Parliament of Australia

HOUSE of REPRESENTATIVES

STANDING COMMITTEE
ON
LEGAL AND CONSTITUTIONAL AFFAIRS

INQUIRY INTO CRIME IN THE COMMUNITY:

- **FEAR OF CRIME**
- **OFFENDERS**
- **VICTIMS**

SUBMISSION IN REPLY TO BRACKET OF EVIDENCE TAKEN IN BRISBANE REGARDING SUBMISSIONS 142 & 142.1 THE HEINER AFFAIR ON 27 OCTOBER 2003

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TERMS OF REFERENCE

The House of Representatives agreed to the following Terms of Reference:

> The Committee shall inquire into the extent and impact and fear of crime within the Australian community and effective measures for the Commonwealth in countering and preventing crime. The Committee's inquiry shall consider but not be limited to:
>
> (a) the types of crime committed against Australians
> (b) perpetrators of crime and motives
> (c) fear of crime in the community
> (d) the impact of being a victim of crime and fear of crime
> (e) strategies to support victims and reduce crime
> (f) apprehension rates
> (g) effectiveness of sentencing
> (h) community safety and policing

"No power ought to be above the laws."
Cicero, de domo sua, 57 B.C.

1. INTRODUCTION

1.1 Given the quite personal character of my interrogation by certain members of the Legal and Constitutional Affairs Committee in Brisbane on 27 October 2003 attacking my credibility, with a reminder that I was under oath,[1] I believe it is both necessary and in the public interest to make matters more explicit than I already thought they were in my submissions 142 and 142.1 and in my response to questions put concerning the Heiner Affair (Heiner).

1.2 Furthermore, the gravely serious submission presented by Mr. Bruce Grundy on 27 October 2003 to the Committee revealing unresolved systemic physical, psychological and sexual abuse of children at the John Oxley Youth Detention Centre (JOYC) reinforces a closer examination of the Heiner Inquiry's gathered evidence shredding and the special payment to Mr. Coyne on the condition that neither the State of Queensland nor he would ever talk about or broadcast such events ever again.

An Act of Unconscionable Bastardry

1.3 By way of example from evidence gathered by Mr. Grundy, this is the conduct concealed from public scrutiny:

> *"…What happened to the girl at the Lower Portals, one of two incidents, was an act of unconscionable bastardry. The files show her carers knew she had been a victim of sexual abuse prior to her being admitted to custody and yet they took her away into the bush, told her to take her jeans off when she slipped into the water—and I have also slipped into the water at that place because of the nature of the terrain—and left her alone with the boys and, despite being aware of what happened, they did nothing for her. And yet the Criminal Justice Commission says no official misconduct was involved—nothing that might see anyone disciplined or sacked. That means that staff in such places today could do the same thing and there would be no problem.*
>
> *Another John Oxley girl says she was raped in her cell, or room, by a staff member and on weekend release at home. She says any number of staff knew about what happened to her. Because of the circumstances, if the matter of the Heiner shredding had been properly dealt with instead of being nicely sidestepped we might have lifted the lid on not only the current foster care issue in Queensland but, more to the point, if Mr. Heiner had reported, what happened to that girl may never have occurred because it may have been prevented."*[2]

1.4 On top of that, Mr. Grundy's deeply concerning evidence concerning the inexplicable abuse of the judicial process in obtaining relevant court transcripts, a mysterious arrest warrant[3] issued by the State on 23 December 2002 within days against the JOYC pack-rape victim

[1] LACA *Hansard* 23 October 2003 p1454
[2] ibid pp 1383-84
[3] ibid p1392-3

after she lodged a compensation claim against the State for negligence and breach of duty of care, evidence of serious crime at JOYC being withheld in a freedom of information application[4], the unacceptable role of the Criminal Justice Commission (CJC/CMC[5]), all combine together to necessitate this submission in reply.

1.5 In regard to greater explicitness, I am also cognizant that a Mr. Des O'Neill provided a bracket of evidence on Tuesday 28 October 2003 which may have aided the Committee to better understand certain matters, particularly the nature of the initial anticipated litigation which was deliberately obstructed by the shredding.

1.6 The coverage of the Committee's Brisbane visit by *The Courier-Mail* on 28 October 2003 and the misleading nature of its comments, including its editorial, warrants examination here, as indeed does Queensland Premier Beattie's media release of 27 October 2003 declaring the visit a waste of taxpayers' money. The deliberate untruths told by both gives a greater insight into the extraordinary cosy nexus between them on Heiner which consistently prevents the truth from getting out to the general public. **(See *The Courier-Mail* and Beattie Government Combine on Untruths)**

1.7 In being reminded that I was providing evidence under oath, this submission in reply is not suggesting that I either object now or then to being put on oath, or, for that matter, being reminded and/or cautioned by Mr. Robert McClelland MP[6] on the day that I may be opening myself up to serious charges of perjury or contempt if I failed to answer truthfully, although this was not explicitly stated by him. Rather, the clear inference to the oft-repeated question concerning my state of knowledge about the nature of Mr. Coyne's threatened *defamation* action – thought to be about imputations or allegations concerning his involvement in abuse of child while JOYC manager - was that I, as his industrial advocate, must have known about the child abuse at the time of the shredding and, therefore, it seems open to conclude, that I was either as culpable as the rest in the child abuse cover-up at the time and later, a hypocrite, or conniving in my own cause for making an issue of it now.

1.8 Others, less generous, might conclude that it was a classic example of shooting the messenger when the delivered message was unassailable and perhaps too difficult or unpalatable to face.

1.9 Notwithstanding that I answered truthfully that I had no knowledge of the child abuse at the time of the shredding (and the Hon. Con Sciacca MP[7] unreservedly accepted my answer[8]) I nevertheless feel that as my credibility has been attacked publicly, it has become necessary to

[4] The significance of this concealed evidence was described in these terms by Mr. Grundy (at p1410): *"…Sadly, there is a very important connection between the offender in her case and what was going on in the centre when the girl got brought back from that escapade to the lower portals, but they blanked it all out. It has all been covered up in the FOI process—quite wrongly I believe because, while they can black out people's names, these documents hold slabs of pages that have been blacked out. There is a connection between that person and that event, and what he knew about what happened in that place at that time has been concealed from the girl and certainly from me and I do not know from who else. What he knew was going on in the centre at that time is absolutely critical, but we do not know. All we know is what he said prior to the blackout and post the blackout—things like 'I could see that this was very serious information and I felt it should be passed on to the authorities immediately' and then there is a blackout. That particular individual has some questions to answer."*

[5] Crime and Misconduct Commission (CMC) is a result of the merger between the Criminal Justice Commission (CJC) and the Queensland Crime Commission (QCC) on 1 January 2002.

[6] ALP Member for Barton and Shadow Federal Attorney-General.

[7] ALP Member for Bowman and former Federal Minister for Veteran's Affairs.

[8] LACA *Hansard* p1455 23 October 2003.

make clearer and expand on what I thought my two submissions sufficiently covered to show Heiner's relevance to the Committee's terms of reference.

1.10 The line of questioning advanced by Messrs. Duncan Kerr[9] and McClelland concerning who knew about the child abuse at the time and the weight they placed on it, and another comment concerning the judicial proceedings associated with the tabled Ensbey District Court indictment[10] has, in fact, triggered a closer examination of their emphasis only to reveal another layer of *prima facie* serious criminal conduct not previously advanced.

1.11 Heiner now turns on what was actually contained in the gathered evidence and the legal consequences flowing therefrom whereas previously the offences which have carried Heiner forward for many years were directed at the interference the shredding represented to the administration of justice insofar as destroying evidence required in a judicial proceeding was concerned which, in itself, still remains valid.

New Layers of Possible Criminal Conduct

1.12 The new layers of possible criminal conduct are that: -

(a) Members of the Goss Cabinet may be in breach of section 132 of the *Criminal Code (Qld)* - conspiracy to pervert the course of justice - over ordering the destruction of the Heiner Inquiry documents while knowing that those public records contained evidence about abuse of children in State care as it was done for the specific purpose of preventing its use against the careers of the public servants at the Centre. (*See R v Rogerson*). Those public servants, being Crown employees with direct care and responsibility for the children, were known to be open to either possible criminal or disciplinary charges over the evidence provided to Mr Heiner. It is therefore beyond reasonable doubt that members of the Goss Cabinet would have known that said public records would be either reasonably foreseeable or clearly known material evidence for any police or CJC disciplinary investigation or in subsequent related judicial proceedings in any matter relating to the abuse;

(b) Senior public officials in the Department of Family Services and Aboriginal Islander Affairs and possibly others who participated in the shredding of the Heiner Inquiry documents when knowing that evidence of unresolved child abuse was contained therein may be in breach of section 545 of the *Criminal Code (Qld)* - accessories after the fact, and other related provisions of the *Criminal Code (Qld),* as well as the official misconduct provisions of the *Crime and Misconduct Act 2002*; and

(c) the extraordinary conditions contained in the February 1991 Deed of Settlement entered into by the State of Queensland and Mr. Coyne specifically demanding silence from both sides about the goings-on (i.e. "events"[11]) at the Centre and related matters forever and a day when it is beyond reasonable doubt that those "events" were known to be about

[9] ALP Member for Denison and former Federal Justice Minister.

[10] The Queensland citizen who has been charged and ordered to stand trial in the District Court pursuant to section 129 of the *Criminal Code (Qld)* [destroying evidence] and, in the alternative, section 140 [attempting to obstruct justice] for destroying a record some 5 to 6 years ***before*** a judicial proceeding commenced.

[11] Clauses 2 and 5 See Volume 2 Criminal Justice Commission – Senate Select Committee on Unresolved Whistleblower Cases

> unresolved abuse of children in State care in exchange for a special payment beyond Mr. Coyne's proper pay and emoluments which may be a breach of the *Financial Administration and Audit Act 1977* and section 87 of the *Criminal Code (Qld)* - official corruption - and section 88 of the *Criminal Code (Qld)* - extortion by public officials – and other related provisions of the *Criminal Code (Qld)*, as well as the official misconduct provisions of the *Crime and Misconduct Act 2002*.

In that sense, Messrs Kerr, McClelland (and Sciacca for that matter) are to be thanked.

1.13 It follows that law-abiding Australians might reasonably expect those two honourable MPs (both qualified in law) to accept the unresolved danger that Heiner represents to the rule of law by applying it to any and all elected and appointed Queensland public officials who were legally obliged to act at all relevant times and not cover up any suspicions or real knowledge of any abuse of children in State care. This, of course, depends on whether or not their intellectual honesty means something to them and that they are capable of rising above whatever obligations or loyalty they may naturally feel toward protecting their political party's interests or ALP colleagues.

1.14 The backdrop to the Committee's task and my appearance before it is that our systems of government throughout the Commonwealth of Australia are based on the so-called Westminster system which functions on ministerial responsibility. Its cornerstone, upon swearing an Oath of Office before Her Majesty's State or Federal representatives, is an obligation on public officials to uphold the rule of law unconditionally, be that either criminal, child protection law or whatever. I hold that to be a non-negotiable truth if the rule of law means anything.

1.15 As a member of the ALP[12] at the time of the shredding (but no longer a member or of any other political party), I was forced to make such a choice early on in this saga when I was required to stand by my members'[13] legal and industrial rights set out in *Public Service Management and Employment Regulation 65* when the newly elected so-called clean Goss Government decided to ride roughshod over them.

1.16 It follows that any suggestion that the (Goss) Queensland Government came to this matter with clean hands and good intentions bears little scrutiny. Transparency in the Goss Government's handling of this matter was never present from day one, nor does it exist in the Beattie Government in 2003.

1.17 It is now quite clear that while Queensland's administrative and criminal justice system has collapsed in around the Cabinet's unlawful decision to destroy the Heiner Inquiry documents, as Dr. MacAdam suggested in his 27 October 2003 bracket of evidence, these corrupt doings, by natural political and logical extension, go back to the ALP's transition-

[12] I was an ALP member in Federal seat of Bowman occupied by the Hon. Con Sciacca; and the State seat of Manly (later changed to Capalaba) which was occupied by Mr. Jim Elder who later resigned in disgrace, when Deputy Premier and Minister for State Development, after being caught up in electoral rorting which came to light during the Shepherdson Inquiry into electoral rorting within the ALP in late 2000. I used to attend branch meetings on a regular basis. I parted company with the ALP over the Heiner Affair in 1992 after meeting with Mr. Elder when he acknowledged that exposing the Heiner cover-up was only a matter of when it would happen, not if. After the 1992 Goss victory, Mr. Elder became a new Minister and leader of the AWU faction, and spoke in a derisory manner about Heiner whenever it came to the floor of Parliament for debate.

[13] Mr. Peter Coyne and Mrs. Anne Dutney

into-government committee because it is not credible for certain of its members not to have had the same knowledge as Ms. Warner declared she had in the 1 October 1989 edition of *The Sunday-Sun*. It is simply not plausible to suggest otherwise. It is therefore strongly open to suggest that certain plans originated in this forum – or even within a smaller circle - about how the John OxleyYouth Detention Centre problem within the Families Department would be addressed, along with a general cleaning out of other departments after being in the political wilderness for 32 years when the expected December 1989 State election victory was decided. It was, afterall, another "drover's dog" election to be won by the ALP against a discredited and dysfunctional National Party Government massively weighed down by the Fitzgerald Inquiry revelations.

1.18 The manifestation of a transition-into-government plan to "clean out" certain public officials showed up when certain high ranking persons, mainly former departmental Directors-General, were shunted off to a "gulag" at the Normanby Fiveways within a matter of days of the Goss Government winning office where they were given no work, and were eventually either terminated or employed elsewhere. The author knows that Queensland Premier the Hon. Wayne Goss's Principal Private Secretary, Mr. Kevin Rudd, played a highly significant role in this possess of vetting the suitability of new Directors-General for the Goss administration, even as early as the Sunday after election day.

1.19 Mr. Coyne was suddenly moved from his management position at Wacol on 14 February 1990 to another in the Brisbane Central area to carry out a so-called special task the following day. His secondment occurred the day after the Inquiry was closed which immediately triggered his legal action to obtain access to the Heiner Inquiry documents.[14]

1.20 He was gazetted[15] to his new position which opens up other related questions concerning the subsequent (fraudulent) make-up of his Deed of Settlement* payment of $27,190 which included bogus compensation for additional travelling costs and payment for time off in lieu of worked overtime neither of which he was entitled to. Mr. Coyne claimed that his seconded task was, in reality, a "created non-job"[16] for the purpose of justifying his sudden removal from the Centre. ***(See Heading: The Fresh Significance of the Particular Provisions in the February 1991 Deed of Settlement)**

1.21 The identity of those on the ALP transition-into-government committee may become a highly relevant factor in Heiner now for a variety of reasons. Certain LACA Committee members have seen fit to question me on the suspicion that I must have known about the child abuse at the time which, presumably, I should have done something about by preventing the Inquiry's records from being shredded or reported it to an appropriate authority because it potentially breached 'the course of justice' as the records would have been highly relevant to a police investigation and potential related judicial proceedings. As it happened, I was unaware of the abuse.

1.22 Some of these people may have gone on to hold, and may still hold, very influential positions in State or Federal public office, or, indeed, elsewhere enabling them to hinder justice or to still do so in this serious matter. In the interests of justice, their identity and

[14] See the Walsh Memorandum dated 14 February 1990 to DFSAIA Acting CEO Ms. Ruth Matchett.
[15] See Queensland Government Gazette No. 55 3/3/90 p.1088.
[16] Review of Departmental Services to Young Offenders – See Volume 2 Criminal Justice Commission – Senate Select Committee on Unresolved Whistleblower Cases

public position held at relevant times, may well therefore become a necessary fact-finding ingredient for the Committee which, when known, may add more weight to the already-established call for the appointment of a Special Prosecutor to investigate Heiner fully. Equally, given the seriousness of the situation, some may well wish to publicly disavow themselves, under oath, of the same state of knowledge which former Goss Families Minister the Hon. Anne Warner and former Environment Minister the Hon. Pat Comben unquestionably had at the time when they, as Ministers of the Crown, permitted vital evidence of abuse of children in State care to be put through the shredder so that it could not be used in court or in evidence against the careers of certain staff at the Centre who were plainly abusing children in State care and were never held to account. Such conduct may go to a conspiracy to pervert the course of justice and accessory after the fact.

1.23 It is open to suggest that two such people caught up in this network and sitting in the Federal Parliament should be questioned under oath in the same way I was to ascertain whether or not they held the same state of knowledge as the Hon. Anne Warner and the Hon. Pat Comben did in those critical days. They are the Member for Griffith, Mr. Kevin Rudd MP and the Member for Lilley, Mr. Wayne Swan MP.

2. THE UNITED NATIONS TORTURE CONVENTION

2.1 Notwithstanding the other possible breaches of Human Rights conventions set out in the May 2001 Greenwood QC submission to the Senate (now known as the Lindeberg Grievance), it is suggested that the Committee should be cognizant of the torture convention when considering this matter.

2.2 Article 1 of the United Nations International Torture Convention defines the term "torture" as:

> *"…any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such a purpose as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed; or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering, is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising from, inherent in or incidental to lawful sanctions...*"

2.3. It is also open to suggest that because of the apparent indifference to the sexual assault of children at the Centre, together with Mr. Grundy's disturbing bracket of evidence on 27 October 2003, that the existence of a "comfort women culture"[17] is not beyond the scope of a reasonable mind to accept when examining this matter with sexual favours or opportunities being used as a controlling device to run the Centre; and, against that horrific backdrop, the State, instead of doing everything within its power to get to the truth, has done everything in its power to avoid the truth by shredding evidence, lying and paying hush money to ensure that the world never got to read or know about what was really going on behind the walls of the John Oxley Youth Detention Centre at any stage of its dark history.

[17] In this case because the sexual assaults involved children, it falls into the category of State-authorised criminal paedophilia.

3. THE HEINER INQUIRY'S TERMS OF REFERENCE

3.1. The following is the Terms of Reference supplied to the Queensland Professional Officers' Association in late 1989 upon the setting up the Heiner Inquiry:

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

1. The validity of the complaints received in writing from present or former staff members and whether there is any basis in fact for those claims.
2. Compliance or otherwise with established Government policy, departmental policy and departmental procedures on the part of management and/or staff;
3. Whether there is a need for additional guidelines, or procedures or clarification of roles and responsibilities;
4. Adequacy of, and implementation of, staff disciplinary processes;
5. Compliance or otherwise with the Code of Conduct for Officers of the Queensland Public Service;
6. Whether the behaviour or management and/or staff has been fair and reasonable;
7. The adequacy of induction and basic training of staff, particularly in relation to the personal safety of staff and children;
8. The need for additional measures to be undertaken to provide adequate protection for staff and children and to secure the building itself."[18]

4. THE DEFAMATORY MATTERS KNOWN BY MR LINDEBERG AT THE TIME

4.1. The so-called "complaints" against Mr. Coyne did not come to my union in writing. Their circulation was strictly limited, but photocopies of the complaint obviously went to Mr. Heiner and became part of his Inquiry documents.

4.2. Such as I knew them; they were recounted verbally to me by Mr. Coyne and Ms. Dutney. The complaints referred to in the Terms of Reference went directly to Mr. Coyne himself, albeit in summary form. He did not reveal them to the union. However, he wanted to know precisely what the complaints were so that he could properly defend himself, and insofar as natural justice/procedural fairness was being denied him, as his industrial advocate I contacted then departmental Director-General Mr. Alan Pettigrew who declined to intervene because the matter was being independently investigated by Mr. Heiner which caused me to phone him (i.e. Mr. Heiner) requesting that Mr. Coyne's rights be respected. He indicated that they would be, at the appropriate time. These events are recorded in a QPOA letter dated 29 January 1990 to new acting Director-General Ms. Ruth Matchett.[19]

4.3. The so-called defamatory matters of which I had knowledge concerning my union members Mr. Coyne and Ms. Dutney were that:

(a) Mr. Coyne and Ms. Dutney were engaging in an extra-martial affair (which they strongly denied); and

[18] See Lindeberg Exhibit 2 Senate Select Committee on Unresolved Whistleblower Cases
[19] See Lindeberg Exhibit 3 ibid.

(b) Mr. Coyne had unlawfully broken into a staff member's house (which was found to be untrue).

4.4 I repeat, the matter of Mr. Coyne allegedly being involved abusing children or knowing of certain incidents of abuse (i.e. the pack-rape of the 14-year-old indigenous female inmate) was unknown to me at that time.

4.5 However, it is open to suggest that knowledge of child abuse and the real reason for Mr. Coyne's removal from the Centre may have extended QPOA General Secretary Mr. Don Martindale and QPOA President Mr. Bill Yarrow, at relevant times, once I was removed immediately from the Coyne case after I had challenged the Goss Government's plans to destroy the records which I inadvertently learnt about from Ms. Warner's Private Secretary, Ms. Norma Jones on the phone around 8 March 1990. This occurred when I was trying to arrange a meeting between Minister Warner and Mr. Coyne and Ms. Dutney (and their respective spouses) so that the distress of their extra-martial affair allegation on their marriages could be aired. The phone call between Ms. Jones and myself terminated abruptly when the shredding surfaced, and thereafter Minister Warner refused to deal with me alleging that I had threatened her career and that of her senior departmental officers. No such threat ever came from me, save that - ***as I now know*** - I had learnt the tip of something which I was supposed not to know and consequently, as a safety measure for the conspirators, my instant removal from the case was necessary followed by an insistence that either Mr. Martindale or QPOA Assistant General Secretary Ms. Roslyn Kinder take over carriage of it.

4.6 Mr. Martindale took over the Coyne case at a time ***before*** and ***after*** the shredding actually occurred when knowing that his members were seeking lawful access to the Heiner Inquiry records, and together with his own union and the Queensland Teachers Union, was prepared to seek a judicial review with Mr. Coyne and Ms. Dutney in respect of an access right granted under *Public Service Management and Employment Regulation 65*. **(See later comment on this Regulation).**

4.7 I was subsequently sacked on 30 May 1990 with my handling 'the Coyne case" used as a specific charge by Mr. Martindale to justify my sudden dismissal citing a complaint received from Minister Warner alleging that my conduct was *"…inappropriate and overly-confrontationalist"* which I flatly denied. Mr. Martindale and Ms. Kinder together executed the dismissal without notice in Mr. Martindale's office. My conduct which provoked the complaint was specifically on the point of my seeking lawful access to the Heiner records which both Mr. Martindale and Ms. Kinder knew about and approved of having signed union letters of 29 January and 1 March 1990 respectively to Ms. Matchett concerning the breaches of the law which the QPOA wanted remedied. I was not acting without authority or beyond my legal/industrial rights. Moreover, after my dismissal, and following a conditional reinstatement by the authority of the QPOA governing Council, I informed the QPOA Executive (under the leadership of QPOA President Bill Yarrow[20]) on 12 June 1990 in a memorandum[21] that the Heiner shredding may have breached the criminal law possibly reaching as far as the entire Goss Cabinet. <u>The QPOA Executive did nothing to uphold the law despite knowing that its member's legal rights had been trashed</u>.

[20] Mr. Yarrow was a long-standing ALP member and factionally aligned with Minister Warner's Socialist Left faction. It is the author's understanding that Ms. Norma Jones and Mr. Yarrow were long-standing friends.
[21] See Lindeberg Exhibit 79 Senate Select Committee on Unresolved Whistleblower Cases.

4.8 Both Mr. Martindale and Ms. Kinder subsequently left the union and found senior employment with the Goss administration in the Health Department and Premier's Department[22] respectively.

4.9 For the record, before[23] and after my dismissal I took advice from and used solicitors C.A Sciacca and Associates, which included my subsequent subpoenaed appearance before the Cooke Commission of Inquiry into Certain Queensland Unions in May 1991. In this matter, both the Hon. Con Sciacca and solicitor Mr. Brian Kilmartin have first hand knowledge of it. The Cooke Inquiry was prevented from investigating the circumstances surrounding my dismissal when the Goss Government terminated its funding at the time it knew the Coyne case would come under investigation by Commissioner Marshall Cooke QC.

5. EVIDENCE REVEALING KNOWLEDGE OF CHILD ABUSE KNOWN BY THE GOSS GOVERNMENT

5.1. In February 1999, I was informed by Channel 9 *Sunday* presenter Mr. Paul Ransley (who attended the Forde Inquiry February 1999 hearing into the handcuffing of children to grates and fences and related matters under Mr. Coyne's management of the Centre) that Mr. Coyne had indicated that Goss Government Families Minister the Hon. Anne Warner was aware of these incidents having spoken about them to the print media in October 1989 when in Opposition, and had called for an inquiry into the Centre.

5.2. This was my first indication that such an unequivocal state of knowledge existed in the media, and I hurriedly visited the John Oxley Library to carry out a microfilm newspaper search. I found the article in *The Sunday-Sun* of 1 October 1989. I took a photocopy and gave it to Mr. Ransley just prior to his interview with Queensland Premier the Hon. Peter Beattie when *Sunday* revisited Brisbane to gather fresh material for a second screening which included coverage of the suicide hanging of a 16-year-old aboriginal JOYC inmate Mr. Bobbie Yarrie on a hanging point in his cell. He committed suicide on 28 December 1998.[24] The hanging point – steel meshing above his cell door - had been identified as a building defect at the Heiner Inquiry but was never acted on by government, and therefore, it is reasonably open to conclude, that the shredding of this gathered evidence may have played no small part in that negligent inaction on the part of government which always owed Mr. Yarrie a duty of care (and the courts for that matter) to be housed in a safe environment, especially if staff knew and had informed an inquiry that it was a matter of concern.

5.3. It was remedied after Mr. Yarrie's suicide by then Families Minister the Hon. Anna Bligh without any reference to the shredding of the related Heiner evidence years earlier by her ALP colleagues.

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[22] Ms. Kinder took up a senior appointment with the Public Sector Management Commission under Commissioner (Professor) Peter Coaldrake.

[23] I took advice on a matter concerning possible ballot rorting involving an election to the Board of the Queensland Professional Credit Union in September 1989 in which both Mr. Martindale and Ms. Kinder stood as candidates. I was a scrutineer for Ms. Kinder and discovered, during the count, what was believed to be numerous ballots filled in by similar handwriting. I took the matter to the police on 23 March 1990 when I had reason to believe that the ballot papers would be destroyed before being inspected by police. I was advised by solicitor Mr. Brian Kilmartin of C.A. Sciacca and Associates.

[24] See Point 75 *The Lindeberg Petition*

5.4. Improving building design was a part of Mr. Heiner's Terms of Reference at Point 8 (above) which said:

> *"The need for additional measures to be undertaken to provide adequate protection for staff and children and to secure the building itself."*

5.5. It was later recounted in *Sunday* by a retired JOYC staff member that Mr. Yarrie that been the victim of oral rapes by older inmates, and in the departmental report into his suicide that he was known to a suicide ideation which the continuing existence of the cell's hanging point did nothing to prevent.

5.6. In this follow-up *Sunday* screening on 28 March 1999 entitled "Neglect and Cover Up", Mr. Ransley put the evidence to Mr. Beattie concerning Ms. Warner's undoubted state of knowledge but he declined to answer and deflected it by claiming that the Forde Inquiry was then looking into the matters. The fact that evidence of the abuse had been deliberately shredded by five of his senior Ministers years earlier to prevent its use against the careers of the public servants involved, including Mr. Coyne, did not seem to matter and was glossed over by Mr. Beattie.

5.7. Another compelling item of evidence showing that the Goss Government was aware of 'problems' at the Centre before coming into office in December 1989 may be found in *The Queensland Times* (9 April 1990 p5) which says this (in part) in an article headed "*Escapees still on the run*":

> Ms. Warner visited the center yesterday and had called for an urgent report on the center's problems.
>
> "We've known of the problems at the centre for a long time and when we took over the ministry our first step was to appoint a new manager which we hoped would solve the problems. But problems still do exist," the spokesperson said. (my underlining).

5.8 In addition, we have the admission by former Goss Environment and Heritage Minister the Hon. Pat Comben on *Sunday* that all members of Goss Cabinet knew that the Heiner Inquiry must have been of seriousness because it reached Cabinet-level consideration, and that it was about child abuse. Despite his public protestations the day after the national screening of *Sunday's* "Queensland's Secret Shame" claiming that he was misquoted and taken out of context, and that he was instructing his lawyers to take appropriate action, he did not advance past that (threatening) point after *Sunday* took up his challenge and screened his unequivocal statements revealing that he knew precisely what he was saying and that *Sunday* had not taken him out of context or misrepresented him.

5.9 The unavoidable conclusion one arrives at is that there is abundant evidence, once the facts are known and assembled, showing that a linkage between the Heiner Inquiry and child abuse at the John Oxley Youth Detention Centre can be easily and reasonably drawn and that the Goss Cabinet knew.

5.10 The precise wording of the reasoning for shredding the Heiner Inquiry documents relevant to this new layer of criminality was provided to State Parliament on 18 May 1993 by the Hon. Anne Warner in response to a Question on Notice on Heiner. She said this:

"…all parties involved in the inquiry would be assured that any material gathered would not be used in future deliberations or decisions. This applied to Mr. Coyne as well as to all other staff members."[25]

5.11 It is now a question of looking back and applying the law afresh to those known facts. It paints an extremely serious criminal cover-up to which the criminal law has not been fully applied.

6. THE FRESH SIGNIFICANCE OF THE PARTICULAR PROVISIONS IN THE FEBRUARY 1991 DEED OF SETTLEMENT

6.1. The Deed of Settlement between the State of Queensland and Mr. Coyne is extraordinary in every respect. At its best, it is illogical and highly contradictory in its creation, and, at its worst, a corrupt document in which both parties knew that its purpose was to cover up and pervert the course of justice: -

(a) unaddressed disciplinary and/or criminal conduct concerning the maltreatment of JOYC children; and
(b) disciplinary and/or criminal conduct involving Mr. Coyne and high ranking Department of Families officials of which both parties (including legal official in the Office of Crown Law) reasonably would have known could trigger the following provisions of the *Criminal Code (Qld) et al:*

Section 87 - Official corruption

(1) Any person who—

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

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

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

[25] See Lindeberg Exhibit 37 p4 Senate Select Committee on Unresolved Whistleblower Cases

> **(1A)** If the offence is committed by or in relation to a Minister of the Crown, as the holder of public office mentioned in subsection (1), the offender is liable to imprisonment for 14 years, and to be fined at the discretion of the court.
>
> **Section 88 - Extortion by public officers**
>
> Any person who, being employed in the public service, takes or accepts from any person, for the performance of the person's duty as such officer, any reward beyond the person's proper pay and emoluments, or any promise of such reward, is guilty of a misdemeanour, and is liable to imprisonment for 3 years.
>
> **Section 245 - Definition of "assault"**
>
> **(1)** A person who strikes, touches, or moves, or otherwise applies force of any kind to, the person of another, either directly or indirectly, without the other person's consent, or with the other person's consent if the consent is obtained by fraud, or who by any bodily act or gesture attempts or threatens to apply force of any kind to the person of another without the other person's consent, under such circumstances that the person making the attempt or threat has actually or apparently a present ability to effect the person's purpose, is said to assault that other person, and the act is called an **"assault"**.

and, to seal its end-purpose of silence forever from and for both parties, public monies were disbursed as "hush money", and done in a deceptive manner because both parties knew that its construction was based on so-called public service award entitlements (i.e. $14,110 [unpaid overtime] and $10,000 [travelling time]) which did not apply at Mr. Coyne's classification level or to his seconded position as set out earlier.

6.2. The payment was made under the *Financial Administration and Audit Act 1977* – Part 7 – General Provisions – Section 106* **- Losses and special payments**:

> (1) The Treasurer may write-off losses relating to the consolidated fund accounts.
> (2) The accountable officer of the department may —
> (a) write-off losses relating to the departmental accounts of the department; and
> (b) authorise special payments to be made from the departmental accounts.
> (3) A special payment may be made to an accountable officer only with the prior approval of the Governor in Council.

(* This provision may have been amended since 1991 as it was previously paid under section 77 of the said Act)

6.3. The relevant provisions of the February 1991 Deed of Settlement[26] says this at Clauses 2, 3 and 5:

> "2. The Claimant will not canvass the issues surrounding his relocation from John Oxley Youth Centre, Wacol to Brisbane or events leading up and surrounding his relocation with any officer of the Department of Family Services and Aboriginal and Islander Affairs or in the press or otherwise in public and will forbear to take any action in any forum whatsoever which may have jurisdiction in respect of any of such issues or events.
>
> 3. The terms of this Agreement will not be disclosed by either party without the written consent of the other first being obtained.
>
> 5. Without limiting the generality of the foregoing provisions the Claimant shall not permit or allow the events leading up to and surrounding his relocation to Brisbane to be the subject of any autobiography, biography or any published article."

The Relevance of the Forde Commission of Inquiry to the February 1991 Coyne - State of Queensland Deed of Settlement

6.4 As it is now beyond dispute that the Goss Cabinet, and in particular the Families Minister the Hon. Anne Warner, were aware of the excessive use of handcuffing on the inmates at the time the order to destroy the Heiner Inquiry documents occurred, it becomes a highly relevant matter to ascertain whether or not such acts breached any law and, if so, what was its ramification on those who did and/or authorised it. In February 1999, the Forde Inquiry took evidence on the handcuffing of children to grates and fences, and called Messrs. Peter Coyne, (Revd) Ian Peers and Ms. Dutney and Youth Worker involved, namely Messrs. Trevor Cox, Fred Feige and Warren Christenson.

6.5 What is overlooked is that Mr. Coyne was informing his superiors about what he was doing to the children without any real or apparent admonishment for his conduct. Moreover, he was defended by his immediate supervisor Mr. Ian Peers in *The Sunday-Sun* article. It is simply not credible to believe that Mr. Peer's state of knowledge did not reach the highest levels of the Families Department. While Mr. Coyne cannot escape culpability in these matters, it would be completely unjust that he alone should be held responsible. Put bluntly, he was scapegoated while others, who were equally culpable, remained untouched. Against that background, both sides "had the weights on each other" just like a Mexican stand-off and when it came to Mr. Coyne's termination, the card of "*the entire saga of the John Oxley Youth Centre*" was played, albeit it in code between Mr. Coyne and departmental management, and it became a matter of mutual preservation that the "events" (i.e. incidents of maltreatment of children) never saw the light of day or were referred to the CJC as the union threatened to do on 10 January 1991 on pain of public money being demanded and changing hands. The rights of the abused children counted for nothing.

6.6 Unknown to the parties at the extraordinary 10 January 1991 meeting when 'threats' were made against the Crown by certain QPOA officials (i.e. Messrs. Terry Hamilton and Brian Tierney) using the aforesaid "events" as a bargaining chip, I had already taken the shredding

[26] See Volume 2 Criminal Justice Commission Submission to the Senate Select Committee on Unresolved Whistleblower Cases 1995.

of the Heiner Inquiry documents to the CJC to investigate. The notion of any public sector trade union official using information giving rise to suspected official misconduct or criminality to extract public monies to which there was no entitlement to buy silence by the said conduct should concern the Committee very greatly.

6.7 According to Mr. Coyne himself, a QPOA official allegedly told him to make any claim and the department would pay it. Mr. Coyne stated before the Senate Select Committee on Unresolved Whistleblower Cases in May 1995:

> *"It was put to me by union officials that I just keep claiming time in lieu: "Put down anything you want. Claim anything you want. Just put it down, they will pay it."*[27]

6.8 In January 1997, in the wake of the Morris/Howard Report, I approached the Queensland Audit Office again requesting that it reassess its previous 1993 view of the payment of $27,190 given that Messrs Morris QC and Howard found that it was open to conclude that it breached section 204 of the *Criminal Code (Qld)* and sections 31 and 32 of the *Criminal Justice Act* 1989 (**See Addendum C Point 11.2; 13 and 13.3).** I suggested that the Deed of Settlement's "silence" provisions centred on the unlawful shredding and its denial of Mr. Coyne's legal and industrial rights. On 19 February 1997, then Auditor-General Mr. Barrie Rollason replied and stated that payment (subsequently written off as a loss by Ms. Matchett when it was discovered to be 'technically unauthorised' and recoverable) gave *"…effect to the purpose of the Deed of Settlement of 12 February 1991 between the Crown and Mr Coyne which resulted in the initial charge against the 1990/91 Departmental Budget Appropriations were supported by the prescriptions of the* Financial Administration and Audit Act 1977*."*

6.9 In my response on 26 February 1997 I rejected the Auditor-General's view and repeated my earlier claim of 23 August 1993 that if the *ex gratia*/special payment provisions of the *Financial Administration and Audit Act 1977* could be used in such a manner, then it was nothing short of a political "slush fund" to cover up crime.[28]

6.10 We now know in 2003 what the contents of the Heiner Inquiry documents were, namely evidence of criminal child abuse. It is therefore open to suggest that such a threat to extract public monies may breach the *Criminal Code (Qld)* in the areas of extortion and collusion because the "events" concerned abuse of children in State care, and agreement not to report such criminal offences in exchange for public money may be a breach of section 132 of the *Criminal Code (Qld)* – conspiracy to pervert the course of justice – at the very least, and the shredding remains part and parcel of this *"…entire saga."* It is a matter of record that the "events'[29] were not referred to the police. (**See Recommendation 20.15**)

An Awareness of Evidence Warranting a Possible Police Investigation

6.11 In an undated report[30] headed "John Oxley Youth Centre Inquiry" obtained under freedom of information, Mr. Ian Peers[31] addresses 'a process' for handling the Inquiry to acting DFSAIA

[27] Senate *Hansard* Senate Select Committee on Unresolved Whistleblower Cases 5 May 1995 p.536
[28] http://www2.premiers.qld.gov.au/governingqld/ministerial/entitle5_2.htm Financial Delegations Fresh limits ministerial $1,000,000 and Directors-General $500,000.
[29] Handcuffing children to grates and fences for up to 12 hours at night, and other matters of concern to Mr Heiner.
[30] Its construction would appear to fall around the end of January/early February 1990.
[31] Mr. Coyne's immediate superior.

Director-General Ms. Ruth Matchett under various headings. He suggests that Mr. Heiner's anticipated report might take the following shape:

> "Part A should be a written document able to be released publicly. It should do no more than answer specific issues in line with the Terms of Reference, for example:
>
> - Is there any evidence which should warrant a police investigation?
> - Is there evidence upon which disciplinary action by this Department might be based?
> - As a result of the Inquiry, are there any procedural guidelines that he would recommend?
> - As a result of the Inquiry, did he form any opinions about the design and adequacy of the building?
>
> If he wishes than to list any "evidence" upon which police investigations or disciplinary action should be based, this could be included in a confidential Part B report to the Director-General. There could be reference to such a confidential report in Part A document but it should protect any individuals involved.
>
> The third part of the report should be a verbal report to the Director-General, and possibly to the Minister should she anticipate political issues as a result of the Inquiry. Recommendations by Mr Heiner that may fall into the realm of personal opinion can be presented in this way but also discussed and examined. Any response or any action arising out of the is interview would be left with you."

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

> *"That on the order of Mr Peter Coyne, three residents of the John Oxley Youth Detention Centre were handcuffed on the evening of 26 September 1989. Those residents were X, Y and Z. Daniel Alderton was not one of these three residents.*
>
> *That both the act of handcuffing and then the length of time that X and Y were handcuffed constituted a possible breach by Mr. Coyne of section 69(1) of the Children's Services Act 1965 in that such conduct may have amounted to ill-treatment, neglect or exposure of a child in a manner likely to cause unnecessary suffering or injury to the physical or mental health of the child involved.*
>
> ***That as more than 12 months have elapsed since the date of the commission of the offence, no prosecution for any such breach can now be made**.*
>
> *In light of the evidence heard by the Inquiry, such handcuffing and more particularly the duration of it, could not be regarded as reasonable punishment, nor was it reasonably necessary in order to dissuade the residents from behaving in a recalcitrant or mutinous manner. As such, in the Inquiry's view, Mr. Coyne was not afforded the protection of section 69(5) of the Children's Services Act 1965, nor of Regulation 23(10) of the Children's Services Regulations 1966."* (my heavy italic and underlining)

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

6.14 Nevertheless, taking the aforesaid Forde Inquiry findings as they are, they give rise to other *prima facie* criminal offences against those who willfully shredded the gathered evidence some 9 years earlier, namely the Goss Cabinet, the responsible Families Minister the Hon. Anne Warner and certain of her senior departmental officials who all knew about the handcuffing at the time. The statute of limitations associated with the *Children Services Act 1965* ***was not exhausted*** when the aforesaid parties decided to destroy the related evidence; furthermore, when destroying the evidence, the Goss Cabinet did it for the stated reason that the material's written contents could not be used against the careers of staff at the Centre, including Mr. Coyne.

6.15 It is therefore open to suggest that the shredding, under these factual circumstances, was a breach of section 132 of the *Criminal Code (Qld)* - conspiracy to pervert the course of justice[32], or section 140 of the *Criminal Code (Qld)* - attempting to obstruct justice - insofar as using handcuffing in such an excessive manner was a breach of Section 69(5) of the *Children Services Act 1965* and of Regulation 23(10) of the *Children Services Regulations 1966* opening Mr. Coyne up to disciplinary charges but which the shredding thwarted at the time and aided in covering up for 9 years.

6.16 Had Mr. Coyne been disciplined over the unlawful use of handcuffs which could have ranged from dismissal, demotion or transfer (or even charged for criminal assault), he would have been able, at the very least, to seek a review in the Industrial Relation Commission of Queensland which is a statutory quasi-judicial body and comes within the ambit of a tribunal under section 119 of the *Criminal Code (Qld)* capable of taking evidence on oath. This means that the Heiner Inquiry documents would have been, and known to have been, material evidence in another related tribunal proceedings. Under those circumstances it is open to suggest that the destruction may have breached sections 129, 132 or 140 of the *Criminal Code (Qld)* insofar as those public records related to Mr. Coyne's industrial rights and interests (or the Crown's interest to prove any potential disciplinary or criminal case) as evidence which *"… is or may be required in evidence"* in a tribunal. However, that disciplinary employment aspect of Heiner touching on Mr. Coyne and the so-called "events" at the Centre *"…leading up to and surrounding his (Mr. Coyne's) relocation*" had to wait another 9 years before the law, which should have been applied in late 1989/early 1990, was discovered by the Forde Inquiry in 1999 by which time the statute of limitations time barred action under the *Children Services Act 1965*. Simply put, the course of justice had been unquestionably obstructed by the shredding.

6.17 In that regard, the following statement in my 18 September 1998 to the Forde Inquiry becomes highly relevant:

> "…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

[32] *R v Rogerson* (1992) 174 CLR 268

> 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."

but the Inquiry's counsel assisting Ms. Kate Holmes[33] refused to accept my submission claiming it fell outside her Terms of Reference set by the Beattie Government. In my view, this unavoidable connection between the Heiner Inquiry and the Forde Commission of Inquiry and the latter Inquiry's indifference to the obstruction of justice which the shredding represented, and its unyielding deference to restricted Terms of Reference when it all centred on the maltreatment of children in care gives a disturbing insight into just how genuine the Forde Inquiry was about rooting out abuse and exposing abusers and those who aided in such cover ups. The only reasonable conclusion one can adduce is that the Forde Inquiry was more interested in the political ramifications of the child abuse at JOYC than pursuing the truth and applying the law fearlessly. Its makes Commissioner Forde's Foreword to her Report look hollow and hypocritical in the extreme:

> *"I urge all Queenslanders to contemplate the experiences of children in institutions, how it came to pass that many of them were abused and mistreated, and why it has taken so long for their stories to be told. It was society that failed those children. In acknowledging that, we must ensure that the same wrongs are not repeated, and that this Inquiry has a positive outcome."*

6.18 This rejection of looking into Heiner brought about a heated exchange of letters which was summarized in my final comment to the Forde Inquiry in my letter to Ms. Holmes on 28 May 1999:

> " 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.
>
> 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.

[33] Shortly after acting as Counsel Assisting the Ford Inquiry, the Beattie Government elevated Ms Holmes to a Justice on the Supreme Court of Queensland where she still serves.

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** (i.e. 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."

6.19 Mr. Grundy's bracket of evidence on 27 October 2003 concerning the manner in which the Forde Inquiry handled abuse allegations at JOYC is most disturbing. The extraordinary failure to comprehensively cross-examine key witnesses when under oath before the Inquiry can only be viewed as alarming, if not consciously self-constrained for a political purpose. The failure to advance questions flowing out of the Dutney memorandum of 1 March 1990 which informed the Goss Government that the lives of children were at risk at the Centre ***before*** the Heiner Inquiry documents were ordered destroyed on 5 March 1990 and

subsequently shredded on 23 March 1990, as well as not question another Youth Worker witness about an improper relationship he had with a female inmate, is simply inexcusable for a commission of inquiry set up to address child abuse in Queensland institutions.

6.20 It is recommended that the Legal and Constitutional Affairs Committee might approach the former Commissioner Leneen Forde requesting that she explain how such extraordinary omissions could have reasonably occurred in carrying out her commission. Furthermore, the Committee might inquire whether or not she examined the Families Department file on the May 1988 pack-rape incident, and if not, why not? **(See Recommendation 20.16)**

6.21 These questions are highly relevant in the context of Mr. Beattie's call for the Governor-General's resignation over his handling of child abuse allegations when in the same breath he points to the Forde Inquiry as an unimpeachable example of a courageous government being prepared to set up an inquiry into child abuse in Queensland as if he comes to the issue with clean hands. The reality is that insofar as Heiner was concerned, the Beattie Government nobbled the Forde Inquiry by placing it outside its Terms of Reference, and the Inquiry appears to have been only too happy to have been nobbled making no attempt to have them amended. Reward or not, its Counsel Assisting was later elevated to the Supreme Court Bench, and its Commissioner, elevated to Chancellor of Griffith University to serve with Vice-Chancellor Dr. Glyn Davis who himself remains deeply implicated in Heiner by the deliberate provision of the false and misleading evidence (see tampered Document 13 *et al*) to the Senate Select Committee on Unresolved Whistleblower Cases in 1995 when he was the Director-General of the Department of Premier and Cabinet.

Misleading the Governor

6.22 A related matter of the Goss Government deliberately misleading (then) Queensland Governor His Excellency Sir Walter Campbell AC QC to effect Mr. Coyne's involuntary redundancy in February 1991 when its legal prescriptions had knowingly not been fulfill is another matter of serious related concern. To effect an 'involuntary' redundancy, the instrument had to be signed by Governor-in-Council, but, in Mr. Coyne's case, it was short-circuited by pretending that all of Mr. Coyne's legal options under section 28 of the *Public Service Management and Employment Act 1988* had been exhausted when it fact they had not. In making Mr. Coyne involuntarily retrenched, it provided him with a better (lesser) taxation regime under the *Income Tax Assessment Act 1936*, which, in his case, was contrived. In mid-July 1997, Mr. Coyne filed a writ[34] against the State of Queensland and Ms. Matchett in Queensland's Supreme Court on this matter claiming breach of contract and deceit *et al* but not progress it.

6.23 Furthermore, it was known that in paying Mr. Coyne the aforementioned special payment of $27,190, it should have been authorized by Governor-in-Council but was not. All this indecent haste and deception underscores the determination of the (Goss) Queensland Government to rid itself of Mr. Coyne while at the same time gagging him (and itself) forever over what went on behind the high walls of the John Oxley Youth Detention Centre. **(See Recommendation 20.15)**

[34] (No 1130 of 1997) in the Supreme Court of Queensland

7. THE FORESHADOWED JUDICIAL PROCEEDINGS

7.1. The foreshadowed judicial proceedings facing the Goss Government was a judicial review of the *Public Service Management and Employment Regulation 65* insofar as it applied to access to:

(a) the Heiner Inquiry documents relevant to material held on certain departmental public officials; and
(b) the original complaints.

7.2. The *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*."

7.3. There is no doubt that Mr. Coyne was threatening a defamation action, but on 8 February 1990, his solicitors placed the Families Department on notice in respect of seeking access to the above documents pursuant to *Public Service Management and Employment Regulation 65*. Mr. Coyne was caught up with an initial difficulty inasmuch he could not be sure what (allegedly) defamatory broadcasts had been made against his reputation during the Heiner Inquiry because the gathering of evidence took place in camera and given that he was suddenly relocated from the Centre when the Inquiry was closed, he took the view that adverse broadcasts must have occurred. However, he needed to see what those broadcasts were before advancing any threatened specific defamation action, even though it would have become clear once the discovery processes took effect.

7.4. The Queensland Government, either coordinating how the problems at JOYC would be handled centrally through the Office of Cabinet or out of the Department of Families decided to "warehouse" the Heiner Inquiry documents and secretly transferred them from the Department to the Office of Cabinet so that it could 'truthfully' inform Mr. Coyne and his solicitors that the documents they were seeking pursuant to *Public Service Management and Employment Regulation 65* were not held on any departmental file. What they conveniently failed to say was that they knew the sought-after documents were secretly warehoused in the Cabinet where it was thought that Regulation 65 could not reach because the documents were held by a different department.

7.5. This has all the overtures of the famous *McCabe* case where British American Tobacco deliberately warehoused relevant records off-shore in order to escape the net of discovery applicable on the Australian mainland.

7.6. This crafty move on the part of the Goss Government to 'warehouse' the Heiner Inquiry documents in the Office of Cabinet was its ultimate downfall. It was too smart by half. <u>This cynical move, founded in a mentality of being beyond the reach of the law, brought the entire Queensland Government into the Heiner conspiracy</u>.

7.7. When the Goss Cabinet continued to hold the records and decide their fate despite being advised on 16 February 1990 by Crown Law that the records were (a) not created for a Cabinet purpose; and (b) discoverable once the anticipated writ was served, it sealed its own

fate. In short, once the Goss Cabinet knew that the solution of access to the Heiner Inquiry documents legally rested with the Department of Families, those public records should have been returned immediately to that department which would have kept the Goss Cabinet out of the conspiratorial circle. Plainly, it had been decided that Heiner would be handled centrally by the Goss Government irrespective of legal advice, and then Queensland Premier the Hon. Wayne Goss played a dominant role, or someone very close to him did – and that inevitably points to his Principal Private Secretary Mr. Kevin Rudd.

7.8. Notwithstanding that centralized handling of Heiner by the Goss Government, the roles played by then Families Minister the Hon. Anne Warner and her acting Director-General Ms. Matchett and other senior departmental public officials like Messrs. Gary Clarke, Trevor Walsh, Don Smith and Ms. Sue Crook can not be forgotten or overlooked because all would have known about the child abuse at JOYC at all relevant times and are equally culpable.

The Significance of the Heiner Inquiry Documents being defined as "public records"

7.9. It was always Mr. Coyne's view, and the unions, that the Heiner Inquiry records were public records held in the ownership and control of the Families Department. Initially the Office of Crown Law mistakenly believed that the Heiner Inquiry documents were in the power and ownership of Mr. Heiner, and the flawed advice of 23 January 1990 was based on that mistaken premise. It was later corrected in Crown Law advice to the Goss Cabinet on 16 February 1990 when it was advised that (a) the Heiner Inquiry documents were always "public records" in the ownership and control of the Crown as Mr. Heiner was an agent of the Crown; (b) the Heiner Inquiry documents were not, by law, Cabinet documents and not exempted from access by a claim of "Crown privilege"; and (c) once the expected writ was served, the discovery process of the rule of the Supreme Court of Queensland would apply to the records.

7.10. The legal definition of the Heiner Inquiry documents as 'public records and/or departmental files' under section 5(2) of the *Libraries and Archives Act 1988* created an ***insurmountable legal problem*** for the Queensland Government (and the Office of Crown Law). Put simply, it opened the records up to access pursuant to *Public Service Management and Employment Regulation 65*. In legal/democratic terms, even if the Queensland Government claimed that the regulation was not applicable, it became a matter to be resolved in a court of law not by any unilateral 'first-strike' shredding act on the part of the State of Queensland being the defendant in the foreshadowed judicial proceedings here as the holder of the relevant piece of evidence.

7.11. Under these circumstances, both the Queensland Professional Officers' Association and Queensland Teachers' Union (QTU) indicated that they were prepared to join Mr. Coyne and Mrs. Dutney in their foreshadowed judicial proceeding to gain access to the documents by a judicial interpretation of *Public Service Management and Employment Regulation 65*. I met personally with DFSAIA Acting Director-General Ms. Matchett on 23 February 1990 and placed her on complementary notice that both unions would be joining the Coyne/Dutney anticipated judicial proceeding if access out of court were not granted. From my union's perspective, it was an issue about universal application of members' rights and any legal precedent and/or interpretation of the regulation established by a court ruling would be useful not only for Mr. Coyne and Mrs. Dutney but other QPOA members at some future time, including school teachers who were members of the QTU.

7.12. It is now a matter of record that on this very day, 23 February 1990, when Ms. Matchett was assuring me that the sought-after public records were secure, the Goss Cabinet had secretly sought urgent approval from the State Archivist to have the records destroyed on the known false pretext that no one wanted access the records in question, and, if necessary, would test the access question in court.

7.13. Our union's involvement centred wholly and solely on upholding the law of access for a member. It was our contractual duty owed to any member as it involved legal/industrial rights entrenched in the legislation which governed our membership's employment contract with the State of Queensland. It had nothing whatsoever to do with any defamation considerations which Mr. Coyne, or others, may have been contemplating because that was beyond our legal and industrial jurisdiction and scope. As experienced industrial practitioners, we firmly believed that the particular regulation provided a right of access, and we were willing to test it. As we later discovered, the Office of Crown Law recognized that access right at law, and yet, went on and aided Ms. Matchett to still dispose of relevant evidence. There is no doubt that industrial and legal advisers working for the Queensland Government ***knew*** that our and Mr. Coyne's view of Regulation 65 was soundly based, hence the dissembling, unethical conduct and delay until everything had been destroyed.

7.14. As I now know, the Queensland Director of Public Prosecutions Mr. Royce Miller QC in his yet-to-be-released advice to the Borbidge Government of January 1997 recognised the access right embodied in *Public Service Management and Employment Regulation 65* which Mr. Coyne was entitled to enjoy but Ms. Matchett deliberately obstructed. I am aware that the DPP drafted a criminal charge against Ms. Matchett to that effect in his advice but never activated it. (See DPP's Advice to the Borbidge Government etc).

7.15. In short, the anticipated judicial proceedings relied entirely on the continuing existence of the Heiner Inquiry documents and original complaints. That was indisputably known at all relevant times by the Queensland Government. In wilfully destroying those public records, the Queensland Government rendered our anticipated judicial proceeding nugatory. It had the desired effect of ruthlessly and completely obstructing a known course of justice involving a judicial proceeding because there was no point in filing and serving a writ to gain access to documents by judicial review when they no longer existed.

7.16. In that context, Mr. Ian Callinan QC, as my senior counsel, advised the Senate Select Committee on Unresolved Whistleblower Cases in February 1995 what he thought such deliberate destruction of evidence meant to the administration of justice:

> *"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 that it might be sued, took a decision to destroy evidence, that would be regarded as conduct of the greatest seriousness - and much more serious, might I suggest, if done by a government."*[35]

[35] Senate *Hansard* 23 February 1995 p39

8. THE DPP'S ADVICE TO THE BORBIDGE GOVERNMENT ON THE FINDINGS AND RECOMMENDATIONS OF THE MORRIS/HOWARD REPORT

8.1. **This DPP's advice, which had the undoubted potential to cause a watershed moment in Queensland political history, remains hidden from public scrutiny**. It should not remain so and it is to be hoped that the Committee keeps its public undertaking of 27 October 2003 to seek access to it by writing to Queensland Opposition Leader and Shadow Minister for Justice and Attorney-General the Hon. Lawrence Springborg MLA who controls its destiny under Westminster conventions. **(See Recommendation 20.14)**

8.2. I am aware of its contents. It repeats the discredited notion that section 129 of the *Criminal Code (Qld)* – destruction of evidence – can only be triggered in a pending judicial proceeding. It relies on the other discredited notion that section 119 of the *Criminal Code (Qld)* - definition of "judicial proceeding" – only means a judicial proceeding in the past and present tense whereby it fundamentally misrepresents the rudimentary legal understanding of the word "includes" in statutory interpretation.

8.3. These key disabling reasons to justify doing nothing in 1997 in the face of the serious "open to conclude" criminal and official misconduct findings by Messrs. Tony Morris QC and Edward Howard in October 1996 were comprehensively addressed by Dr. MacAdam in his bracket of evidence. Mr. MacAdam enjoys the company of eminent jurists such as Justice Ian Callinan, Robert F Greenwood QC (deceased) Robert Cock QC (Western Australia's DPP), other barristers and law lecturers throughout Australia.

8.4. In the advice, Mr. Miller QC places some reliance (in terms of not advancing on the Morris/Howard findings) on the fact – then applicable because of Mr. Beattie's decision not to produce them - that the relevant February/March 1990 Goss Cabinet submissions were not available for independent examination. That excuse no longer holds true. We hold them. They show unequivocally that all members of the Goss Cabinet were aware that the Heiner records were required for anticipated judicial proceedings but the expected writ had not yet been served, and with that state of knowledge they ordered their destruction. We also know that the Goss Cabinet and Office of Crown Law were aware that the discovery processes of the Rules of the Supreme Court of Queensland would apply to the Heiner Inquiry documents once the writ was filed and/or served.

8.5. He furthered advised that Ms. Matchett was open to criminal charges under section 92(1) of the *Criminal Code (Qld)* in regard to arbitrarily disposing of the original complaints (and photocopies) in May 1990 when Mr. Coyne was known to enjoy a right of access to them pursuant to *Public Service Management and Employment Regulation 65*.

8.6. However, he suggested that it may be "unjust" to prosecute her because she was aided in her enterprise by Crown Law advice of 18 May 1990. The simple application of the law was not that Ms. Matchett acted arbitrarily alone or even with the assistance of legal advice, but that both Ms. Matchett and legal officers in the Office of Crown Law acted arbitrarily together in denying Mr. Coyne his lawful right, and both should have been named in the indictment. Apart from breaching section 92(1), it is open to conclude that

those aforesaid parties were open to charges of conspiracy to pervert the course of justice or an attempt to obstruct justice.

8.7. On the weight of hard evidence and expert advice, the DPP's advice is deeply flawed on rudimentary aspects of law which first-year law students would be expected to know. As Dr. MacAdam informed the Committee, on the particular points at issue, if a first-year law students ran the same line by Messrs. Miller QC, Barnes, Nunan and others have (in Heiner), they would receive a low fail mark.[36]

8.8. The DPP's advice, desired or otherwise, thwarted the Borbidge Queensland Government in any plans it may have had to hold a public inquiry into "the Lindeberg allegations." Its mere existence became a high hurdle which the Government apparently felt it could not overcome although Mr. Miller QC fails to advise whether a public inquiry should be definitely held. He casts doubt on an inquiry's usefulness, purpose and closes by suggesting that the Heiner matter might be put to rest because too many people have been pursuing the truth for too long.

8.9. The January 1997 DPP advice, which runs to some 23 pages, is couched in deferential terms towards the system, particularly giving credibility to the Office of Crown Law (and describing former Crown Solicitor Mr. Ken O'Shea advice as "cogent") which is simply undeserved. The interpretations of sections 119 and 129 of the *Criminal Code (Qld)* are so strained and flawed as to give rise to the serious question of how could such an experienced legal practitioner and former judge get it so wrong so easily on such a key principle at law (i.e. the preservation of evidence known to be required in a pending/anticipated judicial proceeding) without having some other (improper and/or political) motive in mind, especially when one realizes that the entire 5 March 1990 Goss Cabinet may be open to serious criminal charges?

8.10. As if to seal its oddity, if not contrivance in avoiding what the criminal law objectively demanded, the advice stands in stark contrast to the criminal charges now being brought by the DPP against the Baptist minister mentioned in my Opening Statement and by the Committee Chairman herself. It should alarm the Committee when looking at the health and impartiality of Queensland's criminal justice system.

9. DESTROYING EVIDENCE

9.1. The spectacle of well-educated lawyers earnestly debating the ultra-fine point of when it is lawful to destroy documents known to be evidence in a foreshadowed judicial proceeding does them little credit save, on occasions, when upholding their obligation to defend a client's interests should it be the issue under question, but then it has the capacity of descending into legal madness of arguing for a world without evidence which otherwise considers itself both civilized and democratic.

9.2. In a paper by University of Melbourne Faculty of law lecturer Associate Professor Camille Cameron and Cancer Council Victoria legal consultant Mr. Jonathan Liberman entitled "*Destruction of Documents before Proceedings Commence: What is a court to do*?" in the

[36] See LACA *Hansard* 27 October 2003 p1433 Dr. MacAdam says: *"…if someone used that method to reach a determination as to what section 129 means, that is clearly a wrong method and would result in failure of a first-year law subject; it is the wrong method."*

wake of *McCabe*, they say this in their introduction which I suggest should be an abiding principle in any society which considers itself civilized and governed by the rule of law, not by might being right, and where lawyers truly respect their first duty to the courts:

> *"Courts adjudicate disputes. The essential features of the adjudication process are determining the facts and applying the law to those facts. The aim of this judicial process in any given case is to do justice between the parties by finding the facts and resolving a specific dispute according to law. In order to discharge their fact-finding and decision-making functions effectively and fairly, courts need evidence. One of the principal ways in which this evidence is obtained in the civil litigation process is through the discovery of documents."*

9.3. Leaving aside for a brief moment the fact that a Queensland citizen is currently being charged and before the District Court of Queensland for destroying a record some 5 to 6 years ***before*** a related judicial proceeding commenced which sustains our long-held view of section 129 of the *Criminal Code (Qld)* and what protection of the administration of justice demands of itself, the notion that the criminal law is silent, and thereby lawfully invites, evidence known to be required in anticipated judicial proceedings to be destroyed to prevent its use in those anticipated proceedings before a writ is filed and/or served needs to be exposed for the fraud it is.

9.4. Respecting the rule of law was at the very heart of Justice Wilcox's ruling on 23 April 1998 in the notorious Maritime Union of Australia dispute with Patrick Stevedores.[37] His Honour Justice Wilcox of Australia's Federal Court said the following relevant words in his ruling: *"…Just as it is not unknown in human affairs for a noble objective to be pursued by ignoble means, so it sometimes happens that desirable ends are pursued by unlawful means. If the point is taken before them, courts have to seek to rule on the legality of the means, whatever view individual judges may have about the desirability of the end. This is one aspect of the rule of law, and a societal value, that is at the heart of our system of government."*

9.5. Courts need evidence to deliver justice according to law. The notion of any government suggesting that it "…just had to" destroy public records to prevent people suing each other for defamation which meant it had to deny a citizen his day in court in which those records were known to be critically relevant, may, if coloured appropriately, seem palatable at first blush; but when one recognizes the doctrine of the separation of powers[38] which means that the Judiciary is also an indisputable constitutional constituent in a citizen wishing to exercise his legal rights, any unilateral act, no matter how coloured or allegedly necessary, must be questioned, and may even be unlawful despite its (alleged) best intentions.

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

[37] *Patrick Stevedores Operations No. 2 Pty Ltd & Ors v Maritime Union of Australia & Ors* [1998] 397 FCA (23 April 1998).
[38] *Nicholas v The Queen* [1998] HCA 9 (2 February 1998) at 111

criminal provision in conflict with another, particularly in an area so fundamental as offences against the administration of justice.

9.7. Such a notion of lawfully permitting known evidence to be destroyed up to the moment of a writ being filed and served is patently absurd and invites a world without evidence. It would become a spectacle of absurd proportions wherein the very civilised act of placing another party "on notice" would become a signal to that party to shred all relevant evidence immediately. It would mean that disputes between parties would demand that writs be filed and served as a first priority just so all relevant evidence would not only be preserved, but so that the criminal law protecting the administration of justice could ever be triggered.

9.8. Put simply, *R v Rogerson* (the leading authority in this area of law), it could be said, finds its authority in the "wide" definition of "judicial proceeding" set out by Sir Samuel Griffith in sections 119 (using the word "includes" instead of "means") and 129 of the *Criminal Code (Qld)* (using the word "knowing" and "*…is or **may be** required in evidence*") otherwise a conspiracy to pervert the course of justice which *Rogerson* says can occur ***before*** curial proceedings commence could not have been found by the High Court of Australia.

9.9. In other words, the interpretations of sections 119 and 129 of the *Criminal Code (Qld)* applied in Heiner, and seemingly entertained by the Committee member (and barrister) Hon Mr. Duncan Kerr MP, are not only simply untenable, but, as former Queensland Supreme and Appeal Court Justice James Thomas QC advised *The Justice Project*, never open to be made.

10. ***THE COURIER-MAIL*** AND BEATTIE GOVERNMENT COMBINE ON UNTRUTHS

10.1. In the wake of the Committee's Brisbane visit, both *The Courier-Mail* and the Beattie Government combined to place a patently untrue spin on the Committee's decision to examine Heiner. It revealed a disturbing nexus which centred on the claim that Heiner had been thoroughly investigated, and that the Committee was wasting public monies by looking into the affair. Neither party told the public that the Committee held my triggering submissions (Nos 142 and 142.1) and appeared to suggest that the Committee's Chairman suddenly took it into her head to come to Brisbane and stir the political pot on Heiner without any other cause than it was for party-political advantage because a State election was in the air.

10.2. The Beattie Government's media release of 27 October 2003 **(See Addendum A)** is worth examining because it reveals both lies and criminal admissions when one knows Heiner's facts and the law. For its part, *The Courier-Mail* appears to have merely reproduced the list of bodies claimed by Mr. Beattie to have (allegedly) investigated the Heiner Affair to no effect when in fact it had previously ridiculed such a bogus claim by telling its readership that if anyone should suggest such a thing, they should be laughed at. **(See Addendum B)**

10.3. The Beattie Government listed the following as bodies which have investigated the Heiner Affair:

- two Senate Select Committees;
- Criminal Justice Commission;
- Parliamentary Criminal Justice Committee;
- Electoral and Administrative Review Committee;

- Auditor-General (twice);
- Connolly/Ryan inquiry; and
- Morris/Howard Report - and related DPP's advice to the Borbidge Queensland Government.

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

- **Two Senate Inquiries**. They are not named, but it is suspected they mean:

  1994 **Senate Select Committee on Public Interest Whistleblowing** (Chaired by Senator Jocelyn Newman). It found Heiner so serious (and unresolved) that it called on Mr. Goss to revisit it. He refused and then the Senate established:

  1995 **Senate Select Committee on Unresolved Whistleblower Cases** to look into Heiner and described the shredding *"...an exercise in poor judgement*". It was misled by the Queensland Government and CJC and held evidence about the pack-rape deliberately withheld from it. The Senate is currently reviewing the matter and may revisit Heiner to see whether or not, in light of new revelations about pack-rape, Baptist minister case, it was deliberately misled and held in contempt when it visited the matter some years ago;

- **Criminal Justice Commission**. It never did the investigation honestly or thoroughly from day one. The CJC told the Connolly/Ryan Inquiry that it did not do the job thoroughly and if it had, it may have reached a different view. The CJC's conduct (involvement of Labor Lawyers, twisting and misquoting the law, tampering with evidence, failure to interview key people etc) makes it a protagonist[39] in this matter. Its own conduct must come under independent review;
- **Parliamentary Criminal Justice Committee**: It has ***NEVER*** held an independent inquiry into Heiner and never produced a PCJC/Heiner report to Parliament;
- **EARC**: It has ***NEVER*** investigated Heiner. The former EARC Commissioner Brian Hunter has put that in writing. He repudiates Mr. Beattie's claim absolutely;
- **Queensland Audit Office** (Twice): The QAO only investigated Heiner ***ONCE NOT TWICE*** in 1993. It found the payment of $27,190 to be "technically unauthorised". It repeated that finding in 1997 when I brought the *ex gratia* payment matter back to its attention in the wake of the October 1996 Morris/Howard Report because of the extraordinary condition upon which public monies were paid. That is, on the agreed condition by both parties (i.e. the Queensland Government and Mr. Coyne) would never speak about *"...the events leading up and surrounding Mr. Coyne relocation away from the Centre*" for the rest of their lives. It is ***NOW*** open to conclude that those "events" were ***known*** (by the parties to the February 1991 Deed of Settlement) to be about the abuse of children in State-care, going even to the crime of pack-rape of a 14-year-old indigenous inmate by other inmates (i.e. criminal paedophilia) during a supervised May 1988 bush outing. The victim is now suing the State of Queensland for negligence and breach of duty of care;
- **Connolly/Ryan Inquiry** (1997). Heiner came before that Inquiry in July 1997 but it made ***NO*** findings because it was closed by order of the Supreme Court of Queensland

[39] *R v Australian Broadcasting Tribunal; Ex parte Hardiman* (1980) 144 CLR 13 at 55

on the grounds of bias in August 1997. No one knows what Commissioners Connolly and Ryan thought about Heiner;

- **Morris/Howard Report 1996.** Messrs Morris QC and Howard carried out a 'limited" independent investigation based "on the papers" but even at that level found that Heiner's matters were far more serious than matters which came before the Fitzgerald Inquiry. **They recommended the establishment of a public inquiry into Heiner**. **(See earlier comment on the DPP's advice)**

Inculpatory Admissions by Premier Beattie

10.5 In his media release Mr. Beattie makes this extraordinary admission:

> *"At that time, no formal legal proceedings had been instituted, nor was any legal action subsequently instituted."*

10.6 Mr. Beattie acknowledges that the Queensland Government was on notice but the expected writ had not been filed or served at the time of the shredding. Such an admission with attendant purpose in shredding is sufficient, in itself, to trigger section 129 of the *Criminal Code (Qld)*. He then suggests that because no anticipated judicial proceedings were subsequently commenced, it somehow proves that the Queensland Government did nothing wrong by shredding the known evidence in the first place. He fails to understand that there was no point in commencing judicial proceedings because the item under judicial review no longer existed. After the shredding, such court proceedings had no purpose. The fact that a judicial proceeding did not eventuate does not afford any relief from the reach of section 129 of the *Criminal Code (Qld)* because at the time the Goss Cabinet ordered the destruction of the records it knew that a judicial proceeding was imminent, and the fact it did not commence, under the facts of the case, is not relevant.

10.7 However, if it is necessary to point towards a judicial proceeding in which the shredders would reasonably have known that the Heiner Inquiry documents would have been required in evidence, then we can look to:

- Criminal Justice Commission which was obliged to look into all suspected official misconduct brought to its attention;
- District and/or Supreme Court for a judicial review of the relevant access law;
- Supreme Court of Queensland in a prospective damages action brought by any of the abused JOYC children in a writ for damages, negligence etc, one of which is currently running by the female pack-rape victim; or an action in defamation by person/s so defamed in the records;
- State Industrial Relations Commission;
- Forde Commission of Inquiry into the Abuse of Children in Queensland Institutions;
- Queensland Police Service.

10.8 The other admission is that the Queensland Government knew that certain wrongdoing was going on at the Centre because it describes the Heiner Inquiry witnesses as whistleblowers.

> "*This was about protecting the whistleblowers.*

10.9 The simple question to be asked is what were the so-called whistleblowers blowing the whistle about? The only conclusion one can reasonably reach is that they were blowing the

whistle about child abuse, going to child sexual abuse. Ironically, their public interest disclosures were never properly investigated, and the shredding was the apogee of the cover-up.

11. RECOMMENDATIONS

20.14 That, in accordance with Terms of Reference (b), (c), (d) and (e), and in keeping with its public undertaking of 27 October 2003, the Legal and Constitutional Affairs Committee might write to the Leader of the Queensland Opposition and Shadow Justice Minister and Attorney-General the Hon. Lawrence Springborg MLA requesting a copy of the January 1997 Queensland DPP's advice to the (Borbidge) Queensland Government in respect of the findings of the October 1996 Morris/Howard Report into the Lindeberg allegations in the public interest in order to ensure the integrity of and public confidence in Queensland's Office of Director of Public Prosecutions and its criminal justice system.

20.15 That, in accordance with Terms of Reference (b), (c), (d) and (e) the Legal and Constitutional Affairs Committee might write to Mr. Len Scanlon, Queensland Auditor-General, seeking a "public interest" explanation on how $27,190 of taxpayers' monies can be lawfully paid to any public official, under the *ex gratia*/special payment provisions of the *Financial Administration and Audit Act 1977* against the factual circumstances of it being sought and extracted by threat of disclosure of certain "events" to the Criminal Justice Commission, on the proviso set out in the February 1991 Deed of Settlement between the State of Queensland and Mr. Peter Coyne that neither party would ever speak publicly about those certain JOYC events (now known to be concerning unresolved criminal abuse of children) at the without permission from the other.

20.16 That, in accordance with Terms of Reference (b), (c), (d) and (e) the Legal and Constitutional Affairs Committee might write to the former Commissioner Leneen Forde requesting that she explain how such extraordinary omissions of not asking relevant questions about the 1 March 1990 Dutney memorandum concerning the lives of JOYC children were being put at risk by staff, the improper relationship between a former Youth Worker witness and a JOYC female inmate, or not seeking to extend her Terms of Reference to investigate Heiner. Furthermore, the Committee might inquire whether or not her Inquiry examined the Families Department file on the May 1988 pack-rape incident, and if not, why not.

12. CONCLUSION

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

KEVIN LINDEBERG 25 November 2003

ADDENDUM A

COPY OF MEDIA RELEASE

Premier & Trade The Hon. Peter Beattie MP 27 October 2003

Federal Liberal Inquiry Will Waste Thousands Of Dollars

A Liberal-dominated Federal committee headed by MP Bronwyn Bishop is wasting thousands of dollars of taxpayers' money on investigating a 13-year-old government decision that has already been examined by at least seven different investigative bodies, Premier Peter Beattie said today (Monday).

"Two Senate Select Committees, the Queensland Coalition Government and the Criminal Justice Commission are among the investigators who have come up empty-handed," said Mr. Beattie.

"I have even taken the unprecedented step of tabling all of the relevant Goss Cabinet documents from 1990.

"But Ms Bishop is leading a committee of 10 Federal MPs who are staying in Brisbane for two days to examine the so-called Heiner Affair which involved shredding documents that had been created following the incorrect establishment of the Heiner Inquiry.

"This is a gross waste of the public's money and will do no more than muck-raking."

The Heiner Inquiry was established in 1989 by the National Party Queensland Government into management issues raised by the union representing staff of the John Oxley Youth Centre.

The Crown Solicitor advised the Goss Labor Government in 1990 that the investigation should not continue and that the documentation should be referred to the State Archivist for destruction, because the inquiry was incorrectly established and because there was no legal protection for witnesses who gave evidence before the inquiry.

Mr. Beattie said: "This matter has been the subject of inquiries by:
- two Senate select committees;
- the Criminal Justice Commission;
- the Parliamentary Criminal Justice Committee;
- The Electoral and Administrative Review Committee;
- the Auditor-General (twice);
- the Connolly/Ryan inquiry;
- and, under the Borbidge Government, it was the subject of a report by lawyers Tony Morris and Mr. Edward Howard.

"On the advice of the Director of Public prosecutions, the Coalition Government decided to take no further action.

"The Coalition Government had two and a half years to uncover anything untoward - and found nothing.

"Nothing could have been more thoroughly investigated.

"On 5 March 1990 the Goss Cabinet was informed that representations had been received from a solicitor representing certain staff at the centre.

"At that time, no formal legal proceedings had been instituted, nor was any legal action subsequently instituted.

"At all times Cabinet acted in complete good faith to protect the whistleblowers involved in this case.

"This was about protecting the whistleblowers.

"These whistleblowers were given no legal protection whatsoever by the previous National Party Government in the way in which the inquiry was established.

"All relevant legal advice from the Crown Solicitor to the Goss Government were tabled in this parliament in February 1995 and provided to the Senate inquiry into unresolved whistleblower cases."

Contact: Steve Bishop 07 3224 4500

ADDENDUM B

Extract From *The Courier-Mail,* Wednesday July14, 1999 (by Journalist Michael Ware)

A SHRED OF EVIDENCE

Many people in politics - primarily in the Labor Party - moan long and loud whenever the much-maligned Heiner inquiry is mentioned.

Indeed, they squirm at the very utterance of its name and make a face as if to say: how could you even bring it up?

Why they do this, I don't know.

But their problem is that it does keep coming up: again and again and again.

There are several reasons for this, but one of them is that it's hard to find anyone who can get the story straight. So many people make so many mistakes when talking about the Heiner inquiry that the mistakes inevitably lead to more confusion, more argument.

And I don't know why because, at its heart, it's a very simple affair...

... What essentially is at issue here is whether - the circumstances surrounding the shredding of the Heiner evidence in 1990 were legal.

If they were, then it's time to forget the whole sordid tale. If they're not, then it's time to start locking some people up - from the bureaucrats to the politicians.

The trouble is, we just don't know which way to go. No one's ever got to the bottom of it. No one has ever, really, investigated it.

Yet there's a proliferation of people who will, quite erroneously, tell you differently. People ranging from colleagues of the Labor ministers under the gun for having been party to the decision to shred, to supposedly savvy media-types who say the shredding's been investigated to death.

It's been done, time and again, by a host of agencies, they say. The only tricky part with those sentiments is that they're not true.

Actually a man whose life has been embroiled in the affair since 1990, former union representative Kevin Lindeberg, is currently trying to bring Premier Peter Beattie to task over this very issue.

And he's gone to the Speaker of Parliament to stake his claim.

This latest mini-battle stems from Beattie's statement to Parliament listing nine or 10 bodies whom he said had made 'inquiries" into the shredding.

But of all the agencies mentioned - from police to Criminal Justice Commission to Auditor-General, among others, none of them had, at any given moment, all of the necessary ingredients to seek the truth at the shredding: the free rein, the power and the jurisdiction.

They've all been hamstrung.

If, in fact, the shredding had been properly investigated by anyone, surely it would have been discovered that the witness testimony that was destroyed had revealed the illegal handcuffing and drugging of child inmates.

I repeat, the illegal handcuffing of children.

However, this didn't come to light until The Courier-Mail unearthed it last year, sparking immediate outcry and creating a special area of hearings for the recently completed Forde inquiry.

But, strangely enough, one of the agencies we've been told that had made "inquiries" into the shred-ding, the 1995 Senate Select Committee on Unresolved Whistle-blower Cases, was discreetly given rock-solid proof of the abuse.

Proof produced, no less, by the Labor state government itself.

Why? Who knows. But a document detailing the handcuffing was buried amidst a mass of material sent to the committee. If the committee had actually been empowered to evince the truth of the shredding, and the government wanted it found, wouldn't the heinous abuse have come

out?

Equally if any of the agencies had really been able to look at the shredding to see if it had been legal, wouldn't they have stumbled upon it themselves?

Of those agencies who made inquiries, how many spoke to the Cabinet ministers who made the fateful decision to shred? None.

How many tried to find out what all the fuss had been about, by speaking to the staff? None. How many had even been to the John Oxley Centre? None. (Just for the record, *The Courier-Mail* did all these things.)

So, if someone tries to tell you that the Heiner issue or the shredding of the Heiner documents has been investigated, you can laugh them away.

ADDENDUM C

PART IV: CONCLUSIONS AND RECOMMENDATIONS MORRIS/HOWARD REPORT

A. CONCLUSIONS IN RELATION TO THE LINDEBERG ALLEGATIONS

1. For the reasons set out in Part II of this Report, and based on the evidence to which we have obtained access in the course of our investigation, we are of the view that the following conclusions are open in respect of Mr. Lindeberg's allegations.

Criminal Offences

2. It is open to conclude that Section 129 of the *Criminal Code* was breached by an officer or officers of the Department of Family Services, to the extent that they were involved in:

2.1 The destruction of the Heiner documents; and

2.2 The destruction, on 23 May 1990, of photocopies of certain statements which had originally been furnished to the Department of Family Services by the Queensland State Service Union on 10 October 1989.

It is open to conclude that Section 132 and/or Section 140 of the *Criminal Code* was breached by an officer or officers of the Department of Family Services, to the extent that they were involved in:

3.1 The destruction of the Heiner documents; and

3.2 The destruction, on 23 May 1990, of photocopies of certain statements which had originally been furnished to the Department of Family Services by the Queensland State Service Union on 10 October 1989.

4. It is open to conclude that an officer or officers of the Department of Family Services breached Section 55(1) of the *Libraries and Archives Act 1988*, by their conduct in:

4.1 Returning to the Queensland State Service Union, on 22 May 1990, original statements which had been furnished to the Department by the QSSU on 10 October 1989; and

4.2 Destroying photocopies of those statements on 23 May 1990.

5. It is open to conclude that an officer or officers of the Department of Family Services breached sub-section 92(1) of the *Criminal Code*, by

5.1 Their failure, in the period 18 January 1990 to 23 May 1990, to accede to Mr. Coyne's lawful requests to inspect records held by the Department on himself in accordance with Regulation 65 of the *Public Service Management and Employment Regulations*;

5.2 Their conduct in returning such documents to the Queensland State Service Union on 22 May 1990, with the intended consequence of preventing Mr. Coyne from exercising his rights under Regulation 65; and

5.3 Their conduct in causing the destruction of photocopies of the same documents on 23 May 1990, with the same intended consequence.

6. It is not open to conclude that any such offences were committed by the Crown Solicitor, or by any officer of the Grown Solicitor's Office.

7. In view of the fact that we have been denied access to relevant Cabinet documents we are unable to express a view - one way or the other - as to whether any such offences may have been committed by any member of State Cabinet in the period February to May, 1990.

Official Misconduct

8. It is open to conclude that "official misconduct", within the meaning of ss.31 and 32 of the *Criminal Justice Act*, was committed by an officer or officers of the Department of FS Services, in:

8.1 Denying Mr. Coyne's lawful right, under Reg. 65 of the *Public Service Management and Employment Regulations*, to peruse and obtain copies of departmental fires and records held on Mr. Coyne, and in responding to him and his representatives in a way which was "not honest" for the purpose of achieving delay pending the disposal of those documents;

8.2 Returning statements to the Queensland State Service Union on 22 May 1990 and

8.3 Destroying photocopies of those statements on 23 May 1990.

9. It is not open to conclude that any such "official misconduct" was committed by the Crown Solicitor, or by any officer of the Crown Solicitors Office.

10. In view of the fact that we have been denied access to relevant Cabinet records, we are unable to express any conclusion as to whether such "official misconduct" may have been committed by any member of State Cabinet in the period February to May, 1990.

Payment to Mr. Coyne

11. It is open to conclude that the payment of $27,190.00 to Mr. Coyne in February 1990:

11.1 Was illegal; and

11.2 involved the commission of an offence under section 204 of the *Criminal Code*, by the Minister and an officer or officers of the Department of Family Services who participated in the making of that payment.

12. It is not open to conclude:

12.1 That any other offence was committed by the Minister, or by any officer of the Department of Family Services, in connection with the making of that payment;

12.2 That any offence was committed by the Crown Solicitor, or any officer of the Crown Solicitor's Office, in connection with the making of that payment; or

12.3 That any offence was committed by Mr. Coyne, or by any person acting on his behalf, in connection with his seeking and receiving that payment.

13. It is, in our opinion, open to conclude that "official misconduct", within the meaning of ss.31 and 32 of the *Criminal Justice Act*, was committed by the Minister and an officer or officers of the Department of Family Services in connection with the making of the payment of $27,190.00 to Mr. Coyne, in that their conduct:

13.1 Constituted or involved the discharge of their functions or the exercise of their powers or authority, as holders of appointments in units of public administration, in a manner that was not impartial;

13.2 Further or alternatively, constituted or involved a breach of the trust placed in them by reason of their holding appointments in units of public administration

13.3 Constituted or could constitute a criminal offence under s.204 of the *Criminal Code*; and

13.4 Except in the case of the Minister, constituted or could constitute a disciplinary breach providing reasonable grounds for termination of the officer's or officers' services in the Department of Family Services.