mr Coyne's personal file. She officially advises him that #she is *not* aware of any other departmental file containing records of the investigation that he is seeking. (1990);# See Point 22 The Peers Memorandum of 2 January 1990.**

27. **17 January 1990.** Mr Coyne instructs his solicitors (Rose Berry Jensen) to threaten a writ of prohibition on the Department regarding natural justice being afforded to Mr Coyne in the inquiry process. The Department is given 24 hours to respond. **(1990);**

28. 18 Jan 90. Ms Matchett writes to the Crown Solicitor twice:(1) seeking advice regarding Mr Coyne's solicitors letter of 17 January 1990; (2) expressing concern over the legality of Mr Heiner's appointment and enclosing Mr Coyne's memorandum dated 15 January 1990; The Crown Solicitor confirms the legality of Mr Heiner's appointment pursuant to the *Public Service Management and Employment Act and Regulations 1988* but alerts her to possible defamation ramifications as witnesses are not immune from writ; **(Accessed in May 1996 from Mr Lindeberg's FOI June 1994 application on the Department of Family Services and Aboriginal and Islander Affairs);**

29. 19 Jan 90. 1. Ms Matchett sends two further memorandums from Mr Coyne and Ms Dutney to the Crown Solicitor to consider. The Crown Solicitor reaffirms the legality of Mr Heiner's appointment, and he also considers the matter of natural justice. The Crown Solicitor notes that Ms Matchett has arranged a meeting with two unions (QPOA and QSSU) to discuss the Heiner inquiry; **(Accessed in May 1996 from Mr Lindeberg's FOI June 1994 application on the Department of Family Services and Aboriginal and Islander Affairs);**

30. **19 Jan 90. 2.** Ms Matchett requests an "off-the-record" meeting with QPOA union organiser Mr Kevin Lindeberg and QSSU Industrial Relations Director Ms Janine Walker. She tells them that she has a major problem. She informs them that the Heiner inquiry has been closed, and that she has taken possession of all the Heiner documents in a sealed box. She puts forward the proposition that they have not been officially filed but remain "in limbo"; **(1990)** Mr Lindeberg, on Mr Coyne's instructions, indicates that his QPOA member still wishes to see the written complaints against him, and that there will be <u>no more</u> "off-the-record" meetings with the Department; **(1990)**

31. 23 January 90. The Crown Solicitor provides advice to Ms Matchett. He believes that the documents are Mr Heiner's own property. He advises that the documents can be immediately destroyed but it is predicated on the basis that ***"...no legal action has been commenced which requires the production of those files...."*** A draft letter is attached to be sent to Mr Coyne and Ms Dutney indicating that everything has been shredded but **<u>the documents are not shredded, nor *the letters sent;</u> *Note later chronology dates 18 and 22 May 1990 regarding this letter. (see Points 76, 79 - 82);**

32. **29 January 1990.** QPOA officially lodges breach of *Public Service Management and Employment Regulation 63* regarding the Heiner inquiry to Ms Matchett, and seeks access to original complaints. Letter signed by QPOA General Secretary Mr Donald Martindale making him officially aware that the documents are required by statute before and after their destruction. **(1990);**

33. **8 Feb 90. Mr Coyne instructs his solicitors to send a letter to DFSAIA seeking access to the Heiner inquiry documents where they relate to him and the original complaints pursuant to *PSME Regulation 65*. The Crown is given 7 days to respond. (1990);**

34. **9-15 February 1990.** Ms Matchett seeks advice from Crown Solicitor re Mr Coyne's solicitor's letter of 8 February 1990, and encloses a copy of the solicitor's letter;

35. **12 February 1990.** Cabinet meeting is held at which the Heiner inquiry is officially terminated. Mr Heiner given indemnity for any ensuing legal costs by Cabinet. The documents are secretly transferred to the Office of Cabinet from DFSAIA in an attempt to obtain "Cabinet privilege";

36. 13 Feb 90. 1. Mr Stuart P Tait, acting secretary to Cabinet, seeks Crown Solicitor's advice on what action might be taken should a writ be issued requiring access to the Heiner documents given that they may be considered to be part of the official records of Cabinet;

37. **13 Feb 90. 2.** Ms Matchett meets with JOYC staff and officially informs them that: (i) the Heiner inquiry has been terminated; (ii) no report will be made; (iii) the Crown ***"...will accept full responsibility for all [legal] claims arising out of a Crown employee's due performance of his/her duties..."*** (iv) Mr Coyne will be immediately seconded to special duties in head office commencing in Brisbane on 14 February 1990. **(1990 and 1995 in evidence to Senate Select Committee on Unresolved Whistleblowers Cases);**

38. **14 Feb 90. Mr Coyne instructs his solicitors to serve notice on the department of his intention to commence court proceedings to gain access to the documents. Mr Berry (Mr Coyne's solicitor) immediately phones Mr Walsh and serves due notice on the Crown giving unequivocal notice of the evidential status of the material. Mr Walsh confirms the serving of notice in Departmental memorandum dated 14 February 1990 to Ms Matchett which she later initials as having read on 21 February 1990;**

39. **15 Feb 90. 1. Mr Coyne's solicitor puts in writing his telephone conversation with Mr Walsh of 14 February 1990 and reaffirms notice on the Crown of his client's intention to commence court proceedings; (1992)**

40. **15 Feb 90. 2.** Mr Walsh officially relays the content of the conversation with Mr Coyne's solicitor to Ms Matchett by phone call to Hobart Tasmania where she is on departmental business;

41. **16 Feb 90. 1.** Mr Kenneth M O'Shea, Crown Solicitor, provides advice to Cabinet in response to Cabinet's letter of 13 February 1990 regarding the Heiner documents. He advises that (i) the documents cannot attract "Cabinet privilege" as they were brought into being for

a departmental purpose not a Cabinet one; (ii) should civil proceedings commence and a Writ issued, the documents could not be successfully withheld; (iii) he now takes the **"...better view..."** that the Heiner documents were, and were always, contrary to his original opinion of 23 January 1990, "public records" within the meaning of section 5(2) of the *Libraries and Archives Act 1988*; and (iv) permission to have them destroyed must be first obtained from the State Archivist;

42. **16 Feb 90. 2.** Ms Matchett officially responds to Mr Coyne's solicitors and acknowledges receipt of his letter of 8 February 1990, and indicates that the Crown's position regarding access as per *Public Service Management and Employment Regulation 65* is "interim", and that she is ***still*** seeking legal advice, and that nothing sought is on Mr Coyne's personal file;

43. **19 Feb 90. 1.** State Cabinet meeting held. Cabinet decides to seek urgent approval from the State Archivist to have the documents destroyed and is informed in the relevant Cabinet Submission that solicitors are seeking access to the documents;

44. **19 Feb 90. 2.** DFSAIA receives: (i) a copy of Crown Solicitor's advice of 16 February 1990 to Cabinet in which he acknowledges a **"... better view"** than the one expressed in his earlier advice of 23 January 1990 on the legal status of the Heiner documents; and (ii) Mr Coyne's solicitor's letter of 15 February 1990 putting the Crown on notice of impending court proceedings;

45. **20 Feb 90.** Acting Cabinet Secretary Mr Tait sends a copy of a draft letter (dated 19 February 1990) to Crown Solicitor for approval which the Cabinet wishes to send to the State Archivist seeking the urgent destruction of the Heiner documents but without being seen to be applying pressure on her;

46. **21 Feb 90.** Ms Matchett initials Mr Walsh's Departmental memorandum of 14 February 1990 as having read it. The memorandum unequivocally confirms that access to the documents will be sought through the courts by Mr Coyne if necessary, and that the material should not be destroyed;

47. 22 Feb 90. 1. Crown Solicitor advises the acting Cabinet Secretary that he sees nothing ***"...which is objectionable.."*** in the draft letter to the State Archivist;

48. **22 Feb 90. 2.** DFSAIA seek advice from Crown Solicitor regarding Mr Coyne's solicitor's letter of 15 February 1990 putting the Crown on notice. A copy of Mr Coyne's solicitor's letter is attached to the Crown Solicitor;

49. **23 Feb 90. 1. Acting Cabinet Secretary Mr Tait writes to the State Archivist seeking her urgent approval to destroy the Heiner documents on Cabinet's view that they are *"...no longer required or pertinent to the public record."* No mention is made in it of Mr Coyne's solicitor's 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**;

50. **23 February 1990. 2.** The documents are delivered to State Archives at Dutton Park from the Office of Cabinet. Ms Lee McGregor, the State Archivist, faxes to Cabinet her written approval (in less than one working day) to destroy the material despite having more than 100 hours of taped evidence and other material to check to ensure that the material has no informational, administrative, data, historical or legal value in order to comply with standard archival appraisal principles and her statutory duty under the *Libraries and Archives Act 1988*. In her internal report she acknowledges 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;

51. 23 Feb 90. 3. Mr Lindeberg meets with Ms Matchett in the afternoon and lodges further breaches of *Public Service Management and Employment Regulations 46* and *65*. They discuss Mr Coyne's foreshadowed litigation and its possible outcome if Mr Coyne gains access to the material and if defamation action ensues. He indicates that the QPOA and QTU may join his legal action to seek access via a judicial review of the statute if the Department doesn't grant access pursuant to his rights. The conversation is witnessed by DFSAIA's Chief Industrial Officer Ms Sue Crook; **(1990);**

52. **23 Feb 90. 4.** Ms Matchett assures Mr Lindeberg at the meeting that the documents are secure with Crown Law and that she is ***still*** waiting for final advice. She also assures him that Mr Coyne's temporary secondment is genuine and coincidental, and has nothing to do with the Heiner Inquiry. **(1990);**

53. 26 Feb 90. Crown Solicitor advises Ms Matchett that *"...the matter cannot advance further from the department's point of view until cabinet makes a decision."* The Crown Solicitor informs Ms Matchett that Mr Coyne's solicitor's letters are *still* subject to ongoing consideration (re access by statute), and drafts a letter to be dispatched stating same;

***54.* 27 February 90. 1.** Queensland Teachers Union (QTU) writes letter to Ms Matchett seeking access to Heiner documents in accordance with *Public Service Management and Employment Regulation 65* on behalf of its school teacher JOYC member; **(1990);**

55. **27 February 90. 2.** Minister Warner signs Cabinet document recommending the destruction of the Heiner Inquiry documents while informing the Cabinet that ***"…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."***

56. 1 Mar 90. 1. QPOA Assistant General Secretary Ms Roslyn Kinder sends letter officially lodging breaches *Public Service Management and Employment Regulations 46* and *65* with Ms Matchett which also confirms Mr Lindeberg's meeting with Ms Matchett on Friday 23 February 1990. Ms Kinder thereby becomes officially aware that the Heiner documents are required by law before the shredding occurs; **(1990);**

57. **1 Mar 90. 2. Acting JOYC Manager Ms Ann Dutney sends a memorandum to Mr Gary Clarke and other DFSAIA Assistant Directors-General setting out details of**

various matters including staff misconduct putting the lives of children at risk, and wanting to finalise a matter concerning a *prima face* criminal assault by Mr Fred Feige, senior Youth Worker against a youth. (See Point 3) (2000 by journalist Mr Bruce Grundy's FOI application on the Department of Families);

58. 5 Mar 90. THE GOSS CABINET, WITH FULL KNOWLEDGE THAT THE HEINER INQUIRY DOCUMENTS ARE REQUIRED BY MR COYNE (AND THE QTU AND QPOA) AND WHILE IN POSSESSION OF MR COYNE'S SOLICITOR'S NOTICE OF IMPENDING COURT PROCEEDINGS AGAINST THE CROWN IN WHICH THE DOCUMENTS ARE CRITICALLY RELEVANT EVIDENCE, ORDER THE DESTRUCTION OF THE MATERIAL TO STOP ITS USE IN LITIGATION AND TO PROTECT THE CAREERS OF STAFF AT THE CENTRE. CABINET IS TOLD IN THE RELEVANT CABINET SUBMISSION FOR THE 5 MARCH 1990 CABINET MEETING THAT A SOLICITOR WAS SEEKING PRODUCTION OF THE MATERIAL BUT HAD NOT YET ISSUED THE WRIT; (July 1998 when tabled in State Parliament by Queensland Premier the Hon Peter Beattie MLA);

59. **6 Mar 90.** Mr Coyne prepares a statement for his court action in the presence of his solicitor; **(1992);**

60. 8 March 90. Mr Lindeberg, while discussing related Heiner inquiry matters with Minister Warner's Private Secretary Ms Norma Jones on the phone, inadvertently learns of the secret plans to shred the documents. He challenges the private secretary's comments indicating that the records are required. She ends the call abruptly; **(1990);**

61. On or About 13 Mar 90. Mr Lindeberg meets Minister's Private Secretary and is immediately told that Minister Warner refuses to deal with him on the "Coyne Case", and will only deal with the QPOA General Secretary Mr Martindale or QPOA Assistant General Secretary Ms Kinder. No reason is given. Mr Lindeberg briefs Mr Martindale before he meets with Minister Warner concerning legal demands seeking access to the Heiner Inquiry documents; **(1990);**

62. About 15 Mar 90. 1. QPOA General Secretary Mr Martindale meets with DFSAIA Minister Warner. After the meeting he tells Mr Lindeberg that Minister Warner has alleged that he has threatened her career and that of her senior departmental officers and wants him removed from the case. Mr Lindeberg denies threatening anyone, and says that he had not even spoken with the Minister on the topic. He is removed from the case and its official carriage is taken over by Mr Martindale and Ms Kinder; **(1990);**

63. About 15 Mar 90. 2. Mr Martindale phones Mr Coyne and offers him an equivalent position elsewhere in the Department, and requests an **urgent** response. Mr Coyne does not respond; **(1990);**

64.* 19 Mar 90. 1.** QTU writes to Ms Matchett indicating that no response has been received to their letter of 27 February 1990. The union informs the Crown that ***"...legal measures to gain access to the material in question may now have to be taken." **(1990);**

65. **19 Mar 90. 2. Ms Matchett writes a memorandum to Mr Coyne indicating that the Crown's current position is "interim" and states *"...I have provided interim responses to Mr Berry (Mr Coyne's solicitor) and have advised him that the matters he has raised are still the subject of ongoing advice. Such issues will be addressed through your solicitors when I have received final legal advice."* (1992*);***

66. **19 Mar 90. 3.** Ms Matchett writes to the QPOA indicating the access to the documents is ***still*** the subject of ***"...ongoing legal advice;"* (1990);**

67. 19 March 90. 4. Ms Matchett writes to Mr Coyne's solicitors and questions whether Mr Walsh did say that a discussion with Mr Noel Heiner had occurred as referred to in his (Mr Berry's) letter of 15 February 90. She confirms that she is ***still*** seeking ongoing legal advice as advised in her letter of 16 February 90 regarding access to the documents;

***68.* 19 Mar 90. 5. Ms Matchett seeks further advice from the Crown Solicitor and encloses Mr Coyne's solicitor's 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;**

***69.* 21 Mar 90.** Mr Coyne's court action statement is typed and drafted by his solicitor; **(1992);**

70. 22 Mar 90. 1. Acting Cabinet Secretary Mr Tait informs State Archivist of Cabinet's decision of 5 March 1990 to destroy the documents under the terms of section 55 of the *Libraries and Archives Act 1988* indicating that the material is being forwarded to her. The letter does **not** mention that Cabinet has ordered the shredding ***"...to reduce the risk of legal action"*** and it prevents its use against the careers of the public servants at the Centre, or what Mr Coyne and others were doing legally and industrially to gain access to the material;

71. **22 Mar 90. 2.** Mr Coyne meets Mr Walsh and discusses access to the Heiner documents. He tells Mr Coyne that the Department is ***still*** waiting for Crown Solicitor's advice. **(1992);**

72. 23 March 90. SENIOR ARCHIVIST IS COLLECTED BY A CABINET OFFICIAL FROM DUTTON PARK ARCHIVES. THE HEINER DOCUMENTS ARE TAKEN FROM CABINET OFFICE IN THE EXECUTIVE BUILDING AND WALKED ACROSS TO FAMILY SERVICES BUILDING. THE SENIOR ARCHIVIST IS JOINED BY MS MATCHETT'S EXECUTIVE OFFICER MR TREVOR WALSH, AND TOGETHER THEY SECRETLY DESTROY THE MATERIAL;

73. **11 April 90.** Brisbane daily newspaper *The Sun* announces on front-page "**Labor Blocks Secret Probe**". Minister Warner indicates that the Heiner Inquiry evidence has been shredded; **(1990);**

74. **18 April 1990. Crown Solicitor provides advice to Ms Matchett re her letter of 19 March 1990. He confirms that Mr Coyne has a legal entitlement to view and take copies of the original complaints pursuant to *Public Service Management and Employment Regulation 65* which *must* be complied with as long as the documents are in the Department's possession. He advises that it is artificial to suggest that Mr Coyne's entitlements can be avoided just because the material is not on his personal**

file. He advises that if she wishes to dispose of them *prior* approval must be obtained from the State Archivist pursuant to the *Libraries and Archives Act 1988*. The photocopies of original complaints are returned to the Department; (Accessed in May 1996 by Mr Lindeberg's June 1994 FOI application on the Department of Families);

75. **20 April 1990.** QTU writes another letter to Ms Matchett inquiring after access to the documents and concern over a newspaper article that they may have been destroyed. They seek an urgent response. **(1990);**

76. **8 May 90. 1.** Internal memorandum by Mr Donald A C Smith, Ms Matchett's Principal Liaison Officer, to Ms Matchett indicates that the original complaints are ***still*** in the department's possession on an official file and will have to be shown to Mr Coyne if they are retained in the possession of the Crown in accordance with the Crown Solicitor's advice of 18 April 1990;

77. **8 May 90. 2. Ms Matchett seeks advice from Crown Solicitor attaching the trade union letters (QPOA & QTU) seeking access to the Heiner inquiry documents and complaints by a legally enforceable statute: *Public Service Management and Employment Regulation 65*. She indicates that she does not want to approach Cabinet again, and wants to return the original complaints to the QSSU;** (**Accessed in May 1996 by Mr Lindeberg's June 1994 FOI application on the Department of Families);**

78. 9 May 90. Ms Matchett informs the QTU that she is ***still*** seeking Crown Solicitor's advice, and once the final advice is received regarding access, the parties will be informed;

79. **17 May 90. 1. Mr Coyne writes to Ms Lee McGregor, the State Archivist, officially informing her that the Heiner inquiry documents are the subject of legal requests for access, which, if necessary, will be determined in a court. He indicates the Department is *still* seeking advice on the matter. He requests that the documents not be destroyed; (Accessed in May 1996 by Mr Lindeberg's June 1994 FOI application on the Department of Families);**

80. **17 May 90. 2. State Archivist records in an internal memorandum (dated 30 May 1990 - See Point 82) that Mr Coyne had contacted her on 17 May 1990 to confirm whether the Heiner documents had been destroyed. Ms McGregor records that, acting on advice from Mr Trevor Walsh, she *"...declined to make any comment to Mr Coyne beyond suggesting that his lawyer should deal directly with the department or the Crown Solicitor's office;"* (Accessed in May 1996 by Mr Lindeberg's June 1994 FOI application on the Department of Families);**

81. 18 May 90. 1. State Archivist speaks briefly on the phone with Mr Walsh regarding Mr Coyne's letter. She faxes him Mr Coyne's letter. Mr Walsh informs her not to respond to Mr Coyne, and he advises her that the matter is being handled by the Crown Solicitor; **(Accessed in May 1996 by Mr Lindeberg's June 1994 FOI application on the Department of Families);**

82. 18 May 90. 2. Crown Solicitor provides one page of advice to Ms Matchett assisting her to return the original complaints to the QSSU in accordance with *her expressed*

intention **while both he and her are fully aware that they are the subject of a legally enforceable access statute. The Crown Solicitor encloses draft letters to be sent to parties seeking access to the documents indicating that the sought-after material is either shredded or not in the Department's possession or control;**

83. **22 May 90. 1.** Ms Matchett sends altered draft letters to: (i) Mr Coyne's solicitors referring to his letters of 8 and 15 February 1990 and declaring that the Department does not have in its possession or control the original complaints sought, and that everything gathered by Mr Heiner has been destroyed; (ii) the QTU declaring that everything has been destroyed; **(Accessed in May 1996 by Mr Lindeberg's June 1994 FOI application on the Department of Families);**

84. **22 May 90. 2.** Ms Matchett sends the QPOA an altered draft letter declaring that everything has been destroyed, and that it appears to her that Mr Coyne has not ***"...suffered any injustice or detriment ...";*** **(Accessed in May 1996 by Mr Lindeberg's June 1994 FOI application on the Department of Families);**

85. 22 May 90. 3. Ms Matchett writes to Ms Janine Walker, Industrial Relations Director of the QSSU, and assures her that all documents brought into existence during the Heiner inquiry have been destroyed, and returns to her the original complaints (officially defined as "public records") which brought the inquiry into existence *without prior* lawful approval from the State Archivist, and while known to be *still* the subject of a legally enforceable access statute; (Accessed in May 1996 by Mr Lindeberg's June 1994 FOI application on the Department of Families);

86. **23 May 90. Mr Donald A C Smith 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;**

87. 24 May 90. Mr Coyne's solicitor phones Mr Walsh and confirms receipt of Department's letter of 22 May 1990. He tells Mr Walsh that ***"...the department is in a lot of trouble".*** He wishes to be advised whether Cabinet took the decision to destroy the documents. Mr Walsh records the conversation and says that such a request should be put in writing; **(Accessed in May 1996 by Mr Lindeberg's June 1994 FOI application on the Department of Families);**

88. 30 May 90. 1. State Archivist writes internal report on her handling of the Heiner Inquiry shredding, acknowledging her receipt of Mr Coyne's letter of 17 May 1990, and subsequently contacting Mr Walsh and following his advice. She closes her file. **(1993 – Mr Lindeberg's 1993 FOI application on State Archives via the Department of Administrative Services);**

89. 30 May 90. 2. Mr Lindeberg is suddenly dismissed after six years as senior organiser by the QPOA General Secretary Mr Martindale. It is witnessed by the QPOA Assistant General Secretary Ms Kinder. Both are aware that the Heiner documents were shredded when being sought by the union, the QTU and Mr Coyne. Mr Martindale cites, among four reasons, Mr Lindeberg's handling of "the Coyne case" as a reason for his dismissal. It is alleged by Mr

Martindale that Minister Anne Warner had lodged a specific complaint against him indicating that he was "*..**inappropriate and over-confrontationalist"*** in his handling of the case. Mr Lindeberg flatly rejects the allegation. His search for justice - *Shreddergate* - begins. **(1990)**

13. INTERNATIONAL COUNCIL ON ARCHIVES - CODE OF ETHICS

At the International Council on Archives' (ICA) General Assembly in its 13th session held in Beijing China on 6 September 1996, the Council adopted the following universal code of ethics to be followed by archivists in the performance of their mission.

Introduction

A.
A code of ethics for archivists should establish high standards of conduct for the archival profession.

It should introduce new members of the profession to those standards, remind experienced archivists of their professional responsibilities and inspire public confidence in the profession.
B.
The term archivists as used in this code is intended to encompass all those concerned with the control, care, custody, preservation and administration of archives.
C.
Employing institutions and archive services should be encouraged to adopt policies and practices that facilitate the implementation of this code.
D.
This code is intended to provide an ethical framework for guidance of members of the profession, and not to provide specific solutions to particular problems.
E.
The principles are all accompanied by a commentary; principles and commentary taken together constitute the Code of Ethics.
F.
The code is dependent upon the willingness of archival institutions and professional associations to implement it. This may take the form of an educational effort and the establishment of machinery to provide guidance in cases of doubt, to investigate unethical conduct, and if considered appropriate, to apply sanctions.

Code

1. Archivists should protect the integrity of archival material and thus guarantee that it continues to be reliable evidence of the past.

The primary duty of archivists is to maintain the integrity of the records in their care and custody. In the accomplishment of this duty they must have regard to the legitimate, but sometimes conflicting, rights and interests of employers, owners, data subjects and users, past, present and

future. The objectivity and impartiality of archivists is the measure of their professionalism. They should resist pressure from any source to manipulate evidence so as to conceal or distort facts.

2. Archivists should appraise, select and maintain archival material in its historical, legal and administrative context, thus retaining the principle of provenance, preserving and making evident the original relationships of documents.

Archivists must act in accordance with generally accepted principles and practice. Archivists must perform their duties and functions in accordance with archival principles, with regard to the creation, maintenance and disposition of current and semi-current records, including electronic and multimedia records, the selection and acquisition of records for archival custody, the safeguarding, preservation and conservation of archives in their care, and the arrangement, description, publication and making available for use of those documents. Archivists should appraise records impartially basing their judgment on a thorough knowledge of their institution's administrative requirements and acquisitions policies. They should arrange and describe records selected for retention in accordance with archival principles (namely the principle of provenance and the principle of original order) and accepted standards, as rapidly as their resources permit. Archivists should acquire records in accordance with the purposes and resources of their institutions. They should not seek or accept acquisitions when this would endanger the integrity or security of records; they should cooperate to ensure the preservation of these records in the most appropriate repository. Archivists should cooperate in the repatriation of displaced archives.

3. Archivists should protect the authenticity of documents during archival processing, preservation and use.

Archivists should ensure that the archival value of records, including electronic or multimedia records is not impaired in the archival work of appraisal, arrangement and description, and of conservation and use. Any sampling should be carried out according to carefully established methods and criteria. Replacement of originals with other formats should be done in the light of the legal, intrinsic and information value of the records. Where restricted documents have been temporarily removed from a file, this fact should be made known to the user.

4. Archivists should ensure the continuing accessibility and intelligibility of archival materials.

Archivists should select documents to be kept or to be destroyed primarily to save essential testimony of the activity of the person or the institution which produced and accumulated the documents but also bearing in mind changing research needs. Archivists should be aware that acquiring documents of dubious origin, however interesting, could encourage an illegal commerce. They should cooperate with other archivists and law enforcement agencies engaged in apprehending and prosecuting persons suspected of theft of archival records.

5. Archivists should record, and be able to justify, their actions on archival material.

Archivists should advocate good recordkeeping practices throughout the life-cycle of documents and cooperate with record creators in addressing new formats and new information management practices. They should be concerned not only with acquiring existing records, but also ensure

that current information and archival systems incorporate from the very beginning procedures appropriate to preserve valuable records. Archivists negotiating with transferring officials or owners of records should seek fair decisions based on full consideration -when applicable- the following factors: authority to transfer, donate, or sell; financial arrangements and benefits; plans for processing; copyright and conditions of access. Archivists should keep a permanent record documenting accessions, conservation and all archival work done.

6. Archivists should promote the widest possible access to archival material and provide an impartial service to all users.

Archivists should produce both general and particular finding aids as appropriate, for all of the records in their custody. They should offer impartial advice to all, and employ available resources to provide a balanced range of services. Archivists should answer courteously and with a spirit of helpfulness all reasonable inquiries about their holdings, and encourage the use of them to the greatest extent possible, consistent with institutional policies, the preservation of holdings, legal considerations, individual rights, and donor agreements. They should explain pertinent restrictions to potential users, and apply them equitably. Archivists should discourage unreasonable restrictions on access and use but may suggest or accept as a condition for acquisition clearly stated restrictions of limited duration. They should observe faithfully and apply impartially all agreements made at the time of acquisition, but, in the interest of liberalisation of access, should renegotiate conditions in accordance with changes of circumstance.

7. Archivists should respect both access and privacy, and act within the boundaries of relevant legislation.

Archivists should take care that corporate and personal privacy as well as national security are protected without destroying information, especially in the case of electronic records where updating and erasure are common practice. They must respect the privacy of individuals who created or are the subjects of records, especially those who had no voice in the use or disposition of the materials.

8. Archivists should use the special trust given to them in the general interest and avoid using their position to unfairly benefit themselves or others.

Archivists must refrain from activities which might prejudice their professional integrity, objectivity and impartiality. They should not benefit financially or otherwise personally to the detriment of institutions, users and colleagues. Archivists should not collect original documents or participate in any commerce of documents on their own behalf. They should avoid activities that could create in the public mind the appearance of a conflict of interest. Archivists may use their institutional holdings for personal research and publication, provided such work is done on the same terms as others using the same holdings. They should not reveal or use information gained through work with holdings to which access is restricted. They should not allow their private research and publication interests to interfere with the proper performance of the professional or administrative duties for which they are employed. When using the holdings of their institutions, archivists must not use their knowledge of the unpublished findings of researchers, without first notifying the researchers about the intended use by the archivist. They may review and comment on the work of others in their fields, including works based on

documents of their own institutions. Archivists should not allow people outside the profession to interfere in their practice and obligations.

9. Archivists should pursue professional excellence by systematically and continuously updating their archival knowledge, and sharing the results of their research and experience.

Archivists should endeavour to develop their professional understanding and expertise, to contribute to the body of professional knowledge, and to ensure that those whose training or activities they supervise are equipped to carry out their tasks in a competent manner.

10. Archivists should promote the preservation and use of the world's documentary heritage, through working co-operatively with the members of their own and other professions.

Archivists should seek to enhance cooperation and avoid conflict with their professional colleagues and to resolve difficulties by encouraging adherence to archival standards and ethics. Archivists should co-operate with members of related professions on the basis of mutual respect and understanding.

14. 2001 MEDIA COVERAGE ON PACK-RAPE INCIDENT

THE COURIER-MAIL

Centre inmate, 14, pack raped

Bruce Grundy
3 November 2001
Page 3

A YOUNG Aboriginal woman has confirmed claims by several former staff members of a Brisbane youth detention centre that she was gang-raped while being held in the centre as a 14-year-old.

The woman, now in her mid-twenties, said she was gang-raped twice on a supervised outing from the John Oxley Youth Detention Centre in the late 1980s.

Former members of staff at the centre also have claimed the matter was "swept under the carpet" and "hushed up".

One former youth worker said if what had happened to the girl in question had happened to a white girl, "there would have been hell to pay".

The woman, who cannot be identified, said she was taken on a bus trip with a group of Aboriginal and white male inmates to an isolated spot in the country.

One staff member accompanied the inmates into the bush and left her with the boys. The woman said the boys demanded sex and started arguing about who would "go through her" first.

She said she told them to leave her alone but they forced her on to a large rock and raped her.

The woman said that what had happened to her on the first walk was repeated later in the day.

When contacted about the incident Families Department public servant Jeffery Manitzky, who was allegedly in charge of the excursion, said: "I'm not interested in talking about that."

Mr Manitzky then denied he was aware of the incident.

Karen Mersiades, who also supervised the excursion, said she would prefer not to comment.

"I know that the manager of the centre informed (the girl's) mother of the allegations, and she came in to the centre," she said.

Ms Mersiades said the mother decided not to pursue the matter because she had been told the boys involved were "indigenous".

Former leading criminal lawyer and Director of Public Prosecutions at the time of the incident, Des Sturgess QC, said "unless the story was incredible the outcome of the matter was not one for the mother to decide".

"That would be for the police to investigate and determine," Mr Sturgess said.

However, the girl's parents strenuously denied ever being told of the incident.

They said the first they had heard of it was when asked by *The Courier Mail* why they had decided not to take any action over the matter.

Peter Coyne, the then manager of John Oxley, said anyone with allegations about the abuse of children at the centre should take them to the Families Department, the police or the Criminal Justice Commission.

"I would encourage anyone with such allegations to do so," Mr Coyne said.

Former assistant manager of the centre, Jenny Foote, also declined to discuss the matter. She works in the Families Department.

The Courier-Mail has been told by former members of staff they had "no doubt" the matter of the gang rape had been raised with the 1989 Heiner inquiry into the John Oxley Centre.

Following the closing down of the inquiry the manager of the centre was paid more than $27,000 for "entitlements" and required to sign a secrecy agreement.

Phone-interview
with
'Michael' former JOYC Youth Worker and Mr Steve Austin Presenter
ABC Morning Radio (612 4QR)
Brisbane
7 November 2001

I feel too many people are protecting their posteriors in the interest of self improvement at that time … you know … in getting on in the bureaucracy, government .. it was pure self interest.

Q. What do you know of the alleged rape of this young girl?

A. I cannot remember … as I say … this is going back about 1988 -- 87-88 … I cannot remember if I was on duty or not … everybody knew … I wasn't told directly … but we all knew … we were summonsed down a couple of days later to Peter Coyne's office and we were told it would be handled internally, we were under the Secrecy Act and we were not to discuss it outside … and they would handle it internally.

Q. What was the Secrecy Act that they cited as the reason why you couldn't speak?

A. That everybody who was a government employee in that sort of job, basically, you didn't discuss what went on outside of duty … concerning the children.

Q. Did it surprise you when you were told that you could say nothing?

A. It did. It did .. because, quite frankly, I thought it would be taken to the highest level. I mean, rape is rape, isn't it … and especially those children were in the care of … us … Peter Coyne being the manager.. and the other staff there … they were in the protection … OK, they weren't little angels, there were often nasty little children there, but the point is … or, that is beside the point, that they were under the protection of the Family Services and they weren't getting it.

Q. The current government's attitude seems to be that this matter has all been dealt with by the Forde Inquiry, and that's essentially the end of the story …

A. It's not … because I was interviewed by … oh what's his name … then … very nice man and his assistant …

Q. This is way back in '89 are you talking about … Noel Heiner …

A. That's it … and he was very nice … put it all on tape and everything. I spent oh … a lot of us spent time in there … I can't give you the other names because I can't remember , but I was there and I know other people went and then I think Anne Warner had it all shredded.

Q. Well the government's attitude seems to be that the Forde Inquiry has dealt with all these matters so there is no further investigation …

A. No, I don't agree with that. I don't. I think it has all been pushed under the carpet.

THE COURIER-MAIL

Page 2 Thursday 8 November 2001

Journalist Bruce Grundy

INQUIRY BOSS 'KNEW OF RAPE CLAIM'

THE former Children's Court magistrate who conducted the aborted 1989 inquiry into the John Oxley Youth Detention Centre was told of claims that a 14-year-old Aboriginal girl in care was gang-raped.

But the inquiry by former magistrate Noel Heiner was terminated by the Goss government whose cabinet directed that all of Mr Heiner's materials be shredded in 1990.

Allegations that the centre's management knew of the rape, for that it had been covered up for 12 years, were raised in *The Courier-Mail* on Saturday.

A former centre youth worker said yesterday that he had been interviewed in 1989 by Mr Heiner, who had specifically asked about the rape.

He said the interview "was about Peter Coyne (the manager of the centre) basically" but the rape "was one of the incidents that came out."

When asked if he had volunteered information about the rape claim or had been questioned about it, the man said; "He (Mr Heiner) asked...he knew about it already."

The man said everyone in the centre knew about the rape allegation.

A former minister in the Goss cabinet, Pat Comben said on television in 1999 that "in broad terms" the cabinet had been aware that the shredded documents had contained information about child abuse.

The next day Mr Comben said that his comments had been taken out of context.

Mr Heiner declined to comment on the matter yesterday.

A move by Families Minister Judy Spence to refer the pack rape cover-up allegations to the Criminal Justice Commission for investigation was strenuously opposed yesterday by a Queensland member of a Senate select committee which examined the shredding of the Heiner documents.

Former Democrats senator John Woodley, a member of the 1995 Senate Select Committee into Unresolved Whistleblower Cases, said it would be inappropriate for the CJC to investigate the matter because at the time of the Senate inquiry the CJC knew about cases of child abuse, but failed to disclose them to the Senate.

"That was an incredibly serious omission, and one can't have confidence that they will deal with it properly if it is referred to them again," Rev Woodley said.

According to former members of staff and the girl concerned, the gang rape took place when she was taken on a supervised excursion with a group of male inmates to a remote location in the bush.

The state Opposition yesterday called for a fresh public inquiry into the Heiner shredding. Opposition Leader Mike Horan said he was shocked to learn of the rape allegations.

"This latest allegation of pack rape indicated the seriousness of the allegations that were covered up by the members of a Labor cabinet, some of whom still sit in this House," Mr Horan said.

"Nothing short of a full and open inquiry into this matter will ensure that justice can finally be given to victims of abuse."

Premier Peter Beattie said police and the CJC were examining the allegations.

CRIMINAL
JUSTICE
COMMISSION Media Release

CJC completes investigation of alleged rape cover-up

16 November 2001

The Criminal Justice Commission has completed investigations into claims of a cover-up of an alleged rape of a 14 year old female resident of the John Oxley Detention Centre in 1988.

The investigation was undertaken by the CJC in keeping with its legislative obligations, after the issue was raised in State Parliament by the Minister for Families and Disability Services Hon. Judy Spence following media reports of the allegations.

The media reports suggested that the matter had been 'swept under the carpet' and 'hushed up' by staff of the Detention Centre at the time.

Ms Spence told Parliament she had ordered an immediate search of files by senior departmental officers and had referred the rape allegations to the Queensland Police for investigation.

Ms Spence also announced she had asked the CJC to investigate whether there was any official misconduct by Family Services staff in the way the issue was dealt with at the time.

CJC investigators have since examined Department of Family Services records from 1988 which show that the allegations were referred to the police at that time.

The CJC has also obtained and examined relevant police notebooks and diaries which further confirm this fact.

CJC investigators also inspected medical records confirming that the girl was examined by a paediatrician at the time, at the request of the police.

The CJC has now written to both the Police Commissioner Mr Atkinson and the Director-General of the Families Department Mr Frank Peach, advising that there is no reasonable basis to suspect any official misconduct by any departmental staff in respect of their duty to report the alleged rape of the girl.

The CJC has provided copies of the material it has examined to Queensland police.

For further information, contact Media Manager Stewart Sommerlad.
Ph: 07 3360 6344
Mob: 0407 373 803
Fax: 3360 6235

THE COURIER-MAIL

Saturday 17 November 2001 Page 3

Journalists: Chris Griffith and Bruce Grundy

CJC FINDING QUESTIONED BY VICTIM'S PARENTS

THE parents of a 14-year-old girl who said she was pack-raped while under care at the John Oxley Youth Centre last night cast doubt on whether there was a thorough police investigation.

The parents' claim follows a Criminal Justice Commission finding yesterday that staff at the youth centre had not covered up the alleged pack-rape in 1988 and that Department of Family Services records from 1988 showed the allegations were reported to police.

The CJC said it had examined police notebooks and diaries "which further confirm this fact", along with medical records showing the girl was examined by a pediatrician at police request.

QPS spokesperson Tim White said police records also confirmed an investigation had taken place but he would not provide more details.

On November 3 *The Courier-Mail* reported claims by former staff the rape allegations had not been passed to police.

Karen Mersiades, one of those who supervised the 1988 excursion, said the girl's mother decided not to pursue the matter because she had been told the boys involved were "indigenous".

The CJC clearance yesterday prompted Department of Families director-general Frank Peach to issue a media statement welcoming the CJC's findings clearing his department of a cover-up.

But the girl's parents questioned whether any serious investigation of the rape claim occurred as they had never been informed by police. "I was never told anything about my daughter being raped or any investigations. That is a lie," the mother said.

"But they told the staff they couldn't do anything because I wouldn't press charges.

"I would have pressed charges - all the way."

---

15. RELEVANT CORRESPONDENCE WITH THE FORDE INQUIRY AND QUEENSLAND CRIME COMMISSION

It is relevant for this Declaration to be placed in the context of approaches made by me over the last decade to other accountability or law-enforcement bodies in an attempt to have the Affair properly aired and independently investigated because it is often said that this matter has been thoroughly investigated and no wrongdoing found. Nothing could be further from the truth.

By way of example, I am attaching the series of letters sent to the Forde Commission of Inquiry into the Abuse of Children in Queensland Institutions in 1998-99 and the Queensland Crime Commission in December 2001.

The Forde Inquiry

In respect of the Forde Inquiry, it refused to accept my submissions because its counsel assisting, barrister Ms Kate Holmes, claimed that its Terms of Reference prevented it from examining the shredding of the Heiner Inquiry documents.

The logic and legality of her position warrants public examination in the public interest. Ms Holmes was subsequently appointed as a Justice to the Queensland Supreme Court by the Beattie Government.

The following was said at page 4 in the Introduction to my submission of 18 September 1998 to the Forde Inquiry which was an attempt at setting the significance of maintaining a proper recordkeeping regime insofar as it impacted on the welfare of children held in the care and custody of the Crown/State:

> *"…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*."

This concern was rejected by the Forde Inquiry as it refused to accept my submissions.

The following is the series of letters sent to the Forde Inquiry:

> Kevin Lindeberg
> 20 Lynton Court
> **ALEXANDRA HILLS QLD 4161**
> 17 November 1998

Ms Kate Holmes
Counsel Assisting
Forde Commission of Inquiry
into Abuse of Children in Queensland Institutions
Post Office Box 554
BRISBANE ROMA STREET QLD 4003

Dear Ms Holmes

Re: The Shredding of the Heiner Inquiry documents

I refer to your letter of 28 September 1998.

You have acknowledged receipt of my submission dated 18 September 1998.

You have adopted the view that the shredding of suspected child abuse allegations against children held in the care of the Crown at the John Oxley Youth Detention Centre presented as evidence to the Heiner Inquiry in late 1989 and early 1990 does not fall within the Terms of Reference of the Forde Inquiry.

In reaching your view you would have been plainly aware that the order to shred those public records was made by members of the Goss Cabinet of 5 March 1990, and that five members of that Cabinet are currently serving as senior Ministers in the Beattie Government.

I draw your attention to the following statement at page 10 of my submission:

> *"…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."*

For the public record I do not concur with your view.

Yours sincerely

KEVIN LINDEBERG

-oOo-

Kevin Lindeberg
20 Lynton Court
ALEXANDRA HILLS QLD 4161
29 April 1999

Ms Kate Holmes
Counsel Assisting

Forde Commission of Inquiry into the Abuse of Child
In Queensland Institutions
Post Office Box 554
BRISBANE ROMA STREET QLD 4003

Dear Ms Holmes

Re: The Shredding of the Heiner Inquiry Documents and Related Matters

I refer to your letter of 23 April 1999.

As with my first submission of 18 September 1998, you are attempting to claim that my Special Supplementary Submission of 15 April 1999 falls outside your Inquiry's terms of reference from the Beattie Government.

You have said:

> *"…the Inquiry is limited to consideration of whether unsafe, improper or unlawful care or treatment of children has occurred in particular institutions; or whether any breach of any relevant statutory obligation has occurred during the course of the care, protection and detention of children in those institutions. To seek to expand its inquiries to consider the manner in which documents concerning questions of abuse of children were dealt with, or whether there may have been breaches of statutory obligation in their disposal, would go beyond that frame of reference."*

Your Inquiry was given evidence proving illegal acts in shredding Heiner Inquiry documents, the original documents photocopies which are known to contain evidence of child abuse. *All the documents were public records*. It was known at the time that they contained evidence of child abuse. The Goss Cabinet ordered the shredding on 5 March 1990 to cover up the abuse and to obstruct justice. The second and third waves of shredding by senior departmental officers, assisted by Crown Law, achieved the same wilful end on 22 and 23 May 1990. A wide spread cover up has followed those illegal acts.

I disagree with your opinion on my submissions, and must contest it. Your position on this matter displays an unacceptable sycophantic deference to the Beattie Government.

The Inquiry's position is illogical reasoning because the shredding of evidence of maltreatment of children by the Crown cannot be separated from the actual maltreatment, especially when the shredding was done for the express purpose of covering up the maltreatment.

You know that in setting the terms of reference, the Beattie Government had sitting in its midst five senior ministers who knowingly ordered the shredding on 5 March 1990 to prevent the abuse becoming public then and who have actively engaged in the cover up since.

The failure and abuse of the machinery of government permitting this cover up to go unchecked for years has not been addressed despite public fanfare to the contrary.

The truth and the public interest are not being served. The welfare of children going into those institutions will remain in jeopardy and justice will not be done.

You have now made your position clear and on the public record. I must not let the matter rest there.

Yours sincerely

KEVIN LINDEBERG

-oOo-

Kevin Lindeberg
20 Lynton Court
ALEXANDRA HILLS QLD 4161
28 May 1999

Ms Kate Holmes
Counsel Assisting
Forde Commission of Inquiry into the
Abuse of Children in Queensland Institutions
Post Office Box 554
BRISBANE ROMA STREET QLD 4003

Dear Ms Holmes

I refer to your letter of 20 May 1999.

I have no desire to commence a "paper war" between us (and I suspect you don't either) but, with respect, I cannot permit your final comment on my description of the Inquiry's position in respect of the shredding of the Heiner Inquiry documents to go unchallenged.

I acknowledge, without reservation, your professional competence. I readily accept that you can properly reach a view which may be different from mine on matters, including the Inquiry's Terms of Reference.

<u>The issue at hand is not that our views differ, but what the difference of opinion between us leaves unattended in respect of the welfare of children in Queensland institutions</u>.

While the incidents of abuse at the John Oxley Youth Detention Centre are serious and may, of necessity by law, require action, it still leaves the more serious matter of the shredding unresolved.

It is my respectful view that any Inquiry established for the specific purpose of looking into the abuse of children in Queensland institutions cannot reasonably or rightly ignore compelling evidence put to it that a cover up of abuse (through shredding and subsequent systemic cover up) has occurred, and remains unattended.

Certainly, an interpretation of the Terms of Reference impartially could and appears to have been reached by you that does not permit matters outside those Terms of Reference to be investigated; but with respect, I was and am suggesting that the matter does not rest there.

You ***always*** had open to you three options in this matter given its serious nature. They remain open:

1. Approach Government to seek an extension of your Terms of Reference to cover the shredding of evidence of child abuse done for the purpose of covering it up;

2. Make an immediate reference to Government that the unresolved matter in respect of the abuse of children at the John Oxley Youth Detention Centre (i.e. the Heiner shredding and related matters) be investigated by an appropriate body e.g. a Special Prosecutor;
3. Make (2) a recommendation in your report to Government.

I suggest, without seeking to imply adverse inference to the Inquiry, that any reasonable person, with knowledge of the facts, would be aware of the political dimensions associated with my matter. That dimension has hindered justice for years, which we now know, through my persistence, also concealed evidence of child abuse for years.

I respect parliamentary democracy and the rule of law however when the political/democratic process is abused by Members of Parliament to give themselves unwarranted protection from the processes of the administration of justice then those abusing our system will never enjoy my deference. I suggest that is a reasonable view to hold.

Commissioner Tony Fitzgerald QC sought and obtained an extension of his Terms of Reference from the Queensland Government when he was faced with compelling evidence of wrongdoing shortly after his Inquiry took evidence, and it was provided.

By contrast, your Inquiry, required to approach its task impartially, has chosen to remain with its original restricted Terms of Reference despite evidence showing that the Queensland Government which drafted them had five senior Ministers in its ranks who had a hand in destroying evidence of child abuse in March 1990. That artificial but purposeful barrier put up by the Queensland Government has unfortunately become "**the difference of opinion" between us** (ie the shredding and cover-up) in the carrying out your difficult commission.

There is no truth without the whole truth; and while your Inquiry may finally and rightly deliver justice on the incidents of the child abuse at the John Oxley Youth Detention Centre concealed for almost a decade, the shredding still cries out for justice to be done.

Your exception to my earlier comment, and if it still exists, was said in this context.

Yours sincerely

KEVIN LINDEBERG

Queensland Crime Commission

In regard to the Queensland Crime Commission, its position is quite remarkable and disturbing. The emergence of the pack-rape incident, being a major crime as I understood it to be when writing my complaint, gave me jurisdiction to approach it. It became more clear when I received Mr Callanan's letter that the alleged offence also fell within the category of "criminal paedophilia" as defined under the *Crime Commission Act 1997*.

The QCC had a standing reference pursuant to section 46(7) of the *Crime Commission Act 1997* to investigate the crime of "criminal paedophila" whenever it became aware of such activity. It is now clear that in spite of *The Courier-Mail* articles in which Mr Grundy exposed the crime in his November 2001 series, it remained inactive. It seems to have sat on its hands. At the time of writing this Declaration, its extraordinary tardy conduct has not been fully explained.

This is against the background that when I met with Commissioner Tim Carmody SC for 90 minutes on 13 December 2001 at its headquarters in Unisys House, I left with the clear impression (as reflected in his supportive comments on the key elements in the affair) that he was going to make a personal recommendation (after examining the material put before him) to its reference committee for the QCC to hold a public inquiry into the Heiner Affair which would be conducted by Mr John Callanan, Deputy Crime Commissioner. As Crime Commissioner, he said that he was no longer prepared to be a bystander in this matter. It was expected to be the last reference received by the QCC before it closed its doors at midnight on 31 December 2001.

The reference did not eventuate.

The following is the series of letters sent to the QCC:

Kevin Lindeberg

11 Riley Drive

CAPALABA QLD 4157

13 December 2001

Commissioner Tim Carmody SC

Queensland Crime Commission

GPO Box 3123

BRISBANE QLD 4000

Dear Commissioner

RE: REQUEST FOR A REFERRAL OF THE HEINER AFFAIR TO THE QUEENSLAND CRIME COMMISSION FOR INVESTIGATION

I am the whistleblower in the matter commonly known as the Heiner Affair.

I seek your reference to the Queensland Crime Commission's (QCC) management committee pursuant to section 29(1)(a) and (b) of the *Crime Commission Act 1997* in order that the following matters may be referred to the QCC for an appropriate independent and impartial investigation.

On advice it is submitted that my complaint now falls within the QCC's jurisdiction pursuant to section 4(1)(a) of the *Crime Commission Act 1997*.

It is my submission that the QCC's jurisdiction can now be enlivened in the long-running Heiner Affair because of recent publications by journalist Mr Bruce Grundy in *The Courier-Mail* (see attached) and 612 4QR *ABC-Radio* interview of 7 November 2001 (see attached) which indicate that :-

(a) the major crime of pack-rape of a 14-year-old Aboriginal girl occurred at the John Oxley Youth Detention Centre sometime in 1988 while she was held in the care and protection of the Crown by court order;
(b) it is open to conclude that the pack-rape was not properly investigated at the time by the police thereby leaving the crime still open to prosecution as no time bar exists on the crime of rape, and therefore, also leaving certain police officers and public officials with knowledge of the incident open to covering up a major crime involving obstruction of justice;
(c) the Criminal Justice Commission's (CJC) recent investigation of the pack-rape incident, as reported in its media release of 16 November 2001 (see attached), gives rise to more serious questions than its answers;
(d) it is open to conclude that the pack-rape was covered up at the time as an excuse (*prima facie* misleading and unlawful in intent) was used to subvert charges being laid by suggesting that the girl's mother, in 1988, would not press charges because the alleged rapists were indigenous when (i) it was not the mother's duty to do so given that her daughter was a minor and in the care and control of the Crown at the time of the incident; and (ii) the mother has since claimed that she was not informed about the pack-rape at the time, and had she been told, she would have insisted on charges being laid;
(e) it is open to conclude that certain public officials within the Department of Family Services were derelict in their duty of care to the 14-year-old Aboriginal girl pursuant to the provisions of the *Children Services Act 1965* and therefore may have engaged in official misconduct by knowingly covering up a major crime;

(f) evidence of this major crime was provided to Mr Noel Heiner during the course of his 1989/90 Inquiry into the management of the John Oxley Youth Centre, and that it is therefore open to conclude that certain public officials (elected and appointed) were aware of this fact when assuming responsibility for his evidence upon the termination of his Inquiry on 11 February 1990;

(g) in light of these new revelations clearly indicating evidence of the major crime of pack-rape was gathered by Mr Heiner during his Inquiry, it is therefore now open to conclude that the subsequent shredding of his Inquiry documents by order of the Executive Government of Queensland on 5 March 1990 may have knowingly covered up a major crime and perverted the course of justice (not to the exclusion of other possible illegal consequences flowing from the shredding relevant to the facts confronting the Executive Government and others at the time in regard to other legal demands being made on the records in question) based on the state of knowledge at the time, and reasons publicly stated by then Minister for Family Services and Aboriginal and Islander Affairs, the Hon Anne Warner to Parliament, which were:-

  (i) the inquiry had ceased and no report would be produced, therefore there was no further need for the material;

  (ii) all parties involved in the inquiry would be assured that any evidence gathered would not be used in future deliberations or decisions. This applied to Mr Coyne as well as to all other staff members; and

  (iii) disposal of the material reduced the risk of legal action against any party involved such as Mr Heiner and Youth Workers employed in caring for children at the John Oxley Youth Detention Centre (See State *Hansard* 18 May 1993 p2871);

(h) the disbursement of public monies in the sum of $27,190 in accordance with certain terms in a Deed of Settlement dated 7 February 1991 between the State of Queensland and Mr Peter William Coyne, manager of the John Oxley Youth Detention Centre at the time of the pack-rape and who had knowledge of it, was deliberately designed for the unlawful purpose of covering up a major crime because the Deed required Mr Coyne's (and the State of Queensland's) lifetime's silence in respect of not publishing (information about) all events leading up to and surrounding his relocation from the Centre;

(i) the involuntary retrenchment of Mr Peter William Coyne on 7 February 1991 in *prima facie* breach of section 28 of the *Public Service Management and Employment Act 1988* and the *Income Tax Assessment Act 1936* may have been motivated by agreement between certain public officials and the Executive Government of Queensland, extending to the misleading of His Excellency the Governor Sir Walter Campbell to sign (unwittingly) a false and misleading Executive Council Minute to effect the fraudulent involuntary retrenchment and unlawful disbursement of approximately $80,000 of public monies, in order that Mr Coyne's services could be terminated while permitting a major crime committed under his management of the John Oxley Youth Detention Centre to go unaddressed.

The facts of the Heiner Affair have been thoroughly documented by me and my former (now deceased) counsel Mr Robert F Greenwood QC and other senior counsel attesting serious (unresolved) wrongdoing. In that regard I provide the following documents as immediate – but not exhaustive - supporting evidence to this submission: -

(a) the *Lindeberg Petition* tabled in the Queensland Legislative Assembly on 27 October 1999 and related correspondence with Queensland Premier the Hon Peter Beattie MLA;
(b) the Greenwood QC submission to the Australian Chapter of the International Commission of Jurists dated 25 April 2000;
(c) the Greenwood QC submission dated 9 May 2001 to the Australian Senate outlining the Lindeberg Grievance in which it is suggested that both the Queensland Government and the CJC may have misled the Senate and obstructed justice when the Heiner Affair came before it in 1995, 1996 and 1997/98;
(d) my submissions to the Forde Commission of Inquiry into Abuse of Children in Queensland Institutions and related correspondence with counsel assisting Ms Kate Holmes (now Her Honour Justice Holmes of the Supreme Court of Queensland).

Any suggestion that my allegations have been properly investigated simply cannot withstand objective honest scrutiny. The oft-stated claim that my allegations have been

"exhaustively investigated" is a myth designed to deceive, and prevent justice being served.

Notwithstanding deception, I have also experienced dissembling and inordinate delay in my pursuit of justice. The following example (See the *Lindeberg Petition* pp59-65) concerning the Office of the Information Commissioner saw a delay of two years and two months before receiving an answer from former Information Commissioner Albietz, one day before he retired. Even then, he failed to answer a threshold question concerning apprehended bias giving rise to suspected official misconduct in the examples he ordered me to provide (to give substance to this serious charge) relating to his handling of my earlier 1994 freedom of information applications for documents associated with the Heiner Affair held by the Department of Family Services and Aboriginal and Islander Affairs and the Department of Justice and Attorney-General.

I include two submissions to the Office of the Information Commissioner for examination within the context of this request for a referral:-

1. Submission to former Information Commissioner Fred Albietz dated 12 May 1999 on a matter of apprehended bias giving rise to suspected official misconduct concerning himself and others within his Office for failing to report suspected official misconduct to the complaints section of the CJC pursuant to his obligation under section 37(2) of the *Criminal Justice Act 1989* (See File Ref: S3/99 REM);
2. Submission to Information Commissioner David Bevan dated 14 November 2001 (on the File Ref S3/99 REM) addressing the unacceptable manner in which both he and his staff handled my application which involved the serious charge of apprehended bias giving rise to suspected official misconduct, obstruction of justice, and a failure to comply with section 37(2) of the *Criminal Justice Act 1989.* (Information Commissioner Bevan is yet to respond to this letter).

Having placed this matter before you, I am are now obliged to point out that I hold that certain members of the QCC's management committee (decision-makers under the *Crime Commission Act 1997* and therefore obliged to respect procedural fairness and

impartiality considerations according to law - (*See Livesey v New South Wales Bar Association* [1983] 151 CLR 288 per Mason, Murphy, Brennan, Deane and Dawson JJ at 294-294) cannot come to this matter without the existence of apprehended bias and/or prejudgement, and therefore, I respectfully submit one of the following should occur because of the extraordinary circumstances surrounding with this matter :-

(a) in the first instance, automatic disqualification should apply in any associated deliberations to QCC management committee members allegedly tainted by apprehended bias and/or prejudgement – whom I submit are:

- CJC Chairperson Mr Brendan Butler SC;
- Queensland Police Commissioner Bob Atkinson;
- PCJC Chairperson Mr Geoff Wilson MLA;
- PCJC Deputy Chairperson the Hon Howard Hobbs MLA;

Then;

(b) notwithstanding the doctrine of necessity, the remaining members of the QCC management committee may consider that owing to the complaint's seriousness and because (i) the makeup of their committee may be so compromised and depleted; and (ii) the time constraints on the QCC owing to its closure on 31 December 2001, that, via your good office, an extraordinary referral to your accountable Minister, Police and Corrective Services Minister the Hon Tony McGrady MLA is made, recommending that a Special Prosecutor with appropriate powers, resources and sufficiently wide terms of reference to cover all aspects of this Affair be appointed to:-

(i) independently investigate and hold public hearings;

(ii) prosecute where sufficient evidence exists; and

(iii) make recommendations to changes in the law where required, and to the structure of the governance of Queensland flowing out of these matters involving *prima facie* major crime and relevant criminal activity thereby restoring integrity and public

confidence in Queensland's criminal justice and public administration systems so that such systemic wrongdoing and abuse of office might not happen again or be corrected sooner;

(c) make a reference to the QCC, within its limited time constraints before closing on 31 December 2001, whereupon you and/or a QCC agent may suggest an appropriate manner in which these matters can be properly and independently advanced and resolved.

I am prepared to provide evidence on Oath.

Yours sincerely

KEVIN LINDEBERG

13 December 2001
Phone: (07) 3390 3912
Email: kevlindy@stargate.net.au

-oOo-

Kevin Lindeberg
11 Riley Drive
CAPALABA QLD 4157
21 December 2001

Assistant Commissioner John Callanan
Queensland Crime Commission
GPO Box 3123
BRISBANE QLD 4000

Dear Assistant Commissioner

RE: REQUEST FOR INVESTIGATION OF THE HEINER AFFAIR BY THE QUEENSLAND CRIME COMMISSION PURSUANT TO SECTION 46(7) OF THE *CRIME COMMISSION ACT 1997*

I refer to your letter of 19 December 2001 which invites further clarification on my correspondence of 13 December 2001.

My initial approach to the Queensland Crime Commission (QCC) sought a referral from its management committee to have the Heiner Affair investigated by the QCC in light of new evidence published in *The Courier-Mail* by journalist Mr Bruce Grundy which I held enlivened the commission's jurisdiction under the meaning of "major crime."

While this belief has proved not to be misplaced, it appears that I may have failed to explain or to advert adequately to the full reach and extent of the possible criminality involved, hence the need for further clarification.

It is now clear that this new evidence enlivens the commission's jurisdiction on "criminal paedophilia" within its meaning under section 6 of the *Crime Commission Act 1997*. You have acknowledged this in your letter on page 2 wherein you said *"…it would seem that, in addition to constituting a major crime, the alleged rape of a fourteen year old girl would fall within the definition of* "criminal paedophilia" *in section 6 of the Crime Commission Act 1997*."

Also, you have acknowledged the crime of "criminal paedophilia" ***does not require*** a reference from the management committee to investigate because the QCC has a standing reference under section 46(7) of the *Crime Commission Act 1997*.

Given the QCC's standing reference to investigate criminal paedophilia, and the fact that evidence of such an incident was first published on 3 November 2001 clearly linking it to

the Heiner Affair, it is reasonable to assume that the QCC has already been enlivened to investigate, and therefore a file may already be open.

Notwithstanding the above, I hereby lodge a complaint concerning the cover-up of criminal paedophilia at John Oxley Youth Detention Centre in which the shredding of the Heiner Inquiry documents and related matters are indissolubly linked (as provided in my submission to Crime Commissioner Carmody SC on 13 December), and request that an investigation commence immediately.

I respectfully request the reference number of the QCC's file and its creation date for my record purposes please.

LEGAL AND ETHICAL DEMANDS ASSOCIATED WITH THE CIRCUMSTANCES SURROUNDING THE COMPLAINT

The body of facts surrounding this complaint points towards the credible and unacceptable existence of systemic corruption on a wide scale over a prolonged period which has irrefutably contaminated our justice system in Queensland.

The Heiner Affair carries with it, for all sworn statutory law-enforcement agents and officers (i.e. decision-makers) who handle it, inescapable threshold questions of prejudgement, apprehended and/or actual bias, and apprehended bias giving rise to suspected official misconduct.

In short, these threshold questions must be settled before any law-enforcement agency or official comes to the matter. The seriousness of the alleged criminality, reaching as high as Executive Government and Executive Council, demands impartiality and disinterestedness in the outcome (save that the law is upheld equally) from any decision-maker, investigator or reference committee.

However, your immediate obligation is to ensure that justice is not denied by delaying justice any longer. This obligation has the added edge of the seriousness of the allegations now confronting the QCC.

It is both illogical and inappropriate for you to argue, at the same time, that this matter cannot be advanced now because (a) the QCC management committee lacks a community representative; or (b) the Crime Commissioner has not sought a referral, when, by law and your own admission, you know that the QCC does not need a referral because it already has it pursuant to section 46(7) of the *Crime Commission Act 1997*.

With respect, your duties and obligations under the Crime *Commission Act 1997* extend up to midnight 31 December 2001, and to do nothing now when you have a standing reference to investigate immediately, is, in my opinion, tantamount to denying justice by obstructing it.

While I appreciate that the *Crime and Misconduct Act 2001* repeals your ability to investigate criminal paedophilia as at 1 January 2002, the Crime and Misconduct Commission (CMC) will be obliged, at the appropriate time, not to ignore that the facts of the case which strongly suggest that the police will not be able to come to the matter impartially because of other attendant factors set out in the material you hold:

> [a] my submission, dated 13 December 2001, and relevant media coverage;
> [b] the *Lindeberg Petition*;
> [c] Greenwood QC submission to the Australian Senate;
> [d] Greenwood QC submission to the International Commission of Jurists;
> [e] submissions to the Office of the Information Commission; and
> [f] the police's 1988 handling of the incident of criminal paedophilia which is now open to question.

At the same time, the CJC has recognised that it is also tainted and can no longer come to the matter. By law, the CJC is now a protagonist in this matter.

It would be investigatively absurd and inappropriate to suggest that the incident of criminal paedophilia can be isolated from the events which followed, namely the Heiner Inquiry, the shredding of its evidence and reasons for doing so, the unlawful

disbursement of public monies to buy the silence of a public official and so on when all had knowledge of the incident of criminal paedophilia.

The evidence show that (a) Mr Heiner took evidence on the matter; (b) the Executive Government shredded the gathered evidence to cover up criminal paedophilia and other abuses of children held in the care and protection of the Crown at John Oxley Youth Detention Centre by court order, and which, the Executive Government knew was required for litigation; and (c) the Crown unlawfully disbursed public monies by use of an unlawful Deed of Settlement to effect the cover-up.

Put simply, the Heiner Affair is about *prima facie* State-sanctioned criminal paedophilia against children placed in its care and protection by court order.

The vehicle to achieve this unlawful activity involves systemic corruption reaching over a decade, and now, by my complaint, the QCC has become involved until midnight 31 December 2001. Until your responsibility has been discharged, this alleged wrongdoing must be acted on.

As to what happens after 31 December 2001 because of the extraordinary circumstances surrounding this matter – the Heiner Affair – is something which shall have to be handled appropriately at the time in order that justice is served honestly and impartially so that any wrongdoer is brought to justice.

To suggest that there is no statutory vehicle whereby notice can be given to the Queensland Government and People that a Special Prosecutor should ideally handle this matter, is to suggest that those who have engaged in systemic corruption and abuse of office for over a decade, which aided in covering up State-authorised criminal paedophilia, are to escape independent public scrutiny.

This is simply intolerable and unacceptable by societal standards if we, as a so-called civilised society, wish to claim that we live by the rule of law and care for our children wherever they may live.

It should be of great concern to the QCC that another Grundy article published in *The Courier-Mail* on 20 November 2001 (p5) revealed another victim of criminal paedophilia and rape while in the care of the Crown at Sir Leslie Wilson Youth Detention Centre and John Oxley Youth Detention Centre respectively. (See attached).

These above values cannot be mutually exclusive for men and women of goodwill who seek to respect the law, otherwise, the law, instead of being our cherished instrument of justice, will have become the instrument of continuing injustice and held in contempt by all. That must not be permitted to happen.

Yours sincerely

KEVIN LINDEBERG

21 December 2001

END OF THE LINDEBERG DECLARATION REVISTED IN 2002