
The Parliament of the Commonwealth of Australia

Crime in the Community: victims, offenders and fear of crime

Volume Two

**House of Representatives
Standing Committee on Legal and Constitutional Affairs**

August 2004
Canberra

© Commonwealth of Australia 2004
ISBN 0 642 78484 1

Contents

Foreword.....	v
Membership of the Committee.....	xi
Terms of reference	xiii
List of recommendations.....	xv

THE REPORT

1	Introduction	1
	Background to Volume Two.....	1
	Evidence relating to the Heiner Affair	2
	Evidence relating to Bribe Island	4
2	The Heiner Affair – the destruction of evidence	5
	Introduction	5
	The Heiner Affair – overview of events	6
	Essential legal issues in the Heiner Affair	9
	Conduct of the Queensland Government	10
	The legality of the shredding of the documents	12
	Precondition for the shredding: pending legal action	12
	The role of the State Archivist	34
	Treatment of the Heiner Affair by successive governments	39
	The Morris/Howard Report.....	41
	Protection of the executive government	44

Was the Heiner inquiry properly set up?	46
Conclusion.....	52
3 The Heiner Affair – motives for the shredding.....	55
Introduction	55
Evidence of child abuse at JOYC and culpability.....	56
The Forde inquiry findings.....	57
Alleged sexual abuse at JOYC	59
The actions of government agencies.....	64
Goss Cabinet awareness of child abuse at JOYC	66
Child abuse evidence to the Heiner inquiry	67
The aim and scope of the Heiner inquiry.....	68
The type of evidence gathered by Heiner	73
Comments on evidence given to the Heiner inquiry	76
Motives for the shredding - the role of the unions.....	80
The response by the Queensland Government	83
The CJC investigation	83
The Forde inquiry.....	85
A further cover-up?	87
Conclusion.....	89
Motive for the shredding.....	90
4 Abuse at Bribie Island	95
The Peter Rowe case	95
Further abuse of residents and operational negligence.....	96
Conduct of Queensland Government authorities.....	98
Conclusions.....	99

APPENDICES

Appendix A – List of Submissions	103
Appendix B – List of Exhibits	113
Appendix C – List of Witnesses	125



Foreword

Whenever Australians are surveyed, crime is one of the top three issues of concern.

Thus it was in May 2002 that the House of Representatives Standing Committee on Legal and Constitutional Affairs received terms of reference to inquire into crime in the community: victims, offenders and fear of crime.

Almost immediately, the Committee received substantial submissions covering all aspects of the Inquiry. From New South Wales came very serious allegations of corruption in New South Wales policing, including allegations of protection of paedophiles, ‘doctoring’ of police statistics, corruption of the newly introduced promotions system for duty officers, the failure of the Wood Royal Commission and the systemic failure of bodies set up to investigate such issues. Instead of being applauded for seeking remedies, the whistleblowers received punitive treatment.¹

From the beginning, Labor members of the Committee had a difficulty with the Inquiry and were overwhelmingly concerned as to how it may reflect on various Labor State Governments. Hence the attempt by a then Labor member of the Committee to prevent former and serving police officers giving evidence of corruption to the Committee. Although this action delayed evidence being given, this attempt was thwarted and the officers gave evidence in February and March 2003.

From Queensland came submissions concerning the ‘Heiner Affair’. First, from Mr Kevin Lindeberg, a man who in the words of *Australian Story* is the David of

1 All the submissions to the Inquiry into Crime in the Community: victims, offenders and fear of crime can be accessed on the Committee’s website at www.aph.gov.au/house/committee/laca/crimeinthecommunity/subs.htm

David and Goliath and is ‘a pretty powerful human being’,² and later from Mr Bruce Grundy, journalist-in-residence at the University of Queensland.

Mr Lindeberg became the crusader who revealed a cover-up of illegal behaviour by the then Premier Wayne Goss and his Cabinet Ministers when they joined together to authorise the destruction of documentation of evidence taken by Noel Heiner in 1989. One of those Cabinet Ministers is Treasurer of Queensland in the Beattie Government at the time of tabling this report. Mr Heiner took evidence about mismanagement and abuse of children at the John Oxley Youth Detention Centre in Brisbane.

Many, including Premier Beattie, say it all happened 14 years ago, so why pursue it?

The 2004 conviction of Pastor Ensbey, who was given a suspended sentence for the same offence - that is, the destruction of evidence - shows that the length of time that has elapsed is not relevant. Indeed, as Premier Beattie continues the cover-up, the DPP has lodged an appeal against the leniency of Pastor Ensbey’s sentence.

According to Premier Beattie, this issue has been examined by ‘at least seven different investigative bodies’,³ but only this Inquiry has required Mr Heiner to attend and give evidence. Further, this Committee has dealt with Cabinet documents the One Nation Party forced the Beattie Government to table in the Queensland Legislative Assembly.

Volume Two of the Committee’s Report therefore focuses on the ‘Heiner Affair’ – the shredding of documents by the newly elected Goss Government in Queensland in 1990. Those documents contained evidence of child abuse at a State-run youth detention centre. To this day, Queensland continues to experience revelations of serious abuse of those most vulnerable in our community.

The Committee’s conclusions in this Volume are based on two guiding principles of our society: everyone is equal before the law, and the welfare of the most vulnerable in our community is paramount.

Section 129 of the Queensland *Criminal Code Act 1899* states:

Any person who, knowing that any book, document, or other thing of any kind, is or may be required in evidence in a judicial proceeding, wilfully destroys it or renders it illegible or undecipherable or incapable of identification, with intent thereby to prevent it from being used in evidence, is guilty of a

2 ‘Three little words’, *Australian Story*, ABC Television, 17 May 2004.

3 The Hon Peter Beattie MP Press Release, ‘Federal Liberal Inquiry Will Waste Thousands of Dollars’, 27 October 2003.

misdemeanour, and is liable to imprisonment with hard labour for 3 years.

As stated earlier, this year a Pastor was convicted under this section for guillotining pages of a diary containing evidence of abuse of a girl. The diary was required in court proceedings years later when the abuse victim decided to pursue justice. Fortunately for the victim, the guillotined pages were able to be reassembled. The same option of pursuing justice is not open to victims of abuse at the John Oxley Youth Centre – the evidence of abuse was shredded and disposed of by the Queensland Government over 14 years ago, hiding behind an interpretation of section 129 which defeated the purpose of the section, as pointed out by distinguished QCs such as (now High Court Judge) Mr Ian Callinan QC, in testimony to a Senate inquiry, and Mr Robert Greenwood QC in a submission to the Senate in 2001. Unlike the Pastor however the responsible Government Ministers have never been held to account for their actions.

The Heiner inquiry had been set up to investigate alleged mismanagement at the John Oxley Youth Centre. The Minister who established the inquiry told the Committee she did so because she had become aware of allegations of abuse at the Centre. The incoming Goss Government hastily aborted the inquiry – apparently because doubt was cast on whether Mr Heiner and his inquiry were adequately protected from legal action – and subsequently authorised the shredding of the evidence.

The issue of protection from legal action arose precisely because legal action was indeed foreshadowed. Not legal action by the victims of abuse – that might have come later – but legal action by the manager of the Centre. His rights were effectively negated. And so were those of the children who were abused.

The Committee took evidence from Mr Heiner that he sought validation of his appointment and inquiry from Cabinet and that he was advised such validation was given. He further testified that he only handed over the documents after he was told such Cabinet action was taken.

If you are an ordinary citizen, the law is clear: you cannot destroy evidence that may be required for judicial proceedings. If you are a Government Minister in Queensland, the law is different: you can destroy documents even when you have been put on notice that proceedings are intended. You can destroy documents even when they contain evidence of child abuse.

Evidence to the Committee has exposed a culture of concealment and collusion – a culture that has effectively covered up abuse of children and placed the welfare of those entrusted with their care ahead of that of the victims. There is evidence of abuse taking place at the John Oxley Youth Detention Centre in the late 1980s and continuing today at the replacement for the John Oxley Centre – the new Brisbane

Youth Detention Centre: physical abuse including beating of children while handcuffed. Had action been taken in 1990 to clean up instead of cover up, subsequent abuse could have been avoided and the culture changed.

A shocking example of how the culture remains was illustrated by evidence of practices in a care facility for the intellectually and physically disabled on Bribie Island. Such evidence included a description of punishment meted out to a boy whereby his artificial leg was removed to force him to crawl. This incident and more was revealed in evidence given to the Committee.

A number of recommendations in this Volume represent a step towards righting some of the wrongs. Others are aimed at improving the management and oversight of institutions entrusted with those most vulnerable in our society.

Through the course of this Inquiry, members of the Committee have been impressed by the courage of individual Australians who came forward to try and have deception and cover-up exposed.

In addition to Mr Lindeberg, who has remained steadfast to his cause, and whose daughter said of him in *Australian Story*:

I'm really proud of my dad. I'm glad that I mean even though it's caused us a lot of pain and stress, I am really glad that he has kept on with this crusade.⁴

there are others -

There is Mr Bruce Grundy, who heads the Justice Project, staffed by his Journalism students at the University of Queensland, and is editor of *The Queensland Independent*.

There are Mr and Mrs Rowe and their son Peter, a sensitive disabled young man who was sexually abused at the aforesaid facility on Bribie Island. When Peter asked of his mother:

Mum, is this ever going to happen to me again?

She replied:

Well, I hope it's not... I'm going to spend the rest of my life for as long as it takes to make sure that you are safe and other people like you.⁵

There is Mrs Kay McMullen, who, as a registered nurse, gave evidence of her outrage as to how vulnerable people were treated in Queensland.

Premier Beattie pretends to take the moral high ground and led the pack to have former Governor-General Peter Hollingworth deposed, whilst at the same time

4 'Three little words', *Australian Story*, ABC Television, 17 May 2004.

5 Mrs Betty Rowe, *Transcript of Evidence*, 18 June 2004, p. 1804.

perpetuating the cover-up of the Heiner Affair and presiding over the continuing culture of abuse of the vulnerable.

It is time to right these wrongs.

Hon Bronwyn Bishop MP
Chairman



Membership of the Committee

Chair Hon Bronwyn Bishop MP

Deputy Chair Mr John Murphy MP
(until 03/08/04)

Members Hon Julie Bishop MP
(until 07/11/03)

Hon Alexander Somlyay MP
(from 07/11/03)

Hon Alan Cadman MP

Hon Duncan Kerr MP
(until 03/08/04)

Mr Daryl Melham MP
(until 11/08/03)

Mr Robert McClelland MP
(from 11/08/03 to 03/08/04)

Ms Sophie Panopoulos MP

Hon Con Sciacca MP
(until 03/08/04)

Mr Patrick Secker MP

Dr Mal Washer MP

Committee Secretariat

Secretary	Ms Gillian Gould
	Ms Julia Thoener (acting from 29 March 2004 to 7 May 2004)
Inquiry Secretary	Ms Julia Thoener
Research Officers	Ms Frances Gant (until July 2003)
	Mr Muzammil Ali (from October 2003)
	Dr Nicholas Horne (from June 2004)
Administrative Officer	Ms Frances Wilson



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

The inquiry was referred to the Committee on 21 May 2002 by the Minister for Justice and Customs, Senator the Hon Chris Ellison.



List of recommendations

2 The Heiner Affair – the destruction of evidence

Recommendation 1 (Paragraph 2.174)

That the Queensland Government publicly release the 1996 advice on the Morris / Howard Report provided by the Director of Public Prosecutions to the then Borbidge Government.

Recommendation 2 (Paragraph 2.213)

Given that:

- it is beyond doubt that the Cabinet was fully aware that the documents were likely to be required in judicial proceedings and thereby knowingly removed the rights of at least one prospective litigant;
- previous interpretations of the applicability of section 129 as not applying to the shredding have been proven erroneous in the light of the conviction of Pastor Douglas Ensbey; and
- acting on legal advice such as that provided by the then Queensland Crown Solicitor does not negate responsibility for taking the action in question.

the Committee has no choice but to recommend that members of the Queensland Cabinet at the time that the decision was made to shred the documents gathered by the Heiner inquiry be charged for an offence pursuant to section 129 of the Queensland *Criminal Code Act 1899*.

Charges pursuant to sections 132 and 140 of the Queensland *Criminal Code Act 1899* may also arise.

3 The Heiner Affair – motives for the shredding

Recommendation 3 (Paragraph 3.163)

That a special prosecutor be appointed to investigate all aspects of the Heiner Affair, as well as allegations of abuse at John Oxley Youth Centre that may not have been aired as part of the Heiner inquiry and may not have been considered by the Forde or other inquiries.

That this special prosecutor be empowered to call all relevant persons with information as to the content of the Heiner inquiry documents, including but not necessarily limited to:

- Public servants at the time, including staff of the then Department of Family Services, the Criminal Justice Commission, Queensland Police, and the John Oxley Youth Centre
- Relevant union officials

That the special prosecutor be furnished with all available documentation, including all Cabinet documents, advices tendered to Government, records from the John Oxley Youth Centre and records held by the Department of Family Services, the Criminal Justice Commission and the Queensland Police.

Recommendation 4 (Paragraph 3.166)

That the Commonwealth, through the Council of Australian Governments process, obtain a commitment from the States and Territories to legislate to require the retention for 30 years of documentation relating to allegations of abuse of children.

4 Abuse at Bribie Island

Recommendation 5 (Paragraph 4.20)

The Committee recommends that the Commonwealth gain a commitment from the Queensland Government within the framework of the Council of Australian Governments to introduce an accreditation system for disabled care facilities similar to that introduced by the Commonwealth for aged care.

Recommendation 6 (Paragraph 4.22)

The Committee recommends that the Commonwealth gain a commitment from the Queensland Government within the framework of the Council of Australian Governments that the Queensland Auditor-General be given the power to conduct performance audits of Queensland public sector entities comparable to the performance audit power available to the Commonwealth Auditor-General.

