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SENATE

SELECT COMMITTEE ON THE LINDEBERG GRIEVANCE

Reference: Lindeberg Grievance

FRIDAY, 11 JUNE 2004

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SENATE

SELECT COMMITTEE ON THE LINDEBERG GRIEVANCE

Friday, 11 June 2004

Members: Senator Watson *(Chair)*, Senator Kirk *(Deputy Chair)*, Senators Bartlett, Eggleston, Harris, Moore and Santoro

Senators in attendance: Senators Bartlett, Eggleston, Harris, Kirk, Moore, Santoro, Watson

Terms of reference for the inquiry:

To inquire into and report on:

(a) whether any false or misleading evidence was given to the Select Committee on Public Interest Whistle blowing, the Select Committee on Unresolved Whistleblower Cases or the Committee of Privileges in respect of the matters considered in its 63rd and 71st reports; and whether any contempt was committed in that regard, having regard to previous inquiries by Senate committees relating to the shredding of the Heiner documents, the fresh material that has subsequently been revealed by the Dutney Memorandum, and Exhibits 20 and 31 tabled at the Forde Commission of Inquiry into Abuse of Children in Queensland Institutions, and any other relevant evidence; and

(b) the implications of this matter for measures which should be taken:

    (i) to prevent the destruction and concealment by government of information which should be available in the public interest,

    (ii) in relation to the protection of children from abuse, and

    (iii) for the appropriate protection of whistleblowers.

WITNESSES

Committee met at 8.49 a.m.

CHAIR—Welcome to this public hearing of the Senate Select Committee on the Lindeberg Grievance. Today is the first hearing of the committee's inquiry into this matter. On 1 April 2004 the Senate referred the Lindeberg grievance to the committee to inquire into it and report by 5 October 2004. The inquiry terms of reference are as follows:

(a) whether any false or misleading evidence was given to the Select Committee on Public Interest Whistleblowing, the Select Committee on Unresolved Whistleblower Cases or the Committee of Privileges in respect of the matters considered in its 63rd and 71st reports; and whether any contempt was committed in that regard, having regard to previous inquiries by Senate committees relating to the shredding of the Heiner documents, the fresh material that has subsequently been revealed by the Dutney Memorandum, and Exhibits 20 and 31 tabled at the Forde Commission of Inquiry into the Abuse of Children in Queensland Institutions, and any other relevant evidence; and

(b) the implications of this matter for measures which should be taken:

(i) to prevent the destruction and concealment by government of information which should be available in the public interest,

(ii) in relation to the protection of children from abuse, and

(iii) for the appropriate protection of whistleblowers.

Before inviting the first witness to appear, I need to place on record a number of important procedural matters. The first concerns the advice the committee has obtained from the Clerk of the Senate in terms of dealing with contempts. The Clerk has advised that, although the committee's terms of reference require that a finding be made on whether any contempt was committed with respect to false or misleading evidence to other Senate committees, such a finding by the committee cannot amount to a determination that the contempt was actually committed. Only the Senate itself can make such a determination. The committee can only make a preliminary finding and a recommendation that the Senate endorse it. The committee could also recommend a penalty for any contempt which it finds, but only the Senate may impose a penalty. The Parliamentary Privileges Act 1987 limits the penalties which the Senate may impose to six months imprisonment or a $5,000 fine in the case of a natural person and a $25,000 fine in the case of a corporation. The Senate may also make a reprimand with respect to a contempt and has done so on two occasions in the past. The Senate has not imposed a penalty, a fine or imprisonment.

The Clerk has also advised that there is no statutory criminal offence of giving false or misleading evidence to a Senate committee which could be prosecuted in the courts, and referred to the privilege resolution 3, which sets out the criteria the Senate will take into account when determining whether a contempt has been committed. I put the Clerk's advice on the public record as it outlines the parameters and the criteria the committee must observe when it comes to the question of determining whether a contempt has been committed, as set out in the committee's terms of reference.

All those appearing before the committee should have received advice on protection and obligations that apply to witnesses under parliamentary privilege. The committee prefers to conduct its hearings in public. However, if there are any matters which you wish to discuss with the committee in private we will consider your request. Do any members of the committee wish to make a statement before we hear from our first witness?

Senator HARRIS—In consideration of your opening statement, I would like to place on record that I will look at the Commonwealth Criminal Code in relation to a person either wilfully

withholding information, knowingly, or being party to an attempt to mislead the Senate. I will look at the Commonwealth Criminal Code of 1996 in relation to that matter.

CHAIR—That is your prerogative.

[8.54 a.m.]

LINDEBERG, Mr Kevin, (Private capacity)

CHAIR—I now welcome Mr Kevin Lindeberg as our first witness this morning. I invite you to make an opening statement. Following that opening statement, members of the committee will ask you a number of questions.

Mr Lindeberg—Thank you, Mr Chairman. I appear before you as the aggrieved Australian citizen in this matter. Before I make my opening statement, may I seek a ruling or seek an understanding from the committee as to whether or not my evidence is given on oath. Is there availability for me to swear my evidence before you?

CHAIR—It is not the usual practice of committees to swear witnesses on oath but we do expect witnesses to make a true and accurate representation of the matters which are before the committee.

Mr Lindeberg—I appreciate that. I am sorry to press the point. It is just that I appeared before a committee of the House of Representatives on legal and constitutional affairs and I was obliged to take the evidence upon the swearing of an oath. I know this is the Senate—

CHAIR—Differences apply to the House of Representatives compared with the Senate. They are not always identical.

Senator SANTORO—You want to swear your evidence on oath, do you?

Mr Lindeberg—I want to indicate to the committee the gravity of the matter. I appreciate that one is expected to tell the Senate the truth, but I just feel the gravity of this matter needs to be reinforced. That is all I am saying to you, and I am happy to do that.

CHAIR—If you wish to put your request to the committee, the committee will consider your request and make a decision.

Mr Lindeberg—I am making that request.

Senator HARRIS—I support that in light of the gravity of this inquiry and suggest that each person be asked if they are prepared to give their evidence on oath. They are not required to, but I believe an indication by each witness that comes before this committee to provide their evidence on oath would be an additional indication of the standing of that evidence.

CHAIR—How do you view this matter, Senator Moore? Would you prefer to discuss it in private?

Senator MOORE—Let us deal with it in committee.

CHAIR—The proceedings stand suspended for five or 10 minutes.

Proceedings suspended from 8.58 a.m. to 9.07 a.m.

CHAIR—The committee has considered the request of the witness, Mr Kevin Lindeberg, to swear an oath. I read a report of the deliberations of the Senate committee:

As this inquiry goes to the issue of contempt, at the heart of this inquiry is the issue of the contempt of the Senate. It is therefore reasonable to expect that all witnesses, irrespective of whether they swear an oath, affirmation or not, will actually testify before this committee in a totally forthright and truthful manner. However, when requested by a witness, the committee has agreed in this case for the witness, Mr Kevin Lindeberg, to swear an oath.

I ask Mr Lindeberg to stand, take the Bible in his right hand and respond to the words 'so help me, God'. The evidence you shall give before the committee shall be the truth, the whole truth and nothing but the truth. Please say: 'so help me, God'.

Mr Lindeberg—So help me, God.

CHAIR—Thank you. Be seated. I now invite you to make an opening statement.

Mr Lindeberg—Some may ask: why has the Senate come back to this matter again? Some may say it is a waste of time. Some may ask: what is new? Some may say that this is yet another occasion where I am tilting at windmills, like some modern-day Don Quixote.

But others, who have taken the time to acquaint themselves with the facts and who are not diverted by myths and untruths, will join me in saying that this committee's task is a hugely important one, based on new evidence and by no means a waste of time. Those eyes, nationally and internationally, are watching these proceedings with keen interest.

This committee's prime task is to see whether or not its privileges and immunities were knowingly abused at an earlier time. The character of the evidence to be advanced may prove that criminal contempt of the Senate has taken place.

In simple terms, if a government and law enforcement authority can appear before the Senate and provide false and misleading evidence to cover up serious crimes, which go to the heart of a democratic society, and the Senate does not care then we are in deep strife.

I am talking about crimes such as the need to protect the administration of justice by properly protecting known and actual evidence from lawful unshredding in anticipated and pending judicial proceedings, the need to protect children in care and not cover up the crime of criminal paedophilia, the need to properly protect public records, the need to protect the integrity of evidence provided to the Senate, the need to properly disburse public moneys and not use it as hush money to cover up crime, and the need for probity in high public office.

If this is all too hard and the Senate baulks at the immensity of the task when evidence subsequently surfaces showing that perjury or contempt may have been committed by a state government or law enforcement agency which at an earlier time prevented the Senate from making full and proper findings and recommendations pursuant to its constitutional function, then we can give the game away—we can fold our tents. Our democratic system of

representative government will have been subverted to become a farce, a joke, a circus of clowns.

But I aim for higher mountains. I refuse to live in deep valleys of despair, fear and cynicism, and that is why I know that this committee's task concerning the protection of its privileges and immunities to its full constitutional extent may turn out to be a watershed moment in national politics. Today, we are commencing a journey which must be seen through, no matter the duration, tension or expense.

We all live our lives as Australians in civility and social cohesion because of the rule of law and its judicious enforcement, from the houses of parliament to local magistrates. This is so because we live in a society where our forefathers, like Sir Samuel Griffiths, Alfred Deakin, Edmund Barton and others, framed our formidable Constitution, which is founded on the rule of law, the separation of powers and placed constraints on government being able to unilaterally ride roughshod over the rights of the individual. Their wisdom and foresight, sealed by the sacrifice of subsequent generations to protect these values, gave us the freedom and liberty we enjoy today. It allows me to sit before you today, but, as such, a civil society will crumble if the national Senate is lied to and treated contemptuously when it is investigating matters under the laws of the land.

It is within this inheritance that each of us is able to hold differing political philosophies on what role government should play in our lives. We all live out our lives according to a set of values which comes to us from our mother's knee, our education, our family and national traditions. We are rightly encouraged to believe that our government, law enforcement and regulatory authorities can be trusted to uphold the law. That belief dissuades us from taking the law into our own hands and to rejecting terrorism of any kind.

But is it true or is it a myth fostered by a system which functions, when push comes to shove, for its own sectional interest against society's better interests? Is the reality that our system of government is suckled and sustained by the blood of systemic corruption where, when the occasion arises, a coterie of well placed mates in government act as the damage control brigade to protect vulnerable mates and where our elected representatives are prepared to take the measure only 'so far and no further' for fear that the same blowtorch of truth and justice may be applied to them when they are in government?

Instead, they engage in a charade of indignation, huff and puff and outrage, always falling just short of upholding the interests of equal justice across the Australian community. In short, it seems left to politicians and bureaucrats themselves, where accountability may be lacking. Our democracy appears to function on the basis of 'You've had your turn; now it's ours.'

It becomes the ultimate club of hubris, which lives by its own laws, winks and nods, where ambitious men and women will be prepared to do anything to join and, once inside, anything and everything to stay within its protected borders. I refuse to live by those rules. It is fascism and totalitarianism by another name where executive decree replaces the rule of law. The marrow in my bones tells me that I must fight against such abuses and bullies as all good men and women should.

I refuse to accept a cynical view of politics which can engender a dangerous indifference to the political process and invite contempt for all politicians. I want to protect the political process. I want respect for public life and those who enter into it. I care deeply about our nation's democratic wellbeing and its future. I refuse to accept defeat and to be worn down by abuse of power and the passage of time in the struggle to see the great democratic principles embodied in the Heiner affair prevail. I reject completely the cynical view: 'You can't beat them; you may as well join them.' That is not the Australia I want for myself, my children and their children or for others.

If history teaches us one thing, it is this: there is a time for everything. There is a time when lies can be sown, and there is a time when their bitter harvest will be reaped. There is a time when the seeds of truth sown by one farmer may perhaps wither and die under the oppressive dry heat of indifference and lies, and his hopes of success ridiculed when nurturing his seed against the apparent overwhelming hopelessness of massive abuse of office and indifference. As happens, and as the seasons dictate, the optimistic farmer knows that the rains will eventually come and his faith will be rewarded. But for the truth to prevail the farmer's abiding task is to endure and endure the hard years.

In the beginning, my few courageous supporters and I have faced many harsh times over many years, but we carried on because we knew that a time would come when the truth would prevail over the lies. Those other times when lies were told to the Senate by the Queensland government and the CJC had to be endured in humiliation. Along the way, we saw other times come and go which conditioned the nation. We saw a time when our Governor-General was forced to resign over his handling of child abuse allegations in order that accountability be seen to have been served. We saw another time when an Australian citizen was charged by Queensland authorities and found guilty over destroying evidence of child abuse some five years before the relevant judicial proceedings commenced, while, at the same time, knowing that the very same conduct those authorities engaged in in the Heiner affair was not put before the courts, by the deliberate twisting of the same criminal provisions.

In short, over 14 years our nation has been prepared for this huge harvest, which you, Mr Chairman, and fellow committee members are now in a position to reap. It promises to be a very bitter harvest for those who have abused their positions of trust, but with Grace and hope I hope that those who believe that the privileges and immunities of the Senate must be preserved and upheld without fear or favour also believe that the criminal law throughout the Commonwealth of Australia must be applied equally in materially similar circumstances even if it concerns executive government itself.

There is a perfect time in the life of all nations. It is one where compelling, irresistible and irreversible forces converge to cause great things to happen and to be done which can set the stage for the next 100 or 200 years. The signing of the Magna Carta was one; the framing and signing of the American Declaration of Independence was another. In Australia, just over 100 years ago those forces converged when great minds forged our Constitution, which has given us one of the most stable democracies on the face of the earth. Our nation was prepared politically, if not spiritually, to embrace that great document when put to the vote through the conditioning of harsh times that went before.

It is my view that another perfect time faces the nation in 2004. It is in the form of the Lindeberg grievance—not because it carries my name but because of the great democratic issues it embodies, as set out in my main submission of 28 May 2004 and the Greenwood submission. Ironically, Mr Greenwood signed his document on 9 May 2001 in Sydney, the very same day our federal parliament celebrated the 100th anniversary of the first sitting in Melbourne.

This grievance is a single moment in Australian history, brought about by Providence, which brings before the nation a high water mark to reveal its national character. It is a test to see whether we can grasp its harvest and advance our democracy and values such as equality before the law, or whether we will squander it through lack of courage and political will and bow to the bitter taste which says that the Senate's privileges and immunities can be treated with utter contempt by a state government and law enforcement authority to such an extent that the Senate may be misled to cover up serious crime and wrongdoing and no-one cares. If that is the outcome of this test, we can give the game away.

To conclude: if, in the course of your investigation, you are satisfied that sufficient evidence has been adduced to suggest beyond reasonable doubt that the Senate was deliberately misled and criminal contempt committed when it took evidence on the Heiner affair at another time some years ago, you must act to the full extent the Constitution allows—just as happened to the famous British author and politician Lord Jeffrey Archer when his perjury was discovered years later and for which he was justly punished. If necessary, you must create new precedents and impose appropriate penalties so that it never happens again. In short, the Senate must find and exert its full powers. It must summon witnesses, no matter how high or how far away. It must call for documents, no matter how deeply buried by the Queensland government and the CMC—and, in doing so, better secure our democratic processes for years to come.

Whistleblowers, would-be whistleblowers, abused children—some of whom are adults still waiting for justice—journalists, lawyers, public officials, politicians of all persuasions, archivists and ordinary decent Australians are watching and waiting. You can either turn the light on on the hill or turn it out.

Put squarely, our democracy will fail if you do not do your duty to protect the privileges and immunities of the Senate without fear or favour, especially when contempt is criminal in kind, as I have suggested. This is your highest duty as an elected senator to our nation's premier democratic institution. It must be faced with courage, integrity, determination and resolve. Nothing less will do. If necessary, the Senate should seek rulings on its powers under the Constitution from the High Court of Australia if challenges come during this grievance matter.

Above all, I ask you this: let your deliberations not be tainted by party political considerations. This is about the enduring privileges and immunities of the Senate.

In Queensland we appear not to have in our midst a modern-day Bill Gunn, who was courageous enough to say that enough is enough and who brought about the Fitzgerald inquiry. We have a smiling premier who professes to care about our children as a priority but is more interested in talking about 'hot dinners' than in getting to the truth of this matter. When the Fitzgerald inquiry ended, we were left with a job half done. The subsequent Forde inquiry into the abuse of children in institutions was a complete farce in this matter. The reality is that the cancerous tentacles of Heiner have eaten the heart and soul out of our public administration. The

systemic corruption has sucked it dry of goodness and preparedness to do the right thing, difficult though that may be in Heiner, or to act ethically. Self-interest rules the roost.

We have now been forced to look elsewhere, to the Senate, to bring our state back into the fold of decency and good governance under our Constitution. You must not turn your back on us. In this affair, you are seeing, writ large like Watergate, the inevitable end result of a unicameral system of government gone mad, drunk on its own executive power, and of a Queensland media which has failed in its essential democratic task of asking difficult questions and never giving up until the truth is revealed. And it cannot go without being said that to date we suffer from a Queensland opposition that lacks heart and fails to show us an alternative way. Courage is missing on all fronts.

In conclusion, as Australians Bruce Grundy and I have sowed our crop. We have diligently nurtured it through years with the constant trickle of water found in our pursuit of truth. We have been wonderfully helped by others of like spirit. However, we have been plagued with attacks on our integrity, have been ridiculed as being obsessed, have suffered stress and hardship and have endured obstacles, dissembling, deceit and abuse of power. But we have prevailed and we stand before you. The harvesting is now yours. Our democracy's future awaits with great expectation your grading of our crop. Thank you, Senators.

CHAIR—Thank you, Mr Lindeberg. I have got two questions before I ask my colleagues to ask you a number of questions. I ask you to consider the words of the Senate resolution carefully. Those words are 'deliberately misleading or deliberately misled'. I put it to you that it is possible that the Senate indeed could have been misled, but in considering that scenario it is possible that that misleading could have been through a lack of knowledge of certain events or certain facts because those facts or that knowledge may not have been passed on to the relevant people who provided the evidence before the committee. I ask you to consider your reaction to that situation. We have to look at all possible scenarios as to the background and how this evidence may have been presented or the reasons why a particular outcome was achieved or not achieved.

Mr Lindeberg—I accept what you are saying and I think that at the core of the thing is the word 'deliberately'. I believe that the evidence which I have presented to you in my submission and supported by evidence provided by Mr Grundy is sufficient for you to reach the view that there was a deliberate misleading of the evidence. The alternative to it is that the people who provided you evidence in respect of, for instance, 129 of the Criminal Code were incompetent. Of course there is no crime necessarily in being incompetent, but it is a question of whether such people can be so incompetent in providing the evidence in respect of that matter plus others. There is also the issue—

CHAIR—Do you think they were incompetent?

Mr Lindeberg—No, I do not.

CHAIR—Continue.

Mr Lindeberg—There is the glaring evidence that you have before you in the form of document 13. Document 13 was provided to the Senate in a filtered or tampered form. As you

will see, as I have it here in this exhibit, pages 3, 4 and 5 are there, but pages 1 and 2 were missing. Within the scheme of things, as the evidence is presented to you it will become clear that that cannot have been done by a mere oversight, because of the significance of pages 1 and 2. There are other examples in this matter. In my submission I have set out various examples going to the payment of moneys. The point is that, if we were talking about, for instance, the nature of the evidence that went to Mr Heiner, it was known it concerned the maltreatment of children. That changes the colour of matters that surround it in respect of the payment of moneys. I am aware of the point you are making, distinguishing between it being deliberate and it being just a bit of incompetence on our part. I am quite prepared to go into an amount of detail—

CHAIR—This is not just restricted to incompetence. There is the fact that the CJC, for example, may not have been given material. If they were not given material, it is not unreasonable for them to come to the conclusion that they came to—if they were not given the evidence.

Mr Lindeberg—With respect, that is not correct.

CHAIR—That is what I am asking you to do: you have to refute that.

Mr Lindeberg—I am saying to you, and I will make this abundantly clear as we go through the evidence, that there are elements in here that show that the CJC, or the CMC now—and I assume the Senate realises that the CJC no longer exists as a body—certainly had sufficient evidence in their hands to reach proper findings. There may be another case where they allegedly said that they did not see this type of material.

CHAIR—I am saying that they might not have had all the evidence. It is possible that they may not have received some. It all depends on what we call sufficient. We are expecting them to extrapolate from what may be insufficient evidence.

Mr Lindeberg—I can answer that. There was certainly sufficient evidence for them to reach a view in respect of the interpretation of 129 given to the Senate. I think that is all you have to have: sufficient evidence. I do not know whether you are going to break it down to being sufficient in all cases, but there was sufficient evidence for them to know that, when they were addressing the interpretation of 129 of the Criminal Code, the documents were the subject of anticipated judicial proceedings. But what they told you was that section 129 of the Criminal Code required a judicial proceeding to be on foot to trigger it. What I am putting to you is that that was a view which was never, ever open to them. No reasonable lawyer could have ever reached such a view.

The other side to the coin is: who benefited as a consequence of that particular interpretation? It so happened that it was the Queensland government and certain high ranking public officials. But then it goes further than that, to—as I said in my opening speech—a coterie of mates. I am happy to go into the question of the people who delivered the evidence to you—Mr Michael Barnes, for instance—and the connections that they had with the Labor Party and Labor lawyers et cetera. So I stand by my evidence. I believe that there is sufficient evidence before you to allow you to reach the view that you were deliberately misled, so that you could not make full and proper findings.

CHAIR—The next question concerns the shredding of the Heiner documents. I put the proposal to you—and this has come out of discussions with some independent legal minds in Queensland—that there was considerable doubt as to the constitutionality of the committee that was set up to examine this matter. The documents placed before that inquiry were defamatory and, as such, if the committee were deemed to be not properly constructed, that could give rise to defamatory action. So under the circumstances—according to the legal minds who put this to me—it was not unreasonable that those documents were shredded, after due inquiry within the relevant law advisory authorities in Queensland, taking into consideration the possible constitutionality or not of the committee and the protection of privilege and the fact that there were defamatory statements. I would like your comment on that, please.

Mr Lindeberg—It is totally incorrect. All that has been put to you is totally incorrect.

CHAIR—Totally incorrect?

Mr Lindeberg—Yes. Because it is missing a number of fundamental points.

CHAIR—I am giving you an opportunity.

Mr Lindeberg—I appreciate that. It is missing a number of fundamental points. You were talking about the Heiner inquiry being improperly set up. What you are not saying and what is being said is that it was not set up under the Commissions of Inquiry Act, which would have given the witnesses total immunity.

CHAIR—You think they were given total immunity?

Mr Lindeberg—Sorry?

CHAIR—You believe they were given total immunity?

Mr Lindeberg—There are different types of immunity. The Heiner inquiry was lawfully set up, pursuant to the Public Service Management Employment Act, section 12. It was known that the witnesses who appeared before that inquiry were given qualified privilege. That is what they were told. They were told by the government that, if any litigation were to commence on it, the government would carry their litigious problems. They were given that guarantee. The notion that the Crown, having given that guarantee, then turns around and shreds the documents to prevent them being used in court is an affront to the right of any individual to have his day in court and also goes to obstruction of justice.

CHAIR—But I put this to you: they did not just shred those documents without seeking authority from the legal advisory body which was part of the department of state.

Mr Lindeberg—There are a number of questions there, I appreciate that.

CHAIR—It was not an action taken precipitously.

Mr Lindeberg—With respect, that is not correct either.

CHAIR—I said that it was not an action that I understand was taken precipitously; it was an action that was only taken after due advice from the relevant legal minds of the day within the government's offices of law.

Mr Lindeberg—I will answer that in a number of ways. First of all, acting on legal advice that breaks the law is no protection from charges under the Criminal Code. If that were the case, you would just go and trot out any unlawful advice and you would be afforded some protection. That is well settled in law. In relation to the matter of suggesting that they acted on legal advice, the advice that you are referring to—and it is set out in my submission—is the one dated 23 January 1990, wherein it talks about a number of things. One of the things that it talks about is the destruction of the documents, but it is predicated on the fact that at the time no judicial proceedings had commenced requiring the production of the documents. That advice was based on an incorrect understanding of the facts and was subsequently changed—or there was subsequent advice to it—because it was predicated on the fact that they believed the Heiner inquiry documents at that time belonged to Mr Heiner. A number of days later the documents were handed over to the government, which made them public records, which opened up another whole scope of legal activity to gain access to the documents. So, with respect to the business of saying, 'Look, we got advice and we therefore followed it,' it does not follow if the circumstances change.

CHAIR—You have almost admitted that perhaps the advice could have been correct at the time the advice was given, but the government—or somebody—subsequently opened up those documents to the public record. Is that what you are saying?

Mr Lindeberg—No, I am not saying that at all. First of all, this is another issue which this committee has to consider. If an ordinary citizen acts on legal advice and it is wrong, it does not prevent the person who acts on that advice facing the full rigours of the law. I merely point you to the recent imprisonment of Queensland's Chief Magistrate. She acted on legal advice. She was found guilty and sent to jail. One of the things that the CJC has suggested in this is that 'Provided we've got Crown Law advice, we're all OK.' You have to focus on whether or not that advice was lawful—not on whether you had it, but whether it was lawful. Apart from that, and on top of that, that advice became redundant. It was no longer relevant. When I talk about the documents becoming public records—and this is in my submission—one of the actions that we were engaged in was gaining access to these documents pursuant to Public Service Management and Employment Regulation 65, which gave us a right to these documents because they were public records or departmental records. The issue that you have to consider is: does a citizen have a right to test that in a court of law, or can governments unilaterally come in and destroy them? If that is the case, it is a breach of the separation of powers.

CHAIR—There are really two issues here. At this stage I do not wish to impugn the integrity of the law officers within that department and the advice that they gave. I think it is important that, at this stage, we do not just assume that.

Senator KIRK—I suppose what I am trying to get my mind around at this early stage of the inquiry is the terms of reference we have before us. I am also trying to understand what has been looked at in the past in earlier inquiries. As a relatively new member of the Senate, I only learnt of these earlier inquiries, in particular those by the Committee of Privileges in 1998 and 1996, relatively recently. Having looked at the reports of the Committee of Privileges known as Nos 63

and 71—you know the ones to which I refer—in report No. 71 the Committee of Privileges states:

> The committee reiterates its view, expressed in the 63rd report, that the most appropriate avenues for examination of a matter of the kind referred to it are state institutions. It considers that it is not the role of the Senate or its committees to adjudicate on these matters and suggests that any further attempts to refer such matters to it take into account comments made not merely by the Committee of Privileges and the CJC but also by the Senate Select Committee on Public Interest Whistleblowing which reported to the Senate in August 1994.

I suppose that is the difficulty I am having as well: the fact that reports Nos 63 and 71, insofar as they make comments in relation to the matters that are before us in these terms of reference, seem to say that the committee accepted the CJC's arguments in this regard and found that there had been no contempt committed by the CJC. I am asking you to articulate for me how you see this committee as being different and what role we have, especially in light of the finding of the earlier Committee of Privileges inquiry?

Mr Lindeberg—I need to almost go through each report. One of the difficulties that we are dealing with here is the fact that evidence has gradually emerged over a period of time. As we have pushed forward on this matter, fresh evidence has come out which was always held by the system but which we outside the system did not get our hands on until we discovered it. Mr Grundy will advance arguments on that. With great respect, I do not want to be impertinent, but I do not know whether you have read my submission, because I made things quite clear in that.

We could look at the first Senate report. I know you are talking about the second one, but there were a couple of things that triggered these various things that have occurred. Certain advices came out afterwards which changed the colour of various things. When I appeared before the Senate select committee on unresolved whistleblower cases I was represented by Mr Ian Callinan, currently at the High Court. We posed the question as to whether or not all the legal advice had been provided to the Senate and were given assurances that that was the case. We suddenly got legal advice in the aftermath of the Morris-Howard report, which was commissioned by the board, and I got a bundle of documents that I had requested under FOI which I had been trying to get for years and dissembling had been going on and so on. When we discovered those advices, they became very relevant to what had gone before.

For instance, coming back to your point in relation to the so-called business about the advice that the government had on the 23rd about whether they could shred. They had advice. It was not as if they acted unilaterally: as long as you have advice, you are okay. That is an important issue, because the CJC in this process have said that they had advice and therefore they acted not in bad faith. But they did not look at the advice to see whether the advice was unlawful or not.

It is almost as if having this so-called business of official misconduct means that, providing you have something to act on, you can escape the consequences of the criminal law, whereas, if you are a private citizen and you act on bad advice, that gives you no protection from being prosecuted by the police, as a magistrate here in Queensland was. She acted on advice and she still went down—she went to jail. I see no difference between what should happen to an ordinary citizen and what should happen to a government. Just because you have Crown Solicitor's advice does not mean what you have done is lawful.

I hope you are following me. In relation to regulation 65, if I can join the two issues, when the documents were handed back to the government it changed their colour. They became public, departmental records, which opened up the range of opportunities for our access to them—under regulation 65, which talks about any departmental record or file held on the officer.

CHAIR—I would like to get the sequence right. You are leading the committee to believe that, despite the advice that came from the crown law department, those documents were not shredded at that point of time but were actually handed back to the government—and then the government must have done something to make them public documents?

Mr Lindeberg—No, it was the very act of handing them back into the possession and control of the department. Let me go through this with you. There is another point in this, if I may say so. We are talking about the advice of 23 January. It is in the exhibits, if you do not have it. The documents were handed back to the department. I am suggesting that the department then, unbeknownst to us, warehoused them across into the department of cabinet, to take them away from being departmental records. It put them into cabinet in an attempt to negate our ability to access them pursuant to regulation 65, which relates to departmental records.

Advice came in on 16 February to the cabinet addressing this issue. The cabinet said, 'Our better view of the Heiner documents is that they are public records. They were always public records, because Mr Heiner was an agent of the Crown and when he was getting evidence he was generating public records.' That advice went on to say further that when the expected writ came in the documents could not attract Crown privilege and would be discoverable.

CHAIR—When were they actually shredded?

Mr Lindeberg—On 23 March.

CHAIR—No, in terms of the sequence of events. You are giving me a date.

Mr Lindeberg—They were shredded afterwards.

CHAIR—After they had been into the cabinet's possession and were cabinet documents. Was it after they had received this additional advice?

Mr Lindeberg—Yes. I want to finish this point. When we got this fresh evidence—the Crown Solicitor's advices, it turned out that Mr Coyne did in fact enjoy a legal right pursuant to regulation 65, and the documents had been shredded. There is a slight border in this area of things, but the point is that that showed that we were right in seeking access to these documents pursuant to regulation 65. What was going on in the meantime was that we were being promised final advice, and that is the reason the writ was not served. They say no legal action ever commenced, but we were promised final advice as to whether or not we could get access to the documents, and so we did not go and advance the writ. What government would destroy documents after you have put them on notice and told them not to shred? They wrote back and acknowledged that and said, 'We are still seeking advice.'

Senator SANTORO—How was the advice that you would have access to them tendered?

Mr Lindeberg—It was Crown Solicitor's advice to Miss Matchett on 18 April.

Senator SANTORO—But how were you informed?

Mr Lindeberg—We were not informed. I am sorry to sound impertinent, but it is set out in the submission as to why we did not do things. This becomes the critical point regarding what the government is saying about the Heiner affair. We knew the documents were required for court, because we put them on notice, and the cabinet documents show that. But they never commenced litigation. The reason we did not was that they shredded the documents. Why would you commence litigation to gain documents which had been shredded? The advice in relation to the original complaint came in on 18 April saying that we had a legal right. Ms Matchett, together with crown law—and you were talking about the probity of crown law, Mr Chairman, but I do say that the probity of the advice given by crown law in this matter is under severe question—then assisted the director-general to obstruct Mr Coyne's known rights, and they got rid of the documents unlawfully. Of course, it is bold, and it is in my submission.

The point is that the facts stand for this. I have the documentary evidence. I am saying to you that you were entitled to have that evidence before you. It is in the documents in relation to the finding of Senator Murphy, where he referred to Ms Matchett's 'deceit' or whatever—I have it in here. The fact is that, had you had these documents, you would have seen that crown law and Ms Matchett together deliberately obstructed Mr Coyne's known legal rights.

Senator KIRK—On pages 31 and 32 of your submission you describe the doctrine of the separation of powers as being under threat. At the bottom of page 31 you say:

... the Senate, unhappily, may be party to such a serious breach of the doctrine of the Separation of Powers.

Firstly, can you perhaps explain to me what your conception of the separation of powers is? Secondly, even if it is accepted that there has been such a breach, what do you want us to do about that as a committee and as senators? Do you want some sort of declaratory statement from the Senate that there has been a breach of separation of powers according to your interpretation of it? Perhaps we will go first to your interpretation of the separation of powers.

Mr Lindeberg—It is a very famous question to be asked of people in Queensland.

Senator KIRK—Indeed, it is, and I would be interested to know if your interpretation accords with the former Premier's.

Mr Lindeberg—The doctrine of the separation of powers turns on the three arms of government. The legislature, the executive and the judiciary all effectively have their own jurisdiction within the Constitution. While there is tension between the two, there should be a recognition of the independence of each. What I am saying here flows from the evidence that was put before you. I remind you that you had a submission put before you by Mr Ian Callinan on 7 August, in relation to certain admissions that were made by the CJC, to suggest that section 129 of the Criminal Code may have been breached—that and/or section 132, namely, a conspiracy to pervert the course of justice.

The Senate decided to describe the facts as they knew them at the time—that is, the shredding of documents—as an exercise in poor judgment. I am suggesting that, if you are aware of the facts, to suggest that you can do that and put it down to just an exercise in poor judgment is unacceptable. The jails are full of people who have engaged in exercises of poor judgment. One Baptist minister engaged in an exercise in poor judgment by shredding documents and was sentenced to jail. I am saying to you that the executive judgment in Queensland was fully aware that evidence in its possession was going to be required for judicial proceedings and it shredded the documents containing that evidence to prevent them being used in those proceedings. Apart from being potentially a criminal offence, if the executive government in Queensland is suggesting that it can shred documents up to the moment of a writ being served—in other words, when it kicks in—it is an interference with the function of the judiciary, and justice cannot be done.

Senator KIRK—If you say that has occurred and there has been a breach of the separation of powers, as you understand it, at the state level, what role is there for the federal Senate to make any sort of finding or declaration about what may or may not have occurred in the state of Queensland?

Mr Lindeberg—With respect, I believe that what you are saying when you write this report—in the public interest, revisited—is that it is not just a report for Queensland, it is a report for the nation. There are similar criminal codes across Australia, as you well know. In South Australia you have an offence under the Crimes Act about destroying documents. There is the Crimes Act 1914, section 36, and there is an offence in the Northern Territory and so on. What the Senate is saying to the nation, given what I am saying, is that you are quite happy to suggest that that can be put down to an exercise in poor judgment. I am saying that you have got to disassociate yourself from that. I am further suggesting that as part of your findings in terms of potential contempt it would go one with the other, because this is at the core of one of my things about what Mr Greenwood said. A government cannot place its imprimatur upon the destruction of documents when they know that they are required for judicial proceedings, because you set the standards. If it is good enough for government, it is good enough for everyone. Apparently, it was not good enough for a Queensland citizen who was put before the courts and found guilty under section 129 when he destroyed documents five years before the relevant judicial proceedings commenced.

Senator KIRK—It seems to me that you are really looking for the Senate to make some sort of declaration in this regard—some sort of legal interpretation of what has occurred here. It seems to me that that is beyond our powers, but perhaps we can seek some advice in that regard.

Mr Lindeberg—That is why I am saying to you, Senator, that I do not believe it is beyond your powers. If you do not have the power at the minute, I believe that you have got to go and seek it. I note that within your terms of reference you have the ability to seek the advice of senior counsel. I believe the issue of the protection of documents to allow people to have a fair trial—like the McCabe case—is of great relevance to the rule of law. As it happens this issue, which is currently being debated down in Victoria in the light of the McCabe case—a paper has just been put out in the last week—is about this very issue. The issue was put before the committee but you were told by the Queensland government and the CJC that you could destroy documents up to the moment of a writ being served. My counsel said that is nonsense. Moreover, a retired justice of the Queensland court of appeal said it was never arguable. What they are saying is that,

if you can destroy documents after they have been put on notice up to the moment of a writ being served, there would be nothing left. You would destroy everything. It is a nonsense, and it is an insult that so-called lawyers came before you and peddled that nonsense. That goes to the core of what my struggle for justice has been about.

CHAIR—You are giving us contradictory evidence. You are saying that the writ had not been served and now you are suggesting that the writ has been served.

Mr Lindeberg—No, I do not believe that I did say that. If I did, I apologise. I am saying—and the evidence is before you—that they were placed on notice. In other words, lawyers contacted the government and said, 'Do not shred. If you do not give us the documents we will go to court.' I met with the director-general of the department and put the same notice on them.

CHAIR—It was suggested that a writ may be served.

Mr Lindeberg—That is right.

Senator EGGLESTON—Is there documentary evidence of that?

Mr Lindeberg—Absolutely.

CHAIR—This is the difference. There is a difference between a writ being served and destroying and suggestions that the writ had not been served but the relevant people had been advised that it is possible that a writ may well be served. That is how I have construed your evidence so far. That is why I am asking for a clarification.

Mr Lindeberg—I do not know whether there is a subtle point where I differ from you. Let me go through it. I am saying to you—

CHAIR—There is a difference, because if the writ had been served and they had destroyed them it puts a different complexion—

Mr Lindeberg—No, it does not. I am saying to you—please listen very carefully—that 129 of the Criminal Code—

CHAIR—I am listening carefully, and that is why I am asking these questions.

Mr Lindeberg—I understand. Section 129 of the Criminal Code says that any person who knowingly destroys a document or thing which is or may be required in a judicial proceedings with the intent of preventing it being used in those proceedings breaks the law. That has been ruled on by the Queensland District Court—it is now going to appeal—accepting the ruling that a judicial proceedings does not have to be on foot. You only have to know that the documents are going to be required for a judicial proceedings and then you wilfully destroy them to trigger 129 of the Criminal Code. Okay?

Senator EGGLESTON—Are they more recent legal interpretations, though? We are going back quite a long way. Is it possible that the interpretation of 129 has changed in that time and that is why the original advice was given and that now a different interpretation is put on it?

Mr Lindeberg—With respect, no. The ruling of the Criminal Code is what it always was and is now. It was introduced in 1899 by Sir Samuel Griffiths. We have the case of The Queen v. Rogerson, which says that a conspiracy can be entered into before judicial proceedings commence. Senator, with great respect, to run that argument—I know you are not a lawyer. Just think about it. If you are put on notice by solicitors, officers of the court, and told not to shred—'If you don't give them to us we're going to go to court'—if that is the signal to shred the documents lawfully, there would be nothing left.

Senator EGGLESTON—Nevertheless, the advice was given by the Crown Solicitor and the Director of Public Prosecutions at the time. They were lawyers and they were giving advice within the accepted interpretation of the law at that point.

Mr Lindeberg—That does not make it right.

Senator EGGLESTON—I am not going to argue whether it is right or wrong; I am just saying that was the interpretation at the time. The interpretation perhaps changed with the Ensbey case, but that is the evolution of the law and it is a very common thing that the interpretation of law changes over time. I would suggest that is something you are not giving due regard to.

Mr Lindeberg—I am not prepared to accept that the law ever allowed documents known to be required for judicial proceedings to be destroyed. The point is that it is the law. It was passed by this parliament, and Mr MacAdam will go through that later this afternoon. The interpretation of judicial proceedings is an open interpretation.

Senator EGGLESTON—But at the time it was regarded as proceedings actually being in train in the courts.

Mr Lindeberg—It was unlawful advice.

Senator EGGLESTON—You say that, but the Crown Solicitor of the day gave alternative advice.

Mr Lindeberg—What makes you think he was right?

Senator EGGLESTON—He is the Crown Solicitor. As you said, I am not a lawyer, but I respect the advice of a senior lawyer such as that being correct at the time.

Senator HARRIS—Chair, could I put a couple of questions to Mr Lindeberg?

CHAIR—Only on that, because I want to go to Senator Bartlett. Providing it is relevant to this question of the lawfulness of the advice, which is the issue that is before the committee at the moment. Are you on that particular point, the lawfulness of the advice?

Senator HARRIS—It would clarify it, but I can defer to Senator Bartlett. I will get there eventually.

CHAIR—Senator Harris, is your question in connection with the lawfulness of the advice?

Senator HARRIS—No.

Mr Lindeberg—There is case law before 1990 in The Queen v. Murphy. Conspiracies can happen. You either get them one way or the other. As Mr Callinan said, if you do not get them on 129 you get them on a conspiracy to pervert the course of justice. It is well known that a conspiracy to pervert the course of justice can occur before judicial proceedings commence. It is a plain nonsense to suggest that that was ever a reasonable view of the law to put. I say to you again that at the time the advice was given to the government—this business about being able to shred the documents provided no legal action had commenced—the question was not put, 'Has anybody threatened to get legal action to the documents?' At that point in time you could arguably say no, but that changed within a matter of days and the whole circumstance changed. You cannot go back and refer to advice where the circumstances have changed. It is a nonsense. Things change, and once the documents became public records it changed everything.

Senator EGGLESTON—My point was that the view then was that legal actions had to have actually commenced. You are saying that there was a suggestion that they might have commenced.

Mr Lindeberg—No, I am saying that the advice that was given on 23 January by Mr Barry J. Thomas was addressed on the basis that the documents in Mr Heiner's possession were his own and that a claim for the documents in relation to going to court was not made at that time. There was a claim but it was believed that it did not matter here because the documents were Mr Heiner's. It was based on a false premise. Then we get the later advice on 16th where they were plainly talking about the fact that what happened when the writ came was that the documents would have to be handed over.

Senator EGGLESTON—The writ was not actually in train, was it? That is the key to the advice that was given at the time, I would suggest to you respectfully.

Mr Lindeberg—I do not want to be dogmatic and say that you are wrong. I am quite happy to sit by the view of Mr Callinan and by the court here in Queensland that 129 does not require judicial proceedings to be on foot, and it has not changed since 1899. If it allows what you are suggesting it allows, in other words, you can be put on notice and, having been put on notice and told not to shred the documents you then turn around and shred documents up to the moment of a writ being served, how could you ever do anybody for a conspiracy or obstruction of justice if that particular interpretation of the law allows you to do that?

Senator SANTORO—You are suggesting that all relevant records would be destroyed if that process were—

Mr Lindeberg—Precisely. And the Criminal Code supports each one. You cannot have one aspect of the Criminal Code in contradiction of another.

Senator BARTLETT—There is obviously a wealth of material—submissions, exhibits, a previous Senate inquiry—and in some ways it is easy to get lost in the midst of all that. I want to go back to the core of it all which, I guess, starts with the shredding. This committee has in effect two main terms of reference: whether we have had false evidence in the past and whether that constitutes contempt—what I would call the backward-looking, not in a pejorative sense—

and then implications of what we should do in future. I think that a lot of what you are putting forward, and what others have put forward already in the previous inquiry, gives us opportunity for lots of recommendations about improvements for the future. The concern I have is what we can do about what has already happened, firstly, because our term of reference about that is actually quite narrow—we just decide whether previous evidence was a contempt of the Senate or not. In one sense that is very significant but in another I am not quite sure whether that is something the general public get that worked up about, although I do acknowledge it is an important principle. You have talked about and appropriately made mention of the Baptist minister that was tried and sentenced in relation to shredding. I can have an opinion, and the whole committee could well have an opinion, that it was unlawful to shred, that the legal advice was clearly wrong. It is a bit hard to speculate about its motivation but it was clearly flawed and the decision to shred was wrong. But we are not a court and we cannot make a finding with legal weight to say, yes, they broke the law in shredding those documents. We can just express an opinion in the same way that you are expressing an opinion and having weight of evidence to back it up. What are you seeking from this committee in relation to that core issue of the shredding? If we express an opinion, even if it is a unanimous one, that it was unlawful it may have some political weight or symbolic weight but it does not have any legal weight. Is there something extra beyond that that you are looking at in relation to the shredding?

Mr Lindeberg—They are almost tied up together in the sense that you may reach a view that the shredding was unlawful but that the advice given to you previously was that it was not false and misleading. I do not know whether or not you can do one without the other, because there is compelling evidence to say that the advice tendered to you at the time was never open to be tendered. We have not gone yet, and part of my submission is that we have to see who offered that advice. I am saying with respect to that that the persons who offered that advice should never have come to the case in the first place because of conflicts of interest and other matters.

That is why I am saying to you that any properly briefed lawyer would never have come to the Senate in 1995 and suggested to you that you can shred documents up to the moment of a writ being served. You have had evidence before you where you have Mr Barnes saying to Senator Chamarette that what you do with documents up to the moment of a writ being served is different to what you do with them afterwards. That is palpable and absolute nonsense. We are not schoolkids suggesting that that is what the law is. The fact that he came before you in the clothing of the CJC raises serious questions about whether or not the CJC was ever impartial in this issue. My view is that you have to go to that, and you will have to reach a view as to whether or not the evidence that was given by those people in respect of that was credible or contrived.

Senator BARTLETT—On that point again, I can reach a view and the whole committee may reach a view that is was not credible and was dodgy in the extreme—you can use legal language or common parlance. That would simply be us expressing a view: it would not have any legal weight. You could say it is false in the sense of being wrong, clearly flawed, not credible or beyond the pale, but to move then to say it was deliberately designed to mislead means you would be getting into the realm of whether or not someone is allowed to express an opinion. Anyone can express an opinion, however stupid it is. People would often say that my opinions might not be terribly bright some of the time, but we are able to express them. Obviously, when you are expressing them before a Senate committee those opinions are meant to be honest and not deliberately contrived.

It is a much bigger step to move beyond saying, 'You are wrong; that is rubbish,' to saying, 'You are deliberately spinning us a load of nonsense to mislead us.' It is a much bigger bar. Even if we go to that and express that opinion, that is a serious finding and it goes to credibility. It still does not have any legal weight. I do agree with what some might say were high-minded but quite appropriate statements you made in your opening statement about how serious it is. At the same time, as you would know, there have been over 100 reports of the Senate Privileges Committee. Some of them have found contempt of the Senate anytime somebody leaks to the newspapers, which some people would say in certain circumstances is actually opening up the process and being a bit of a whistleblower—that has been found to be contempt of the Senate.

That is not something that is approved, but it is not something that people get locked up for. Even when we have found contempt or breach of privilege and although arguably we have the powers to penalise, the Senate never has and I do not think the public would want the Senate to start operating as a body that hands out fines or jail sentences. All we can ever do is express a view and make a finding, even a finding of contempt. That is still just us expressing that opinion. It would be a strong opinion but it would still not have any legal follow on.

Mr Lindeberg—I do not mean to cut across. Mr Greenwood at the time—unfortunately he has since passed away—said that the issues were so serious here that you were looking at obstruction of justice and possibly a conspiracy. You may say that you do not have the powers to handle those things. People may not like the Senate to have such power but I do not know whether that is really true. We are not talking about—it might be arguable—some light contempt. It depends on what the issue is in terms of leaking documents. I am talking about a government appearing before you. According to credible evidence from senior counsel, which has since been sustained by a court ruling, that entire cabinet could be charged in relation to the destruction of documents, going to the fact that they were covering up abuse of children.

That is evidence that is before you. Now you have to make your judgment as to how you want to treat it. You may just want to make a finding. So what? People would be quite happy to turn up before you any day and just tell you a bunch of lies. If all they are going to get is a report that says they are in contempt, big deal! When people commit perjury or contempt of court they go to jail. When they lie to or obstruct police they get charged with obstruction of justice, are put before the courts and possibly go to jail. I suggest to you that there is no difference in a matter like this which goes to covering up crime and that the Senate should not treat it any differently. I will just make this point: I think you are looking at a situation somewhat akin to Oliver North in the Iran-Contra affair. I am not totally aware of all the other things; I do not know whether he actually went to jail but I think they were prepared to send him to jail when he lied to the Senate about what President Reagan did and did not know.

This is a question of how much you value your privileges and immunities and how much you value the truth being put to you. You have not called Mr Barnes or Mr Nunan but I respectfully suggest you should. Of course they will be quite happy to come in here and say, 'Look, we got it wrong. It's most unfortunate. We genuinely believe that.' So did the Baptist minister but other legal people are saying that no credible lawyer could have ever reached such a view. What is on the other side of the coin? The other side of the coin is that the entire cabinet is not charged.

Senator BARTLETT—I do want to get to the issue of the abuse of children, but first I will ask you a question. You are talking about obstruction of justice and I very much understand that

concept and how serious it is. It would seem to me, particularly in this context, that even with absolute best will and total attempts at objectivity anybody else perceiving this would see it as a group of politicians sitting on a committee making a judgment about another group of politicians. So you could argue about whether or not in a legal sense we could be seen to have a conflict of interest. But we are a committee. We have to look at whether or not we have the powers to send them to jail, fine them or whatever if somebody perjures or commits contempt. I think we do have the powers but certainly we have never used them.

I would be surprised if people would see it as desirable for the Senate to start acting that way, but that is a matter of opinion. Surely to find obstruction of justice, people would say, 'That's what the courts are there for—to interpret the law and determine whether or not justice has been obstructed, rather than a group of politicians,' much as I think politicians have got a much worse name than we deserve. If we were to find that the CJC came before us and some of them clearly, deliberately, prima facie, set out to spin us a load of rubbish and we make that finding, what do you believe we should do after that? Do you believe we should seek to impose some sort of punishment?

Mr Lindeberg—I can only speak as an Australian citizen. You may say, 'Kevin, you have a vested—

Senator BARTLETT—I was asking you what you think we should do.

Mr Lindeberg—I hear what you say. You would say, 'Lindeberg would not actually say that.' I am not filled with absolute bitterness towards the people who have thwarted me for years. I think you have to apply the law equally. We are talking about section 129, which I think is simply overwhelming. You also have the business of document 13 being provided to you in an incomplete way. There is no doubt that that document was tampered with before it came to the Senate. If that occurred in a courtroom to advantage a person from being held to account, they would be held in contempt or perjury. I do not see any difference here because you are talking about the same crimes. The problem with Heiner is—and I will tell you quite clearly—there has been a cover-up. The system would not charge the cabinet. It fell in around it. I know it is a bold statement but I am saying to you that that is what happened.

I would like to talk to you about what happened to the police and all that type of thing so that you understand. The reason I came to you by a circuitous route is that, as I said to you in my opening statement, I came in good faith and put a submission before you in relation to the former Senate Select Committee on Public Interest Whistleblowing and then on the Heiner inquiry. It was by your invitation. In the process, I happened to bring a case before you—and other cases, but this one was a bit of a problem—which had a bit of notoriety about it because it involved the cabinet. It was not my choice that the people who may have to face the penalty of the law were the politicians. It was not my making. They made the decision. In one sense it is your problem, but I believe that the Australian people want the law to be applied equally. Contempt of the Senate, in my view, is just as important as contempt of the court because you are an arm of government.

Senator BARTLETT—I agree; there is no doubt that people would expect the law to be applied equally. I also think many of them would think the law should be applied by judges, not by politicians. The law gets made by politicians; it is not interpreted by them. Leaving that to

one side, this document has been tampered with. If we find that they have deliberately given us evidence to mislead us, what do you think we should do as a consequence?

Mr Lindeberg—You have to find out who tampered with it, and I think you have to punish the person.

Senator BARTLETT—What sort of punishment?

Mr Lindeberg—What do you want me to say—'send them to jail'?

Senator BARTLETT—I do not know.

Mr Lindeberg—That opens up a whole philosophy about whether or not, in a civilised society, we should send people to jail. There are people who argue—

Senator BARTLETT—You are saying a contempt of the Senate is the same as a contempt of the court—and I appreciate the principle, believe me. The dilemma for us is, if we accept that as the same and as equally serious, the courts, as you said yourself, do send people to jail for that. What sort of punishment should we give?

Mr Lindeberg—I think you have to do the same.

CHAIR—Let us return to the terms of reference.

Senator BARTLETT—With respect, it is pressing the extent of the terms of reference which do go to contempt. I wanted to hear from Mr Lindeberg what he thought we should do, which he has done. I appreciate that, and that is as far as I wanted to go on that point.

The other broader issue goes to what I call the forward-looking aspect. You talked about the covering up of the abuse of children. From my initial understanding of this many years ago, I interpreted the motivation of the shredding—however, distorted in part—as legal protection against people being sued, who did not have proper legal cover for the evidence they had given. There are certainly appropriate, serious issues around that to talk about it. Are you now saying a primary motivation was to cover up evidence of child abuse? Is that a different view to what you initially believed the motivation for the shredding was about?

Mr Lindeberg—Yes. For new senators who have not come to this matter before, when this matter came to the Senate first of all—if you are not aware, I was a former trade union official—my job, rightly or wrongly, was to protect my members' interests. My member, as a public servant, had a right pursuant to law to access the Heiner inquiry documents because they were public records. You may say that the government had a different view. But, had push come to shove, we were going to go to court to get a judicial ruling on whether or not that was true. They shredded the documents—totally—so that we could not do it. That was the view that Mr Callinan and others said breached section 129 of the Criminal Code, because they knew they were required for court and so on.

This only came about because of, I suppose, my efforts but also the efforts of Bruce Grundy, because we stuck to the trail. It turned out that what they were shredding was known to be

evidence about the abuse of children. I said under oath before Mrs Bishop and I am telling you now that I did not know about that at the time. I did not know about it. I visited the centre only a couple of times, and I did not know about that. It became manifest when suddenly document 13, which talked about the excessive handcuffing of children, came down from the Queensland government. You may say I am a bit slow, but it did not dawn on me at the time. As it happened—and I will not bore you with the entire story—I suddenly realised what was going on at the centre.

Previously—and it may have been a missed point on your part—when they were talking about defamatory comments or the odium of the documents, nobody asked what the odium was. Now we know the odium was about the abuse of children, possibly going to the pack rape of a 14-year-old Aboriginal girl—which, according to the Crime Commission, when I took the matter there, falls into the category of criminal paedophilia. There is evidence to suggest that Mr Heiner took evidence on not only the handcuffing but also the pack rape of the girl. There is evidence in my submission to show that there was a knowledge of these things. You now have a document in front of you showing that this happened and it was not properly investigated. It was covered up at the time.

There is a fresh layer. There was the one layer of destroying documents required for a judicial proceedings. But it is another thing, as Mr Greenwood said, if you are destroying evidence of suspected abuse of children. You do not shred those documents. You do not say that you have to shred the documents so the evidence cannot be used against the staff at the centre and affect their careers. When you are a responsible minister, your first priority is not to the staff at the centre and their careers but to the children. That is whom your responsibility is to. The documents were shredded so that that evidence could not be seen publicly. That is another reason why you are entitled to see it.

Document 13 was sent down to you in a tampered form. It is like the Abu Ghraib prison issue, where they are trying to keep the responsibility at as low a level as possible. This document, which was given to you, fails to show that Mr Coyne was informing his bosses. A complete document exists and it went to the Forde inquiry, which in many ways document 13 kicked off after the former police commissioner came back and helped me in 1998. You were entitled to have the entire document because you may have made different findings. They had it at the time. You were entitled to it. If that happened in a courtroom, the judge would come down on that person like a tonne of bricks. I see no reason why you, when you get evidence, should not demand complete evidence.

Senator BARTLETT—Is it possible to credibly argue that the sections that were missing were not relevant to the terms of reference before the inquiry that is under way and that that is why they may not have been provided?

Mr Lindeberg—No, that is not a credible argument. That document, as far as I know, came out of the blue. I am saying that it came to you for a deliberate purpose—that is, to discredit Mr Coyne before your inquiry and, by association, me because I was perceived to be protecting a prima facie child abuser. I remind you that when document 13 came under investigation by the Forde inquiry, that conduct was found to be unlawful and the person could have been disciplined. They did not look at the evidence of assault under the Criminal Code, but they could

not do that because of the statute of limitations. That document existed at the time. Mr Coyne and others could have been punished at the time, but they were not. The evidence was shredded.

May I say there is evidence which I have put before you which shows that the incoming government knew about it. Minister Warner knew about it, because she actually called for the creation of the Heiner inquiry and cited these things. So then to come into government and say, 'We never read the documents. We made a point of not reading the documents'—what nonsense! We are talking about responsible government. You swear an oath to uphold your acts to protect children, you have in your possession documents which have been lawfully gathered by a lawfully set up inquiry and you say, 'I don't want to read them'!

CHAIR—This is the very point: that inquiry that was set up was set up under the wrong act.

Mr Lindeberg—With respect, it was not. It does not turn on that.

CHAIR—Yes, it does—

Mr Lindeberg—It does not turn on that, Senator.

CHAIR—because, if that was not properly set up and the documents that were presented gave rise to defamation, you can understand a situation where a mistake was made by somebody in setting it up under the wrong heading. This is up to you to prove that it was not set up under the wrong heading. As it appears to me at the moment, if it were set up under the wrong heading and the information in the documents could give rise to litigation, you can understand Crown law authorities and the prosecutors making the decisions that were made. If it was not set up under the wrong heading—

Mr Lindeberg—Commissions of inquiry.

CHAIR—I can understand your line of argument, but I think the committee does need to examine whether it was set up under the right head of authority.

Mr Lindeberg—I will answer that. It was set up lawfully. Crown law said the inquiry was set up lawfully. The minister had the authority to do so. The witnesses were covered by qualified privilege, which means that, when they appeared before Mr Heiner and gave evidence about the suspected abuse of children, they were giving it to them in good faith—assuming they were not telling lies. They had a duty to do so. The Crown told the witnesses that, if litigation were to commence, the Crown would indemnify them and would cover their costs.

CHAIR—Where is that evidence?

Mr Lindeberg—I have that evidence. That evidence is before you. I am happy to present it to you. There is no doubt about that.

CHAIR—Can you table that now? That is fairly central.

Mr Lindeberg—It is part of these exhibits here, Senator.

CHAIR—Give us the page and we will incorporate it in the *Hansard*.

Senator EGGLESTON—Two things: qualified privilege and indemnity.

Mr Lindeberg—Indemnity, that is right.

Senator EGGLESTON—You said qualified privilege was given to the witnesses.

Mr Lindeberg—Precisely.

Senator EGGLESTON—We have to identify where that was—

CHAIR—We want to know who gave it and where it is.

Mr Lindeberg—The indemnity?

CHAIR—Yes, we need to—

Mr Lindeberg—I am happy to. This was given to the previous—with great respect, what I am telling you is not new. I will give it to you, Senator, but can I undertake to give it to you later?

CHAIR—Yes, you can take it on notice. We do not require it now—

Mr Lindeberg—I shall do so.

CHAIR—but it is fairly central.

Mr Lindeberg—I accept that. So the notion of saying that you had to destroy documents so that people could not be sued for defamation—whoever gave you that right? When did the government say, 'If we know that these documents are going to be used for defamation,' who said you could intervene and suddenly destroy them? Who said that? The law does not allow you to do that. On top of that, we are talking about regulation 65, whether the people had a lawful right, and Crown law recognised that Mr Coyne was entitled to see part of those documents. Part of those documents talked about children being handcuffed. They did not say, 'Look, we've got to get rid of them.'

CHAIR—That is all quite abhorrent. We agreed that we would suspend for 10 minutes, and then we will have your questions, Senator Harris.

Proceedings suspended from 10.32 a.m. to 10.47 a.m.

Senator HARRIS—I would like to convey to Mr Lindeberg part of the correspondence from the Clerk of the Senate. In a letter dated 18 May 2004, the Clerk of the Senate, Mr Harry Evans, provided advice for this committee and within that advice made this statement:

... the committee is to determine whether, in the light of the existence of those documents and the state of knowledge of relevant persons of the existence of those documents, false or misleading evidence was given.

What the Senate Clerk is saying very clearly to this committee is that it is part of the role of this committee to determine whether statements made to the committee were made—

CHAIR—Senator Harris, I understand you are reading from a document that the committee has not yet published.

Senator HARRIS—My apologies, I was not aware of that. What are the ramifications of that?

CHAIR—Before I allow you to proceed, I ask the committee whether the document should now be published. As there are no objections, it is agreed that the document should be published.

Senator HARRIS—Thank you, Chair. That was just my lack of knowledge, and I apologise. The Senate Clerk is saying very clearly in this document that part of the duty of the committee is to determine from the evidence that is put before us whether a person, knowing that documents existed, gave evidence to a previous Senate committee but did not bring to the notice of that committee those documents. It is in that light that I will ask you this series of questions. Some of them will be menial to some extent, but I think it will help the committee enormously to understand the roles of the people involved. I would like to commence with the date 23 March 1990. In your statement on page 85 at item 77 you make the comments:

Senior archivist is collected by a cabinet official from Dutton Park archives. The Heiner documents are taken from cabinet office in the executive building and walked across to family services building. Ms. Kate McGuckin, the senior archivist, is joined by Ms. Matchett's executive officer Mr. Trevor Walsh, and together they—

and you use the word 'secretly'—

destroy the material ...

Do we have any documentation or records that you believe should or would be held by the archivist of that particular transaction on that day?

Mr Lindeberg—Yes, there is a document in existence which shows that. That chronology of events that you are referring to has been—

Senator HARRIS—I am just sticking with the actual physical function—you can imagine a group of people with a series of documents using certain machinery to either shred or destroy documents. Would it be reasonable to accept that, as archivists, they would actually record that in some way or would have received instructions?

Mr Lindeberg—There are documents in existence. There is a document dated 22 March which I think you may see there. It is written from the cabinet secretary to the state archives, saying that the cabinet wants the shredding to proceed. So they turned up the next day. Then there is a record, and I am pretty sure that it is in documents that are in here. One was written by Ms McGregor on 30 May, in which she recounts what occurred in terms of who went and shredded the documents and so on. There is no doubt.

Senator HARRIS—Chair, through you, as I list these documents, could I ask the secretary to make a note of those and, with the concurrence of the committee, we will then request copies of these documents. Is that all right?

CHAIR—If they are in the possession of Mr Lindeberg I have no problem.

Senator HARRIS—No, the documents that I will be referring to may be in the possession of the department or, in this case, I am assuming it would be whoever is the archivist. All I wish to do is place on record through you, Chair, a request for the documents. Then I believe it would be the function of the committee then separately to determine whether we wish to follow that.

CHAIR—We could ask Mr Lindeberg, if he has any of those documents, to table them. We will need a separate deliberation in terms of whether we ask for certain documents from certain Crown law officials.

Mr Lindeberg—Can I assist the Senate. A lot of those documents are available. I am not sure whether you are thinking that those types of documents have been withheld previously—as long as you are not thinking that. I think that the secretariat may already have some of these documents—for instance, the document dated 30 May from Ms McGregor. I think you have that in your possession and control. So, in one sense, I do not want any feeling to be held that there are these documents which the Queensland government is withholding from you.

Senator HARRIS—Chair, that is not the inference. What I am trying to do is set out in a reasonably simplified form a series of instances and timeslots so that we can then put a document with that. When the committee is deliberating it will make the process of following what has happened clearer. There is no inference that they are being withheld. So, on 23 March 1990 the actual destruction of the documents was carried out. Could you just briefly describe the position that was held by Ms Matchett?

Mr Lindeberg—At the time of this, to be absolutely precise, Ms Matchett was the Acting Director General of the Department of Family Services and Aboriginal and Islander Affairs. Her position was later confirmed.

Senator MOORE—What had she been before that?

Mr Lindeberg—She was a member of the executive team.

Senator MOORE—In the same department?

Mr Lindeberg—Yes.

Senator HARRIS—I now turn to page 80, item 31, which refers to 18 January 1990. It says here:

Ms Matchett writes to the Crown Solicitor twice: (1) she seeks advice regarding Mr. Coyne's solicitors letter of 17 January 1990; (2) she expresses concern over the legality of Mr. Heiner's appointment and encloses Mr. Coyne's memorandum dated 15 January 1990 ...

Again we have two letters from Ms Matchett to the Crown Solicitor that I would like the secretary to note to see if they are available. If they are not available to the committee the committee will make the decision about whether we should progress those. In making that statement, you are confirming that Ms Matchett had received correspondence from Mr Coyne dated back as far as 15 January?

Mr Lindeberg—Yes. Do you want me to develop that or just say yes?

Senator HARRIS—Briefly develop it.

Mr Lindeberg—That was at a time when we were building up to the advice of 23 January. That was when the Heiner inquiry was still going and he was threatening a writ of prohibition because he felt natural justice was being denied him. If you read the document of—

Senator MOORE—Who was threatening?

Mr Lindeberg—Mr Coyne.

Senator MOORE—It is important, for the record, to say who it is.

Mr Lindeberg—Then they shut down the inquiry so that was no longer relevant. But in doing so they handed the documents to the department. That triggered the other range of opportunities under law, to gain access to the documents.

Senator HARRIS—Yes, we went through that earlier on. On page 80, at item 28 with regard to 15 January 1990, you say:

Mr. Coyne seeks access to original complaints in a memorandum to Ms. Matchett pursuant *to Public Service Management and Employment Regulation 65 ...*

How are you aware that that original complaint or that request is in existence?

Mr Lindeberg—I think I have the letter and I am sure the Senate has the letter.

Senator HARRIS—So that becomes another document that is relevant to the committee.

CHAIR—Senator, for the purposes of the record, we have in our papers—and you have in your papers—on 19 January a letter from Mr O'Shea, the Crown Solicitor, where he responds to the sorts of issues that you are referring to. I think it is important to note that on the second page of his letter he said:

The problems concerning the possibility of defamation proceedings and indeed the general power of Mr. Heiner to be conducting this inquiry remain, but these can be addressed further, if and when you are in a position to give me more complete instructions.

Then he goes on:

I confirm my telephone advice to your Mr. Walsh today that for the time being it would be better not to respond to the Solicitors' letter.

So that is evidence that has been acted upon. Then there is this further correspondence, which is also in your possession, which I think perhaps should remove some of the mystery. It is dated 23 January 1990 and directed to the Department of Family Services and Aboriginal and Islander Affairs. This is the Crown Solicitor's advice, as I said, of 23 January 1990, from Mr O'Shea. I read from the document:

I understand that Mr. Heiner did not purport to exercise any powers under the Public Service Management Act or any other legislation to compel attendance upon him or require answers to questions he asked of those attending. Mr Heiner's informants had no statutory immunity from suit or action for defamation in carrying out these duties although they would appear to have qualified privilege. Therefore, it seems that some of the material which has come into his hands may well be regarded as defamatory. This material is now in your hands and if you decide to discontinue an inquiry I would recommend that as it relates to an inquiry which has no further purpose, the material be destroyed to remove any doubt in the minds of persons concerned that it remains accessible or could possibly affect any future deliberations concerning the management of the John Oxley Youth Centre or the treatment of any staff at that centre.

I do not see any difficulty in destruction of the material supplied to Mr. Heiner, naturally any material removed from official files should be returned to those files but the tape recordings of interviews had with people or any notes or drafts made by Mr. Heiner should I suggest be destroyed.

This advice is predicated on the fact that no legal action has been commenced which requires the production of those files and that you decide to discontinue Mr. Heiner's inquiry.

I think that puts in context the responses from your particular request.

Senator HARRIS—My purpose in recording this chronology is not to determine anything in relation to legal opinion. What I am attempting to do for the record is to place factually a series of events that relate to a person's knowledge. From that point the committee may then be able to determine, as the Clerk has said, in the light of the existence of these documents and the state of knowledge of relevant persons of the existence of those documents, whether false or misleading evidence was given. I am merely setting down the basic bones of the actual factual physical activities that were carried out and the knowledge of those persons at that time, not in any way looking at any legal aspects. To move from that particular area, we know those circumstances actually occurred, because the records physically set out that they did occur. One question I would just like to put to you briefly is: in your opinion, is the abuse of a child a criminal act or a potential criminal act?

Mr Lindeberg—Bearing in mind I am not a barrister, because you have asked that question I think it needs to be put in the context of the issue that we are talking about. I know we are talking about the general statement, but what we are talking about here, if it leads on to the Heiner affair, is children who are in the care of the state. It opens up a range of things. Yes, abuse of children, I suspect, is a criminal act. It may not reach that necessary level. It also opens up other aspects, if those children are being abused in the care of the state, as to the responsibility of those who are there to care for those children. In other words, if those children are being abused while public officials are oversighting them, who have knowledge of it and who are doing nothing about it, that opens up matters of disciplinary action, official misconduct and possible criminal conduct. Do you follow?

Senator HARRIS—Yes.

Mr Lindeberg—On top of that, if you are talking about abuse of children in state care and there is evidence of that abuse, it is open for that evidence to be used later in civil action by the

person who may decide to sue the Crown for negligence. Plainly, once you know that, you are talking about evidence of a kind which should not be shredded.

Senator HARRIS—That is correct. Could I very briefly touch on the deed of settlement with Mr Coyne. Could you, for the committee, briefly give us an overview as to what you believe—and we are not taking this as factual evidence—was the purpose of that deed of settlement.

Mr Lindeberg—In answering that question, I would like to tender as an exhibit a document dated 4 May 2004 addressed to the Auditor-General in relation to the deed of settlement. I seek leave to table the document.

CHAIR—Is that the Commonwealth Auditor-General or the state Auditor-General?

Mr Lindeberg—It is the state Auditor-General. Once I get that, I will answer your question. I was going to address the relevancy of it.

CHAIR—Before I put acceptance of these documents to the committee, can you explain the relevance of these documents that you have asked to be tendered as exhibits to our terms of reference?

Mr Lindeberg—The relevancy goes to the connection between the deed of settlement that has been asked under term of reference 1 put in by Mr Greenwood. Forgive me, it is—

Senator HARRIS—It is 1(b).

Mr Lindeberg—It is that too, but it is also about the disbursement of public moneys.

Senator HARRIS—With respect, Chair, it goes to 1(b)(ii) in relation to the protection of children from abuse.

Mr Lindeberg—It also goes to point 4 of my submission, 'An instrument to cover-up crime conditional upon the payment of public moneys for silence', and the significance of the document against the knowledge that in it they talk about money being paid so that certain events at the centre leading up to and surrounding Mr Coyne's relocation are never spoken about again. Those events, it is open to assume, concern the abuse of children. Had you known that within that deed of settlement the events concerned the abuse of children, I suggest that you would have made better findings in relation to it. The reason why I am putting it before you is that, in the light of this, I lodged a fresh complaint with the Auditor-General on this matter on 4 May and I hold letters from the Auditor-General declining to act on this matter pursuant to the findings of this committee.

CHAIR—I do not want to just go around in circles.

Mr Lindeberg—I understand, but I am saying that it is relevant that a Queensland officer who has responsibility under the Financial Administration and Audit Act to look into this matter is declining to act until this committee makes a finding in respect of it.

Senator HARRIS—That is the relevance of this particular document to our inquiry.

Mr Lindeberg—As to whether or not you will ultimately find great value in it I am not sure, save to say that it has been linked with this committee not just by me but also by the Auditor-General. I find it extraordinary that the Queensland Auditor-General is waiting on the deliberations of the Senate to find out whether or not there has been a breach in the disbursement of public moneys under the Financial Administration and Audit Act in Queensland.

CHAIR—I put it to the committee that we have received so much advice from Mr Lindeberg that I cannot consider that any harm would result from our accepting this document. Is it the wish of the committee that this document be tabled? There being no objection, it is so ordered. I can understand the Auditor-General. Auditors are fairly cautious people. I can understand his not wanting to proceed while there are a couple of inquiries under way.

Senator HARRIS—Mr Lindeberg, do you believe—and I think you have encapsulated it for the committee already—that it was a process of withholding from the public domain evidence of child abuse at the centre?

Mr Lindeberg—I do.

Senator HARRIS—In the main body of your submission, on pages 22 and 23, you make the statement:

In handling the case, I had met with Ms. Matchett on 23 February 1990 and placed the Queensland Government on notice. The Department was told that both my union and Queensland Teachers Union (QTU) would be joining Mr. Coyne and Mrs. Dutney in their already-foreshadowed judicial proceeding to gain access to the Heiner Inquiry documents and original complaints if access were not to be granted to us out of court pursuant to *Public Service Management and Employment Regulation 65*. Mr. Martindale was well aware of these matters. He approved of them. Both the QPOA and QTU had placed a legal claim on the records in writing.

Do you have a copy of those documents that you could provide to the committee? I do not mean at hand; take it on notice.

Mr Lindeberg—I do, yes. There is no doubt about that.

Senator HARRIS—The relevance, Chair, is that I am trying to set out the process of people's knowledge in relation to their further actions. Mr Lindeberg, in the second paragraph on page 24 you say:

Solicitors acting for the would-be known plaintiff (Mr Peter Coyne) informed the Queensland Government by phone (14 February 1990) and follow-up letter (15 February 1990) in these unequivocal terms that a judicial proceeding would commence.

Would you have access to those documents or know of their existence?

Mr Lindeberg—This is the document here. I have given that as a piece of evidence to you already.

Senator HARRIS—As an attachment?

Mr Lindeberg—Yes.

CHAIR—Would you like us to incorporate that in the *Hansard*, Senator Harris?

Senator HARRIS—Yes.

CHAIR—Is it agreed that the response that is in the possession of Mr Lindeberg be incorporated in the *Hansard* record? There being no objection, it is so ordered.

Senator HARRIS—I am mindful of the time. I would like to briefly talk about a Mr Michael Roch. Michael was a former youth worker at the centre—is that correct?

Mr Lindeberg—That is correct.

Senator HARRIS—Is it your belief that Mr Roch did give evidence to Mr Heiner about the pack rape during part of those proceedings?

Mr Lindeberg—The way that you have put it is not totally correct. There is a bracket of evidence presented to the House of Representatives Legal and Constitutional Affairs Committee on 16 and 17 March when Mr Roch appeared before that committee and confirmed, as he recalled from memory at the time, that it was Mr Heiner who raised the question of the pack rape with him during the bracket of evidence. I am talking about the May 1988 pack rape incident of which you have attachments.

Senator HARRIS—You also refer to the now state coroner, Mr Michael Barnes. What part do you believe he played in relation to the entire issue?

Mr Lindeberg—It is my view, on the weight of available evidence, that Mr Barnes has acted corruptly. So much so that I believe he should be called before this committee to explain how he reached the particular views that he did. I believe that he, together with another magistrate called Mr Noel Nunan, have acted corruptly in this matter. Mr Nunan should also be called. Mr Barnes appeared before the Senate Select Committee on Unresolved Whistleblower Cases and gave evidence while he was a CJC officer. What you were unaware of at the time—he did not disclose it to you and it may be argued whether he had to or not—was that he paid a visit to the Department of Family Services before he wrote the evidence to the Senate in respect of my matter. He inspected the so-called 'Heiner files'.

I only discovered this subsequently to 1995 and it was one of the reasons that I wrote to the Senate Privileges Committee, because one of the questions that was raised by one of the senators here was that they may not have been aware of particular documents at the time. What I am suggesting to you is that if Mr Barnes visited the Department of Family Services and looked at the Heiner file, there is no way—if he was in any way genuine—that he could look at that file without seeing relevant crown law advices which were withheld from you. He had to see that document which was just tendered to you, the one about putting the government on advice knowing not to shred the document.

There is also evidence, which Mr Grundy may bring forward, that during the course of that visit he heard allegations about the child abuse at the centre. According to a later document, which I have given as an exhibit to the committee—it is called the Barnes memorandum of 11 November 1996—wherein he saw memoranda between Matchett and Warner which strongly

inculpated all the members of the executive government in criminal offences if the interpretation of 129 put forward by Messrs Morris and Howard QC was correct. That interpretation of 129 put forward by Messrs Morris and Howard in this book says that a judicial proceeding does not need to be on foot to trigger 129, and we have had that confirmed in a judicial ruling. Those memoranda, which I sought to get under FOI, have disappeared. I am saying to you that there were memoranda which were seen, which he failed to take copies of and which I believe you were entitled to also have at that point.

Senator HARRIS—So you believe that goes to a person's state of knowledge and that person then making a decision not to contribute that evidence to the Senate?

Mr Lindeberg—Let me be clear on this: Mr Barnes told the Senate that he had no doubt that cabinet knew that the documents were being sought by Mr Coyne at the time they shredded the documents. He had no doubt about that at all. The question was raised, 'How would he have no doubt?' What he was not telling you was that he had actually visited the department beforehand and had that confirmation. But, of course, what he is saying is that it does not matter whether you know the documents are required for court—providing no judicial proceedings have commenced, you can shred them. To that extent, he may argue, 'I don't care what I saw. My interpretation of 129 was that you can shred documents up to the moment of a writ being served.' You talked before about the law being discovered et cetera—which quite frankly needs to be addressed by perhaps Mr MacAdam later this afternoon—but 129 was made law in 1899. The plain reading of it is that you cannot destroy documents when you know they are required for judicial proceedings.

The Rogerson case decision was handed down in 1992. It makes it quite plain that you can obstruct justice before curial proceedings commence. So what Mr Callinan said in the advice to you was that, if you did not catch them on 129, then you can apply 132, which is a conspiracy or attempt to pervert the course of justice—one way or another, you cannot destroy documents.

Senator HARRIS—This is going back over what we have done earlier on. I believe that Barbara Flynn was an adviser for Mr Heiner or worked for Mr Heiner as part of his staff. Is that correct?

Mr Lindeberg—It is my understanding that that is true, yes.

Senator HARRIS—Do you believe that it would benefit this committee if Mrs Flynn or Ms Flynn—I have no title here—could provide to this committee further relevant evidence?

Mr Lindeberg—I believe it is important for the committee to call persons such as Ms Flynn, because what is also critical in this is the state of knowledge that the department had regarding the abuse of children going on at the centre. It was not part of their evidence—notwithstanding a tampered document 13—but it also confirmed that the evidence about the pack rape of this girl came before Mr Heiner in evidence. If they were prepared to provide you with document 13, they should have provided you with the evidence about the pack rape of the girl if it all went to Mr Heiner.

Senator HARRIS—Again, do you believe that the Department of Family Services file on the young girl was available at the time? Do you believe that it was inept or wilful that that was not provided either to the CJC or to the Senate?

Mr Lindeberg—With respect, I do not know. That is merely my opinion. I do not think I can speak authoritatively on that, save to say that the document existed. According to Mr Roch and, I believe, Ms Flynn, Mr Heiner took evidence on that. With respect, if you read my submission there is an indication that there was an awareness about the unresolved issue about the girl who was pack raped, and the department and the police did not do the right thing by her.

Senator HARRIS—In conclusion, I would like to touch on document 13. At the head of volume 1 of the Senate Select Committee on Unresolved Whistleblower Cases report—and it would appear that there is no integral numbering in that, so I will just refer to it as document 13—there is a statement:

Parts of this document have not been released to protect the identity of the children involved. The original of this document contains the full names, dates of birth and court history information. Names handwritten in this copy are not the actual names of the children.

Do you believe that that statement would lead the Senate to believe that the only altering of document 13 was the changing of the names of the children?

Mr Lindeberg—I think that is a possibility. I can develop what you have asked me. I want to bring to your attention a relevant matter. I know that each senator should have a copy of everything, but I do not have available to me seven copies of the report from the Forde Commission of Inquiry into the Abuse of Children. In relation to document 13, which I believe is a very important part of this particular Senate inquiry, I refer you to page 170 of this report. I will read to you about the handcuffing. As I said to you—and I think I pointed this out to the secretariat—there were copies of document 13 on the front page of the *Courier-Mail*. This is when the Beattie government first came into power as a minority government, and then it set up the Forde inquiry, following the *Courier-Mail* making considerable comment about what went on at the centre, and so on. They investigated this. At point 7.8, it says:

JOHN OXLEY YOUTH DETENTION CENTRE: FINDINGS ON USE OF HANDCUFFS

Of relevance, it says:

The occurrence of the first of the three instances of handcuffing is beyond doubt. In addition to oral evidence in relation to this episode, there is also documentary proof in the form of a report from the Centre Manager, Mr Peter Coyne, to the Executive Director, Department of Family Services, dated 9 October 1989.

That is document 13. What you did not get were the salutations on the document—the fact that Mr Coyne was addressing it to his superior. In the way it was presented to you it is open for you to conclude that this is a report that Mr Coyne wrote to himself. But if he was informing his superiors and his superiors were concurring with it, it does not make it right; it makes it more serious. It goes up the line, as I said before about the Abu Ghraib prison in Iraq. It then brings into the equation the deed of settlement, namely the events leading up to and surrounding a relocation from the centre. It gives an idea of the character of the events.

When the government got into power at a later time, it said, 'We've known about the problems at the centre for a long time, and the first thing we did was get rid of the manager.' If the manager was engaging in this conduct—and according to the Forde inquiry it was unlawful, but they could not do anything about it because of the statute of limitations under the Children's Services Act—it was unlawful always. The department knew about that at the time and they should have taken action, but, instead of that, they patted Mr Coyne on the head and gave him money, but on the condition that they never talk about this for the rest of their lives.

What I am saying to you is that, had the Senate received document 13 in its entirety, it would have opened up a new range of questions which you could have asked or put in your report. That is why I am saying to you that it is important that the integrity of the evidence that comes before you is assured. And if it has been deliberately tampered with—well, just contemplate that for a while. If that document, which plainly exists in its entire form, was deliberately filtered, you cannot escape the word 'conspiracy'—that a person or persons unknown decided, 'We will not send down the front two pages of the document.' Why? It is entirely relevant to the considerations.

Senator HARRIS—That was the next point that I was going to raise. In relation to document 13, from the heading of the number three on the top of the first page that was received by the Senate it is clear the Senate only received pages 3, 4 and 5 of a five-page document. I believe that this is one of the most important documents and that this committee should request a complete copy of in its full, unedited form. My reasoning for making this request of the committee is that, if it was the intention to withhold from the Senate two issues—firstly, that Mr Coyne was in actuality advising his superiors; and, secondly, that pages 1 and 2 of that letter carried other evidence of child abuse—then, coming back to the Senate Clerk's issue relating to the relevant person's knowledge, if that knowledge was wilfully withheld it may be open to conclude that a contempt of the Senate did in actuality occur.

CHAIR—Do you have that document in its entirety?

Mr Lindeberg—No, I do not. All I can point to is that it was plainly given in evidence to the Forde inquiry. It would require the committee to request the Queensland government to go through the archives of this—assuming that they have not been shredded! Sorry, that is not a joke.

Senator SANTORO—Not on reflection!

Mr Lindeberg—Indeed. It would be held at the state archives. There is no doubt that the entire document was given to the Forde inquiry. It may have been given by Mr Coyne, but there is no doubt that the government held it.

CHAIR—Do you have that document in its entirety, Senator Harris?

Senator HARRIS—I only have a copy of the edited version of the document.

CHAIR—Your allegation is that, in addition to the edited version, there is a complete version.

Senator HARRIS—That is correct. I believe that it is essential that this committee have access to the unedited section of that document, for two reasons: firstly, to ascertain whether the departmental heading on the letter has been removed from each page, thus not allowing the Senate the ability to clearly determine that Mr Coyne was notifying his superiors; and, secondly, to raise the issue of concern as to why pages 1 and 2 of that letter were withheld from the Senate. If the document was of sufficient merit to provide pages 3, 4 and 5, why were pages 1 and 2 withheld?

CHAIR—Is that a question to Mr Lindeberg?

Senator HARRIS—That is both a statement to the committee and a question to Mr Lindeberg.

Mr Lindeberg—Plainly the document was sent down, in my view, to inflict a detriment on Mr Coyne and, I believe, by association myself, to diminish him in the eyes of the Senate. I am not approving of what he did. All I am saying to you is that you were entitled to complete evidence to make proper findings. Somebody decided, 'We'll send this document down in such a form as to exclude everyone else and isolate it to Mr Coyne.' That is why I talked in my opening statement about systemic corruption, how the thing goes all the way up and you get a coterie, then, of damage control. This was an act of utter hubris in the sense that they thought they could get away with it. As it happened, the Senate did not pay proper attention to it. It was only later that we started to realise that what in fact was going on at the John Oxley youth centre was child abuse. Does that surprise you? The nature of child abuse in institutions is that it is covered up. It comes out years later. That is what happened.

Senator SANTORO—But in terms of what we are debating here, Mr Lindeberg, the fact that the full document was not provided to the Senate goes to the heart of what we are about here today—that is, contempt of the Senate.

Mr Lindeberg—It does.

Senator SANTORO—The child abuse issues, which interest us all, are very relevant, I think, to everybody, according to the terms of reference. But the fact that that full document was not provided, you maintain—and it was highly persuasive when my support was sought for the establishment of this committee—constitutes contempt of the Senate and of the activities of the previous Senate committees.

Mr Lindeberg—Yes. The fact that it went to another inquiry looking into child abuse which was triggered by that is support that an entire document exists, and the relevance of it, that it should be the subject of a hearing of a commission of inquiry.

Senator SANTORO—And you are suggesting to the committee that we should seek access to the full, unedited document.

Mr Lindeberg—I am requesting that the committee does so, yes.

Senator HARRIS—I just have one more question of Mr Lindeberg.

CHAIR—Can we just clarify which committee that edited version went to?

Mr Lindeberg—The Senate Select Committee on Unresolved Whistleblower Cases. It is in volume 1.

Senator HARRIS—The relevance, I firmly believe, will become integral in this committee's determination of whether a contempt occurred. I ask finally: what was Ms Sue Crook's position and what do you believe her involvement was in this inquiry?

Mr Lindeberg—Ms Sue Crook was, for want of a better way of describing it, the chief industrial officer in the Department of Family Services. Ms Crook witnessed the meeting that I had with Ms Matchett on 23 February, when I put Ms Matchett on notice to get the unions—the POA and the teachers union—to join Mr Coyne's action. There is evidence, also, to say that she was party to the ongoing legal advice liaison between the department and the Crown Solicitor's office on all this business. She was aware, it is my understanding, that Mr Coyne had a lawful right of entitlement to the documents and that Ms Matchett, in crown law, then conspired—I think that is the proper legal term—to construct that right. I believe this. I am aware I am under oath—

CHAIR—There is a lot of speculation here.

Mr Lindeberg—I can point to this. Ms Crook's signatures are to these things. This is not speculation in relation to that.

CHAIR—Yes, but the inference is there that Ms Matchett was part of this conspiracy. If you look closely at the responses by Mr O'Shea, for example, it does not indicate that—she is asking for some pretty direct answers.

Mr Lindeberg—What are we talking about here, Senator? Which advice are you talking about? I am talking about the advice of 18 April 1990 in which crown law advised Ms Matchett that Mr Coyne had a lawful right to access the original complaints. She then turned around and wrote to crown law and said, 'I don't want to do that. I still want to get rid of them.' Crown law wrote back on 18 May and said, 'In accordance with your desire, this is how we can do it.' If a person has a lawful right to documents, he has a lawful right to documents. They did not tell him that he had that lawful right. In this whole process, if I may say—

CHAIR—In the way the responses are given by the various people to Ms Matchett, it would appear that your statements in relation to Ms Matchett are highly speculative.

Mr Lindeberg—I do not agree.

CHAIR—I thought it was important to put it on the record because you are under oath and what you are saying does not appear, prima facie, to correspond with the types of responses that were given.

Mr Lindeberg—Let me say this: I can give further proof of that. You have not come to this point yet, which is in my submission. I have asked the committee to seek access to the DPP's advice in relation to the Morris-Howard report which is relevant in these things, in terms of this

so-called business being Queensland's activity et cetera. There is a charge made out in that advice which I have read, and it is not a public document yet, of Ms Matchett engaging in abuse of office under section 92. The DPP decided not to charge her because she acted with the assistance of crown law. Previously, crown law and Ms Matchett knew that Mr Coyne had a lawful right to the documents. He had been seeking them for weeks and months beforehand. Once you know you have a right, you recognise that right. You do not then try to go around it by unlawful means, which they did. They did not get permission from the archivist to shred the documents. That is what I am saying: two people entered into it. I am using the term 'conspiracy' because it was not one person; that is all. I do not want to be emotive in using the term but 'conspiracy' is a well-recognised term in the law.

Senator HARRIS—I come back to my point regarding Ms Sue Crook's state of knowledge in relation to the requirement of the documents. That was the point that I was asking Mr Lindeberg about. Did I understand you correctly to say that there were letters that passed between the former Department of Family Services senior industrial officer, either Ms Sue Crook or Ms Matchett—between herself and crown law?

Mr Lindeberg—There are documents. You will notice in some of the crown law advices that they are signed by Ken O'Shea but underneath they say 'Barry J. Thomas'. In this case they are signed by Ms Matchett but then they say 'cc Sue Crook'. I am saying to you that she was part of this whole process and she has never been called to give evidence to either the CJC or anywhere.

Senator HARRIS—Can you indicate to us whether you have copies of those letters or whether you are aware of any area where they are available in their original form?

Mr Lindeberg—I am sorry; you are catching me on the hop. I was unaware what form of questions you were going to ask me.

Senator HARRIS—That is quite all right. Would you like to provide those—

Mr Lindeberg—Here is one: 'Mr Ken O'Shea'. It is document 4 and it is signed by 'S.C.'—that is Sue Crook—and Ruth Matchett. It is not speculation on my part.

CHAIR—The Senate is very concerned where witnesses provide adverse comment about a person. In particular, where comment reflects adversely on that person, we as a committee have to give consideration to standing orders 11 and 12 of the Senate. I ask the committee to rule on this standing order:

> Where the committee has reason to believe that evidence to be given may reflect adversely on a person the committee shall give consideration to the hearing of that evidence in private session.

At standing order 12 it says:

> Where a witness gives evidence reflecting adversely on a person and the committee is not satisfied that that evidence is relevant to the committee's inquiry, the committee shall give consideration to expunging that evidence ...

In addition to that, we should give the person on whom the adverse evidence reflects, a reasonable opportunity to comment, to provide evidence and to respond by way of written

submission. I am asking the committee whether it is the committee's intention that Ms Matchett have the opportunity to provide a response to the matters raised by Mr Lindeberg.

Senator HARRIS—Most definitely, and I would concur that that should apply to any person so named.

CHAIR—Yes, but we have to rule separately on each particular person who has had adverse comments made about them.

Senator BARTLETT—Wouldn't we normally do that on reviewing the transcript rather than do it mid-hearing and in open session?

CHAIR—I do it now deliberately because we have had a lot of allegations made about the integrity of a number of people and I think we have to be very careful about encouraging witnesses to impugn the integrity of a lot of people. If we do it at a later date, Senator Bartlett, we could find people making character assassinations right throughout this day. As chair of this committee, I am saying that this committee has a responsibility to act prudently and in the interests of and in fairness to all. Is it the wish of the committee that we take the action now?

Senator BARTLETT—Which action: to ask them to respond or to notify them—

CHAIR—To let Mr Lindeberg know that we are going to proceed to give that person the opportunity of the right of reply.

Senator BARTLETT—Sure.

Senator KIRK—Do we do that in writing, Chair? Are you suggesting that we write to the individual concerned?

Senator SANTORO—I strongly support that. Ms Matchett is one of about 35 witnesses that I have submitted should come before the committee. I strongly support that. The comments that have been made by Mr Lindeberg today have been made previously at several other hearings and inquiries and I think it would be most beneficial to—

CHAIR—Would you like to move it, then?

Senator SANTORO—I would like to move that we invite Ms Matchett to appear before us and also anybody else who is adversely reflected upon by comments by ourselves or witnesses.

CHAIR—A right of reply. There being no objection, it is so ordered.

Senator SANTORO—There will also be a lot of other people who will not be adversely affected by our comments whom we should also consider inviting.

Senator HARRIS—I will cease my questions to Mr Lindeberg at this point but request the committee that I have the ability to recall Mr Lindeberg at some later date.

CHAIR—No problem. The committee has made a decision in relation to Ms Matchett, but that does not mean that on reading the evidence we may not give other people who we believe have been adversely affected that same opportunity to make comment to the committee. I take Senator Bartlett's point: this will not preclude us from writing to other people. I was just concerned that we were spreading a lot of allegations about some people who may need the right of reply.

Senator MOORE—Mr Lindeberg, I have two questions at this stage. One relates to Mr Coyne and his advice during the process. You have pointed out that you were representing him industrially at the beginning of this process and that the investigation Mr Heiner was undertaking was looking at a whole range of issues at the John Oxley centre. Mr Coyne knew that things were being said and he was seeking to find out exactly what evidence had been given. That was the process, wasn't it?

Mr Lindeberg—Yes.

Senator MOORE—Had Mr Coyne been given by the department any statement which indicated the kinds of things that had been said or the background? Instead of having access to the original documents, what exactly had he received from the department in a personnel process to advise him about what was going on?

Mr Lindeberg—Again, it is in evidence which is already before the committee. He was given a summary of complaints which talked about—I do not have them here, so I am talking off the top of my head—inappropriate bullying or things like that towards staff, but the complaints also listed a number of people who had said certain things about him. There was one complaint which talked about handcuffing of children to beds and that type of thing. When the inquiry was set up and the union was given the so-called terms of reference which looked at the management of the centre, they were that type of thing. We did not see the nature of the complaints. Mr Coyne wanted to see them so that he could defend himself. He was given this summary of complaints but he wanted to see the real details of the whole thing so that he could properly defend himself. That is what he was concerned about with procedural fairness and his writ of prohibition and so on.

Plainly, because the complaints were about the management they were about him as a public official. When the documents were handed back to the department and became departmental records they became records held about him, which opened up regulation 65 for adjudication in the court. As I say, the government may not have wanted that to occur. We had a view, and if we differed from their view we were prepared to settle it in court. You do not unilaterally say, 'You're not going to get them; we'll shred them'—and that is what happened. In answer to your question, Mr Coyne was given a summary of the complaints and then he gave evidence on, I believe, 11 January to Mr Heiner, and obviously certain things were said about him then. Have I answered your question?

Senator MOORE—I am trying to find out exactly what exchange of information led to Mr Coyne's concern about the process. I am trying to see whether it was a common process industrially when you had a person about whom complaints were made not to give them the absolute documents, because people were concerned about their privacy and a person who is making a complaint about someone in authority is very reluctant to be open about what

happened. Industrially, is it a standard process to sift it in such a way that, when a person is under investigation or there is some discussion about them, instead of saying, 'Claire Moore said that you did this and that,' you say, 'There have been concerns about your management style'?

Mr Lindeberg—I think the question that you ask is reasonable. It can be addressed in a number of ways. I am sorry to give you a history lesson in terms of Queensland industrial relations law. I have not practised it for some time now. Under the old Public Service act, you were only entitled to access to your personal file. You could seek access to it, have a look at it and make a note of something that may have been adverse to you.

There was a practice of departmental director-generals keeping secret files away from public servants. When you wanted to see them they would say, 'It's not on your personal file; therefore, it doesn't exist.' In fact they were keeping secret files away from other places. In 1988 under the Bjelke-Petersen government the catchwords were 'natural justice', 'procedural fairness' and all those types of things. Sir Ernest Savage came in and reviewed the Queensland Public Service to cut out red tape. As a consequence of that he introduced the Public Service Management and Employment Act 1988.

It flows back to a case in the Supreme Court between the state of Queensland and Mr Ted Wixted. He wanted to see files that were held against him but he could not get them because they were not on his personal file. That showed the mischief. When this new act came in they incorporated regulation 65, which was broad. It said that you could access any departmental record or file held on the officer. So it did away with this notion of keeping secret files and said that you could peruse them.

There are two levels to this. One is that, if you have something detrimental put on your personal file, you can see it. But there was this catch-all business that regulation 65 recommended. Part of the evidence that I would like to go to at some point is to show the absurdity of what was put to the Senate in relation to regulation 65. A ruling was given to the Senate on this by Mr Noel Nunan, Mr Barnes and Mr Le Grand, which said that Coyne could not get it because it was not on his file. Mr Nunan put in the interpretation 'held on an officers' file', rather than the broad 'any departmental record held on file'. That broad regulation I am describing is now used by the CJC in its publications so that, if a whistleblower blows the whistle, one way to defend yourself is to get hold of any departmental record and see if there is not something secret going on behind your back to undermine you. Mr Coyne wanted to test that.

We had a form of Crown Solicitor's advice on 30 June 1989, which has been given in evidence I think in this book, that indicates that to keep a file relating to you away from your personal file but in the department is artificial. Crown law recognised on 18 April that in fact Mr Coyne did enjoy that right. I believe that was one of the motivations for why they warehoused the documents from the department of families to cabinet. They said, 'There's nothing in our department,' but all the time they were over in cabinet—when they were in fact department of family files.

Senator MOORE—It seems to me that one of the key issues—and there are many—in this process is exactly what information people had when they were making complaints, what the people giving evidence to Mr Heiner were aware was going to happen with what they were

saying and what protection each of them felt—in other words, if they gave evidence to Mr Heiner, particularly if what they were saying was negative or could be held against them or their superiors, what protection they knew they had and were trying to seek. But in terms of Mr Coyne and his access to documents, it was to see whether it was standard practice, rather than to have signed complaints by individuals about my performance, that I would be able to get a general statement from the department. Now the document I have seen says that you can get that, so I think I am getting close to information there.

The second point is about issues of child abuse at John Oxley. In terms of the information and the cases that have just come up in this round of investigation and which did not appear in the previous Senate inquiries, this particular strain did not come up at all in that process—it was not the focus of the inquiry. Are you aware whether there was any internal departmental process, not subject to the Heiner, that was looking at those issues, whether supervisors had actually discussed what the allegations were and were going through standard practice in the department looking at those issues?

Mr Lindeberg—I am sorry; you said a lot and I am trying to capture what you said. At what time are you talking about?

Senator MOORE—Ongoing. The inference I have from your statements is that things were said during the Heiner process that were not investigated thoroughly until the Forde inquiry, and from your subsequent statements you do not believe they were fully investigated then either. Was it only through the Heiner process that those issues of behaviours at the centre were investigated or discussed?

Mr Lindeberg—I cannot answer that absolutely authoritatively. I was a trade union official; I was not a departmental officer. That may be better answered by Mr Grundy. He could go to what went on at the centre. The relevant point is that, before the Heiner inquiry was set up, there was a plain state of knowledge on the part of the incoming minister, Ms Warner, that children were being handcuffed and sedated at the centre and she called for a review of the centre. That review was set up by Mrs Nelson and it took evidence on that matter, and that evidence was subsequently shredded. If I may, coming to your point about it not being properly set up, I will show you the evidence to this effect. After they shut down the inquiry they said, 'If anybody has evidence about complaints, let us know and we'll go through the normal grievance procedure.' The normal grievance procedure gave those people no more protection than they had under Mr Heiner.

The simple point is this. These were public servants. If they had a genuine belief that children were being abused and they told their superior, there was no way they could be sued for defamation because there would be protections, qualified privilege and so on. On top of that, we had the commitment from the Queensland government to them—and it is in a statement I said I would give to you—that, 'We will indemnify you against any legal action that may flow out of it.' Saying, 'We had to shred them to stop defamation,' is nonsense. But, even if there were to have been a case of defamation, that would give you no right to interfere with a person's right to take a defamation action. A person has a right to that under our Constitution. If that is the case, everybody out there would be shredding evidence, and you cannot do it.

This is what I am saying to the Senate. We now know the character of the evidence that was given. Once you know that public records were gathered at a lawful inquiry—and it was a lawful inquiry; the fact that there was not a commission of inquiry is not the issue—they should have been kept. There may be evidence later to show that, had something been done about it, a girl may not have suffered further assaults. Nobody was punished. That is the point. The Forde inquiry found that the handcuffing was unlawful. A child was handcuffed to a fence for 13 hours. That does not matter? I think it does, and I think they had a duty of care to those children. Instead of exercising that duty, they shredded the documents.

Senator SANTORO—Mr Lindeberg, I have prepared about 160 questions that I want to put to you, but I think we are going to run out of time. Like Senator Harris, I would like to reserve my right to ask the committee to consider your recall at a later date. Before I go into some prepared questions, I would like to ask you a couple of questions. One of them may seem to people around here a little bit personal, but I will ask it anyway. You have been described invariably as obsessive, as persistent, as a bit of a fruit loop. Your submissions have been questioned in all sorts of places, including in high places, if I can put it that way. I would like you to briefly outline to the committee some of the sources of your legal advice. Who has been advising you on the legal aspects of the case that you have now been prosecuting for 15 or 16 years?

Mr Lindeberg—It is 14 years.

Senator SANTORO—Just for the clarity of the record and for our benefit.

Mr Lindeberg—For the record, I have been represented by Mr Ian Callinan, now of the High Court, when he was a leading QC, with Mr Roland Peterson as counsel assisting him and, before his death, by Mr Robert F. Greenwood QC, who was the former head of the Commonwealth war crimes unit. This enters into a touchy area in terms of legal professional privilege, but there are other people—

Senator SANTORO—I am not asking you—

Mr Lindeberg—That is the ilk, and you will see another gentleman this afternoon—although he is giving independent evidence—who concurs with my view of the law. That is Mr Alastair MacAdam, who is an eminent person in statutory interpretation. They are people of the ilk of those gentlemen, who I suggest have some standing in the legal fraternity.

Senator SANTORO—One of them is a High Court judge.

Mr Lindeberg—Indeed.

Senator SANTORO—Hindsight is a very powerful tool that people can adopt to sound—and perhaps even be—wise subsequent to a major event. Let me ask you a question which I have been wanting to ask somebody, and you seem to be a good person to ask, today at least. The report which resulted from the inquiries by the Anglican Church into child abuse incidents in Queensland was protected in terms of possible defamation action: it was given absolute privilege by its tabling in the Queensland parliament. Again, I am speaking with the great benefit of hindsight. Do you think that the Heiner report could have been treated similarly if there had been

a strong will in the previous Goss cabinet—a similar will to that which existed in the previous Beattie cabinet?

Mr Lindeberg—Yes, I do. Let me just broaden it slightly. It is important for this committee to know, in terms of my suggestion that there has been a cover-up, that in some sense you only know that there is a cover-up the more you dig and the more you see what is covered up—at a particular point in time, everything is okay. This shredding was seen to be just a spat between public servants—nothing to worry about; what's the big deal? I stuck in it because of the fact that you should not destroy documents when you know they are required for court—irrespective of what is in the documents, you shall not do that. I stayed in on it and, as it happened, evidence came to us that what was going on at the centre was in fact abuse of children. Then it dawned on me: document 13. That showed what they always knew on the inside—whereas, remember, I am on the outside. It so happens that I was supporting a member who no longer has any association with me.

Senator MOORE—Mr Lindeberg, when did that dawn on you?

Mr Lindeberg—What is that?

Senator MOORE—You said that you kept digging and then document 13 came upon you. When did that dawn on you?

Mr Lindeberg—I will tell you what happened. I do not know whether many people know, but I am a cartoonist. I do political cartooning, and I had lost my job. I have been blessed by being able to draw.

Senator SANTORO—You sing also, though—you do sing!

Mr Lindeberg—I was trying to earn money, so I decided to go into the prison system to teach people how to do cartooning. The way that I sold it—and I am telling you that it was a genuine view—was that I thought it was a good way for people to express their frustrations, bitterness, in writing rather than by punching people's lights out. So I went to Woodford maximum security prison and taught cartooning up there to murderers and rapists and so on, and also to the Brisbane women's prison. I went in there. Then I thought, 'Why not go to children?' so I went to the Sir Leslie Wilson centre. Then I thought, 'Blow it. Why not go to John Oxley?'

So I went to the John Oxley centre—I am telling you that is was legit; it was something that was genuine to earn a quid. I went in there and did my cartooning. A youth worker talked to me about going to the CJC with these complaints and the CJC saying, 'Go away.' This is another point: the CJC said they were all too old. The CJC knew about this from at least 1994, I believe, and did nothing about it. I found this out in about 1997. I started to fish around. I am friendly with the former police commissioner, Mr Noel Newnham. He is another gentleman who has given me some support. He came back to Queensland and started to talk to people and to find out about the child abuse. I suddenly remembered document 13. Mr Newnham's evidence was going to the newspaper. I then put document 13 in with the headline 'Children Chained'. The next minute the Forde inquiry was set up and away they went. Does that answer your question?

Senator MOORE—So it was in the late nineties?

Mr Lindeberg—Yes, 1997.

Senator SANTORO—I suppose I am just trying to provide the committee, through my questions, with some material that will help us better assess your credibility and that of your submission. I congratulate you on your report, by the way: it is one of the more comprehensive and well-argued—from your point of view—reports that I have ever come across. It is worth restating for the sake of the record that you were a union organiser—and presumably you were a member of the Labor Party.

Mr Lindeberg—I was, yes.

Senator SANTORO—Were you a Labor Party voter?

Mr Lindeberg—I was, yes.

Senator SANTORO—And you were taking on the first Labor government in Queensland since 1956?

Mr Lindeberg—That is right.

Senator SANTORO—Were you in any way motivated—and you will recall that your are under oath—by factional considerations? Were you out to get even with anybody—for example, Mr Martindale or anybody like that?

Mr Lindeberg—I was not a member of any faction; I was just a member of the Labor Party. I live at Capalaba and was a member of the Capalaba branch, which was seen to be aligned with the AWU and Con Sciacca. I just went to the meetings; I was not a member of any faction.

Senator SANTORO—I wanted that to be on the record because we are not talking about a branch office bearer of the Liberal Party who was out to cause mischief to any of the new establishment in Queensland.

Mr Lindeberg—No.

Senator SANTORO—The questioning about section 129 has taken up a lot of today's proceedings. I think that some of the evidence you have provided is useful and I want to take you through a sequence of questions just to tidy up this issue up and elicit a bit more opinion from you. Section 129 of the Criminal Code 1899 is found in part 3, offences against the administration of law and justice and against public authority. Is that correct?

Mr Lindeberg—That is correct.

Senator SANTORO—In other words, when the code was constructed by Sir Samuel Griffith and passed by the Queensland parliament in 1899 it contained provisions whose purpose was to protect the administration of justice—that is, one of the provisions underpinned the other and could not be in conflict with another. Would you regard that also as a fair comment?

Mr Lindeberg—That is true.

Senator SANTORO—I want to deal with the key provisions of section 129, destroying evidence; section 132, conspiracy to defeat justice; section 140, attempting to pervert justice. The construction within the definition of judicial proceeding under section 119 is to preserve known evidence in order that the ends of justice may be met—which goes to preserving probative evidence, the right to a fair trial and other quite entrenched and very well-defined legal principles.

Mr Lindeberg—That is correct.

Senator SANTORO—We had a Queensland government and the CJC at the turn of the 1990s that included legal—and I stress legal—people who were, in reality, officers of the court. Their prime responsibility was to the court—people like Michael Barnes, Queensland's first state coroner; Mark Le Grand; Mr Noel Nunan, who is now a stipendiary magistrate in Brisbane; David Bevan, Information Commissioner and Queensland Ombudsman; Rob O'Regan QC; Frank Clair, former Crown Solicitor; the late Mr Ken O'Shea, former DPP; Mr Royce Miller QC; current chief stipendiary magistrate Marshall Irwin; barrister Barry J. Thomas and other legal officers in the employ of the Queensland government; and some who we are yet to identify. All of them must have known that section 129 of the Criminal Code of the state of Queensland was the key criminal provision in the Heiner affair. All at various times claimed this either orally, in writing or by their imprimatur because of their positions of authority oversighting such evidence given to the Senate or subsequently considering evidence provided to the Senate. The evidence that is being provided by these people to the Senate is at the crux of this inquiry. I am enormously interested in those provisions of our terms of reference that go right to the heart of trying to fix up issues relating to child abuse. The terms of reference say:

(b) the implications of this matter for measures which should be taken:

(i) to prevent the destruction and concealment by government of information which should be available in the public interest,

(ii) in relation to the protection of children from abuse, and

(iii) for the appropriate protection of whistleblowers.

I am vitally interested in pursuing those terms of reference provided that time and your wise guidance, Chair, allows us to do so in some detail. I am interested in a lot of the evidence that was provided either directly to the Senate or via the advice to others who appeared before the Senate. I am vitally interested in how these eminently qualified and highly placed legal people approached their dealings with the Senate through previous inquiries. Mr Lindeberg, do you think that it is feasible for these people to have believed, claimed or advised government or anybody else within government seeking advice that section 129 did not apply to the shredding of the Heiner documents? Do you think that any advice from any of these people to that effect would have any credibility?

Mr Lindeberg—No, it would not—not against the facts that they knew the documents were required. On page 24 of my submission we have the cabinet documents where they say that solicitors are seeking access but no formal legal action seeking production of the material has been instigated. In other words, they are saying, 'The writ hasn't arrived yet, so let's get in quick

and shred the documents.' It is also relevant that the term 'judicial proceedings' does not just mean proceedings in a court room; it also means proceedings of the CJC, proceedings of the Queensland Audit Office or proceedings of a state coroner. Can you imagine the state coroner saying that it is okay to destroy documents relating to an accident which they know is going to be investigated—that they can shred it up to the moment he knocks on the door? That is why you have the other underpinning element. If you do not get them on 129, you get them on a conspiracy to pervert the course of justice. It is a nonsense.

Senator SANTORO—Later on in this inquiry I want to explore the allegation of the conspiracy. I would like to look at the connections between various individuals that we have named here today and that have been named in many other hearings and inquiries. I have listened very carefully to what has been said here today. It seems to me that, on any plain reading of the provision, to suggest a judicial proceeding has to be on foot makes a mockery of everything, including the law itself, fair dealings between the litigants and any notion that there is equal justice under our Constitution.

Mr Lindeberg—Precisely. What it means is that it is open slather on shredding everything.

Senator SANTORO—It seems to me to be an absolute, complete nonsense to suggest that, with such a state of knowledge and then with such intent. I have read the letters that have been referred to here this morning, and it seems to me that they are quite conclusive in their advice that those documents should not have been shredded.

Mr Lindeberg—Precisely.

Senator SANTORO—What seems to make it worse here is that the shredding was done by the so-called model litigant, if I can put it that way—

Mr Lindeberg—The Crown.

Senator SANTORO—which also appears to place the executive on a major collision course with the judiciary in respect of the doctrine of separation of powers. You have addressed that issue quite well here this morning. Would you like to comment on it again in the context of what we have been talking about?

Mr Lindeberg—The doctrine recognises that each arm of government has its own jurisdiction. It is all to the ends of justice and allowing us to live in a harmonious society. The courts can only do justice if they have access to evidence. You might think a person is a villain, but that does not mean to say that he does not have his right to his day in court and access to evidence to prove his guilt or innocence. You cannot have executive government acting in a unilateral fashion to say, 'Well, look, I know these documents are going to be required for judicial proceedings, but I will shred them.' I believe that is a form of fascist totalitarianism.

Our freedoms are based on the rule of equal justice under law. For the government to say, 'We can shred documents up to the moment of a writ, and to prove we are right there were no judicial proceedings,' it means that to prove your point, whenever there is litigation going on, shred everything so that there is no point in having litigation and therefore you cannot breach the law. In this case, our litigation at that point in time depended on the continuing existence of the

documents. On top of that, if they are probative evidence of the abuse of children in state care, those documents could have been relevant to the Forde inquiry. They could have been and should have been sent to the police and the CJC for investigation, but instead of that they shredded them.

Senator SANTORO—A considerable amount of words are being stated here this morning and have been at other times about the clarity of section 129, in terms of when it kicks in. Is it when legal proceedings actually commence or when legal proceedings are foreshadowed? Is there any support anywhere else in Australia for an open interpretation of section 129? Is there are any other Commonwealth or state statute?

Mr Lindeberg—I hold letters from the DPP in Western Australia—where section 132 of the Criminal Code mirrors precisely section 129 of the Criminal Code in Queensland—where he argues that the interpretation of 129 is open, not up to the moment of a writ being served. So that is an example. There is also an example in section 36 of the Crimes Act, which talks about judicial proceedings perhaps being required. So essentially it is all the states, except Victoria—and I am not a legal expert. Victoria is going through this process at the moment following the McCabe case. Even there, because the courts did not have a provision like 129, they invoked Queen v. Rogerson—if you do not get them on destroying documents but you have parties agreeing to destroy documents when they know they are required for litigation, and that is done for the purposes of preventing them being used, you can get them for conspiracy to pervert the course of justice. In relation to Pastor Ensbey in Queensland, who has been recently charged and found guilty, the alternative charge to 129 on the charge sheet was section 140, an attempt to pervert the course of justice. But the No. 1 charge was 129, and that is what he was found guilty of. The Queensland government is now taking that to the appeals court, accepting that ruling and wanting a heavier penalty imposed on him because of the gravity of the offence.

Senator SANTORO—So what you are saying is that the attitude of the current government, obviously, towards that provision is different from the attitude of the previous government.

Mr Lindeberg—The attitude of the current DPP and the Queensland government is different from what happened then. My view, with great respect, is that Heiner is aberrant—it is Heiner that is aberrant.

Senator SANTORO—So what you are saying is that in other jurisdictions where similar provisions to 129 apply, there is no real debate as to where section 129 or its equivalent validly kicks in.

Mr Lindeberg—There is no debate. It is only aberrant in Heiner, and that is why you need to go further, to look at who put forward the advice.

Senator SANTORO—Who advised you that that is the case?

Mr Lindeberg—Mr Callinan has put that provision to the Senate. On the basis of the admissions made to the Senate by Mr Barnes that the cabinet knew, et cetera, he said it is open to conclude that 129 may apply but that for the sake of completeness—citing the highest authority, Queen v. Rogerson—it may be open to suggest that those involved breached section 132, which is a conspiracy to pervert the course of justice.

Senator SANTORO—So you have a very eminent, prominent QC, now a High Court judge, who says that 129 kicks in as soon as there is even a sniff of legal action pending, let alone the government or the department being formally notified by a solicitor's letter that those documents would be required for possible future action.

Mr Lindeberg—When you read Queen v. Rogerson, it goes so far as 'it has a tendency'. It goes that far. In this case they absolutely knew. May I put into that same stable Mr Robert F. Greenwood QC. Another person who is of that view is Mr Tony Morris QC, in his report. The other person who is in that same stable is a former Queensland Supreme Court and appeal court justice, Jim Thomas QC, who advised the justice project that 129 did not require judicial proceedings to be on foot, and went so far as to say that there are some provisions which are debatable, but this is not even arguable. That is the challenge. I am requesting that you call these people, let them put forward the argument and see whether you accept it.

Senator SANTORO—I suppose what I am really trying to do is to just draw you out in terms of the strength of the legal advice that you have taken, and the strength of the legal advice that you may not have sought but that is still available to the committee in terms of section 129. In effect, unless section 129 means what it plainly says, and that is 'is or may be required in the judicial proceeding'—and that word 'may' is obviously a fundamentally important word in terms of what we are discussing here today—then the term 'judicial proceeding' is open and not read down to mean that a proceeding on foot, any party or would-be conspirator could look to section 129 as a positive head of power under the Criminal Code to allow all evidence to be destroyed up to the moment of an anticipated judicial procedure commencing. It strikes me that you do not need to have a legal brain—despite the fact that I have been in parliaments for 12 years, and responsible, I do not regard myself at all as a legal brain or even an eminent one, which I certainly am not—to understand how silly the interpretation of section 129 is as fostered by Messrs Barnes, Nunan, Le Grand and others.

Mr Lindeberg—I agree with you.

Senator SANTORO—Ensbey really proved that point beyond all doubt.

Mr Lindeberg—Absolutely. The judge destroyed it and ruled in five minutes. He justified my 14 years of struggle in five minutes. I have been asking for this matter to be put through the courts, but they will not do it. I am saying that everything relating to Heiner is aberrant. In other words, what they are doing with their Baptist minister is correct. It is not something new. It is just the way it is.

Senator SANTORO—In terms of the definition of 'judicial proceeding', would it be correct to say that the term 'judicial proceeding' as put before the Senate and Queensland government in this matter does not just refer to proceedings in a courtroom? In other words, it also applies or refers, for instance, to proceedings before the CJC, the CMC and the Office of the State Coroner? Would that be your view?

Mr Lindeberg—Absolutely.

Senator SANTORO—Is there any supporting evidence?

Mr Lindeberg—They are respected bodies that are capable of taking evidence on oath. It also goes to the Auditor-General and the police, insofar as the police are gaining evidence which goes to a courtroom. I think that the bodies you have mentioned are sufficient in this thing, because the CJC is a body which is capable of taking evidence on oath. Therefore, in arguing that proposition, it was cutting its own throat.

Senator SANTORO—The reason I put this question to you is that, obviously, all of these bodies have either directly or indirectly made submissions to previous Senate inquiries. If that is the case, both these bodies are suggesting that evidence held by other parties and known to be relevant to any proceeding within their authority can be destroyed right up till the moment of an investigation or proceedings commencing. Doesn't that prove the nonsense?

Mr Lindeberg—I believe it does, beyond a reasonable doubt.

CHAIR—We need to seek further legal advice. It seems to me, at the moment, that you say Heiner is different. Yes, we agree it is different, because the manner in which it was constituted was deemed to be unconstitutional, which could give rise to a number of legal actions. We are going to have to test that and seek some legal opinion.

Mr Lindeberg—With great respect, you are missing the point. That is irrelevant. The relevance is: the documents were evidence for a court case. The fact that they were created by what you say was outside a commission of inquiry is beside the point. They existed.

CHAIR—That is what I think we—

Mr Lindeberg—No, what I am saying is that they existed.

CHAIR—I am saying that this is a matter on which I think we have got to get further legal opinion. You have made this assertion. We have now got to test that independently.

Mr Lindeberg—I appreciate that.

Senator SANTORO—There is nothing wrong with that—

Mr Lindeberg—No, I have got no problem with that.

Senator SANTORO—I support that, Chair. I do not think we are going to get a different answer to what we—

Mr Lindeberg—I will just make the point that, in terms of access to the documents, had it gone to a judicial ruling, the judge may have said, 'Sorry, you can't get them because they were gathered by so-called unlawful means.' We would have to accept that. But you cannot unilaterally intervene and say, 'This is my view'—and bang! they are shredded—because we live in a society governed by the rule of law, not by executive decree. The Crown may have a view but so has the citizen. It is sorted out in a court of law. In this case, the Crown unilaterally intervened. While we were sitting out here waiting and thinking we would get the documents, they told the archivist, 'Nobody wants them; secretly shred 'em.' They did not tell us, Senator, that they had a view that they could shred the documents, because, had that been the case, we

could have sought an injunction. They did not tell us. The only notice we got was letters later, saying that everything was gone. So there was no good faith in it.

Senator SANTORO—I believe that the role of the archivist needs to be carefully looked at, and I would like to pursue that line of questioning. The archivist has been mentioned in passing, but I think that the role of the archivist, her statutory responsibilities—it was a she at the time—and the prerogatives that she exercised or did not exercise are highly relevant to this inquiry. Mr Lindeberg, throughout the entire history of this affair, is it true that the State Archivist—who plainly played a critical, crucial role in the destruction of the Heiner inquiry records—was never questioned or interrogated by the CJC?

Mr Lindeberg—That is correct.

Senator SANTORO—Do you find it extraordinary or surprising that, against the claim by the CJC and the Queensland government that this matter has been 'investigated to the nth degree'—we have heard those words used a lot by politicians over time—the State Archivist has never been questioned about her role in the affair?

Mr Lindeberg—It makes a nonsense of the claim.

Senator SANTORO—Why do you think that is the case?

Mr Lindeberg—I believe that they did not want to ask the archivist for fear of what she might tell them.

Senator SANTORO—That she might actually give them the advice not to shred?

Mr Lindeberg—Let me be clear on this. Are you asking me why they didn't talk to her?

Senator SANTORO—Yes.

Mr Lindeberg—That is speculation. If I can answer it this way, the Heiner affair has become one of the great shredding scandals of the world. Apart from other faculties in universities, it is now taught in archives public record keeping schools both in Australia and throughout the world in universities.

Senator SANTORO—If I ever enrol in a university course that will be one subject I will not take up, I promise you.

Mr Lindeberg—The point is that it is not taught on the basis of what you should do; it is taught on the basis of what you should not do. It is in that sense of the old notion of 'ask me no questions and I will tell you no lies'. On the face of evidence that went to the archivist, she was not told that the documents were being sought by solicitors at the time. In my view, had she known that, no archivist would destroy the documents. She was told that the documents 'are no longer required or pertinent to the public record'. At the time that letter went to the archivist, the cabinet knew the documents were being sought by solicitors for a court action.

Senator SANTORO—I want to take you through all of those steps. I refer to the fact that the State Archivist has never been questioned about her role in the affair. Is this akin to the now public revelation by Mr Heiner himself, when he appeared before the House of Representatives Standing Committee on Legal and Constitutional Affairs on 18 May this year, that he had never been approached by the CJC to learn about the evidence he took, yet the CJC and others would have us believe that this matter has been investigated to 'the nth degree' or more times than Mr Beattie, as he is often keen to say, has had hot dinners?

Mr Lindeberg—It is akin to that, yes.

Senator SANTORO—It is a pretty extraordinary situation, isn't it?

Mr Lindeberg—It is one of the reasons why I have stuck the course, because the matter has never been properly investigated.

Senator SANTORO—We have a submission from the Australian Society of Archivists which rejects the CJC's bracket of evidence to the Senate provided by Mr Barnes concerning the role of archivists in public record keeping. In his evidence, Mr Barnes, for the CJC, claimed that the role of the archivist when appraising records for retention or disposal was to only consider their historical value. Would you care to elaborate on that particular point?

Mr Lindeberg—It is plainly nonsense. Certainly an archivist does have to take into account the historical value of documents but an archivist cannot be blind to the legal value of documents, because there are certain documents which plainly carry legal value; they may be contracts and all of those types of things. They also take into account the data value and the administrative value of things, so they do have values. It is not a valueless exercise when they are exercising their discretion. To suggest that an archivist only has to worry about whether documents required for court have historical value and that, if they had no historical value, she can approve their shredding while knowing that the documents are required for court makes a nonsense of proper public record keeping.

Senator SANTORO—I think you make a very important point there because—and I am very conscious of the requirement of the chair, of this committee and indeed of the Senate for procedural fairness, particularly when under oath and under absolute privilege. We are talking about people's roles; we need to make clear what the archivist knew and did not know. On the evidence of the letter to the State Archivist on 23 February 1990 it seems clear to me—and I think to other members of the committee—that she was not told. She was not told that the records were being actively sought by solicitors for legal purposes which went to foreseeable judicial proceedings. Can you point to any other occasions when the State Archivist actually became aware of the evidentiary value of the records?

Mr Lindeberg—Yes, I can. If you would bear with me, I have too many books here and I am losing track of it.

Senator SANTORO—Maybe, like judges, you need a clerk to assist you.

Mr Lindeberg—I appreciate your sense of humour. Forgive me. Let me go through this. I can point—

Senator SANTORO—Why do not just give us views that you have?

Mr Lindeberg—I am conscious that I am under oath, but I can point specifically to letters. I believe that on 17 May—this is after the shredding took place—Mr Coyne wrote to the archivist, wanted to know the fate of the Heiner inquiry documents and told her that the documents were going to be required for court proceedings. In relation to the fact that she may not have known on the 23rd, she was certainly told a number of weeks later that the documents she had approved for shredding on the basis that no-one wanted them were in fact being sought for foreshadowed court proceedings. What she did—and there is evidence to this effect—was to phone up a Mr Trevor Walsh at the department. According to the evidence led by Senator Harris, or whatever it is, he was the person who helped put the documents through the shredding machine with Ms McGuckin. He told her, 'Don't talk to him. Send him back to us or crown law.' She had an independent statutory authority; she was not responsible to Mr Walsh. She was then told that the documents that she had destroyed had been required for a court case.

Senator SANTORO—Once she was made aware that she would be destroying public records which were known to be evidence in anticipated judicial proceedings—she may have been misled—what were her obligations at that point in time?

Mr Lindeberg—In my view, she certainly had obligations under the then Criminal Justice Act to report suspected misconduct. If, in fact, evidence had been deliberately misled from her she had to consider her position. If she was being used as a legitimising shield to destroy documents when they were known to be required for court but she had not been told all the evidence, then she had been misled in the carrying out of her public function—and there are elements under the Criminal Code about abuse of office, et cetera that could have triggered her responsibility. Instead of that, she referred back and told Mr Coyne, 'I'm not going to say anything.' She did not open her mouth publicly on this issue until the day she retired, while the rest of the archives world went into a tizzy about the whole thing and now teach it in universities throughout the world as to what not to do.

Senator SANTORO—Do you think that these background facts—that is, what the state archivist was told and not told—could have been a factor in why the CJC, or the police, for that matter, never approached her about her role in the affair?

Mr Lindeberg—I think it is a fair position to take because the CJC presented evidence to the Senate and, as you said before, Mr Barnes said that the archivist only had to worry about the historical value. Now the Australian Society of Archivists has a submission before you which is repudiating that. Why did they not go to the authority, the State Archivist, to ask the questions, instead of peddling a nonsense line which has been repudiated the whole world round?

Senator SANTORO—Could that perhaps be an explanation as to why Ms McGregor has never spoken publicly about what she knew at relevant times, despite the fact that, as you say, the world of archivists has been just abuzz in terms of discussion, speculation and analysis of this particular incident?

Mr Lindeberg—Again, I am conscious of the fact that I am under oath and I know I am talking under privilege—believe me, I do not want to be besmirch anybody's name—but I believe the evidence speaks for itself. The role of a public state archivist in any democratic

society is a crucial one. They keep government secrets and they have got to be independent. In Queensland, of course, we suffer from our unicameral system of government, which, in my view, has a greater degree of intimidation than a bicameral system of government because we do not have the Senate, or an upper house, as the watchdog over these things. But that archivist was made aware that the documents that she had destroyed were required for a court case, and yet she did nothing. I am under oath, so I will tell you that I went to see her before I went to the CJC and she would not talk to me. She was actually a POA member—one of my members—and she would not talk to me. She performs a public function. She gets paid by the Crown not to bow to abuses of her office but to uphold them, and for 14 years I have been wanting people like that to do their job.

Senator SANTORO—Is it correct that there appears to be doubt as to whether the cabinet ever had the legal authority to seek approval to have the Heiner inquiry documents destroyed, given that it was advised by the Crown Solicitor on 16 February 1990 that the records were not created for a cabinet purpose, could not attract Crown privilege and, by transfer to so-called safekeeping, were created by the families department and therefore their ownership or control came under Ms Matchett's jurisdiction, pursuant to section 12(3)(r) of the Public Service Management and Employment Act, which deals with the responsibility to maintain proper records?

Mr Lindeberg—I believe that is a legitimate argument to put. There may be an argument to say that because the minister was in the cabinet room or whatever, but the fact is that Ms Matchett had a statutory obligation under that provision of the Public Service Management and Employment Act to keep proper records. You cannot tell me that an inquiry looking into the management of a youth detention centre over which she had responsibility and going to the welfare of children does not fall into the bracket of the proper records of the Department of Family Services. Therefore, when cabinet decided to seek approval to destroy the documents, I think a fundamental question that should have been asked by the archivist was, 'Do you have the authority to seek this approval in the first place?' What we are looking at in Heiner is a deference to executive government—what executive government wants, executive government gets.

CHAIR—The committee is suspended until two o'clock.

Proceedings suspended from 12.47 p.m. to 2.08 p.m.

ACTING CHAIR (Senator Kirk)—I call the committee to order. We are going to continue with evidence from you, Mr Lindeberg. Senator Santoro will resume questioning. He has indicated to me that he has a few more questions. Then we will proceed to Mr MacAdam. The committee has not made a decision as yet but it seems most likely that we will need to ask you to come back before the committee at some stage.

Senator SANTORO—I only have a few more questions pertaining to the role of the archivist but then I have a series of questions regarding the deed of settlement in relation to document 13, the role of the Criminal Justice Commission, the role of Mr Michael Allan Barnes, the role of other individuals and the Queensland Police Service and the role of the Office of Crown Law. So I have quite a number of other questions. But, as you have indicated, it is probably best if we afford courtesy to the other witnesses here today and then we should discuss in committee whether or not we recall Mr Lindeberg, whom I would be very keen to keep on talking with—

through the chair and the committee, of course. But I have just a few more questions just to finish on the role of the archivist. Then, if you wish, maybe we could go on to other witnesses or I could keep on going.

Mr Lindeberg, before we broke for lunch, we were basically discussing the role of the archivist and, in particular, the way that the cabinet acted. I was going to suggest to you that the cabinet was possibly acting ultra vires and the fact that the true ownership was not disclosed to the state archivist could be considered a deception against her.

Mr Lindeberg—I think there is certainly an argument like that that could be run. I must say it is an argument which has not concerned the CJC in evidence put to it before. They looked more at the matter that they were public records; therefore, you had to get the approval of the archivist. But within the profession of archives, it is important to know that the people who are seeking application to destroy the documents actually have ownership of them. I respectfully suggest, knowing that the committee has a submission from the Australian Society of Archivists, that it may be well worth your while to call a representative of the archives profession to talk to that particular submission on that particular point because it is of great relevance to proper record keeping. If in fact the documents were in the lawful ownership or control of the Department of Family Services, what was cabinet doing seeking their destruction?

Senator SANTORO—Could you just talk a little bit more about the possession and the ownership of the documents?

Mr Lindeberg—There is a belief that documents which come into the possession of the Crown, the state, have to be filed before they get some type of legal status. In fact, when a document is created or received by the Crown, it effectively takes on the possession of being a public record and is then covered by the Archives Act. In relation to the Heiner affair, which becomes relevant in bringing it all back to this type of thing, they tried to say they were never placed on a record, as though they were floating around in limbo. That is what Ms Matchett said to me: 'They are floating in limbo; I haven't looked at them,' and so on. That is not the issue. The issue is that they were created, they existed and they were in the possession and control of the department, which then brought legal claims on them under the Queensland Public Service Management and Employment Act—the one where Ms Matchett had to keep proper records. Ultimately at the end of the day they are covered by the Criminal Code, which deals with the administration of justice where the documents could be required for a judicial proceedings, albeit by Mr Coyne or by the department for disciplinary proceedings. For instance, the documents could have ended up going to the state Industrial Relations Commission—had Mr Coyne been disciplined, he would have required them. That is a body which takes evidence on oath and falls under the heading of a judicial proceedings. The documents could also have been used for the children who were abused as probative contemporaneous records for their court proceedings.

Senator SANTORO—During the evidence given this morning there was discussion about what the incoming Goss government knew, because some of the activities occurred and indeed the inquiry was commissioned by a National Party minister prior to the Goss government coming to power. There was some discussion this morning about what the shadow ministry knew, what the then opposition, which became the government, knew of the incident, the inquiry and the sorts of things that were being put to the inquiry. The fact that the records were transferred to the office of cabinet almost immediately after the closure of the Heiner inquiry

does give some credibility to the suggestion, the conspiracy theory, the paranoia—perhaps the reality—that there was in existence a plan before the Goss government came to office; a whole-of-government plan, you might say. Could you, for the sake of a clear record and for the committee, reiterate the pointers in terms of what the incoming Goss government knew?

Mr Lindeberg—Let me deal with the facts. I know you are saying that the end conclusion of the facts may lead to a potential pre-existing plan—a plan that existed during the transition into government.

Senator SANTORO—That is what a lot of people say. It seems to me that you may have been suggesting that yourself. I use the word 'paranoia' not in accusing fashion, but that is some of the stuff that is out there.

Mr Lindeberg—I understand. I will answer the question. What enlivens this whole business that there was knowledge that children were being maltreated at the centre, which caused the removal of Mr Coyne, is that you only get to know about that when you know what was going on behind the walls of the centre. You do that by either being a public servant or a minister or hearing leaks. Even though, as I have told you, I visited the centre about two or three times when I was a trade union official—I was there during the opening, and nothing happened then, and I went out once to pay a visit to the two or three members I had out there—I did not know what was going on with the children. My members were on the management side. The youth workers were covered by the AWU and the Queensland State Service Union of Employees.

We can point clearly to evidence in the *Sunday Sun* on 1 October where Minister Warner made allegations about children being sedated and inappropriately handcuffed. That is on page 19 of the newspaper—and I am sure you have that as an item of evidence. She called for a review of the department. Essentially within a few days of that the department of family services, under Beryce Nelson, established the Heiner inquiry. It was only later that we found out that the complaints put to Mr Coyne concerned the handcuffing of children and so on. So, irrespective of whether or not the minister actually read the Heiner inquiry documents, she must have suspected—if she did not know—that, if she was establishing an inquiry to look into these matters, it was a fair punt that Mr Heiner did in fact take evidence on these particular matters. In other words, they knew the character of the evidence.

Senator SANTORO—When you say 'character', do you mean the nature of the evidence?

Mr Lindeberg—It is not about people having an extra five-minute tea break; it is about children being handcuffed to fences for 13 hours and that type of thing. On top of that—and this is available on video; it is not sworn evidence, I appreciate that, but nor was the newspaper—we have the former minister, Mr Pat Comben, on the *Sunday* program in February saying that in general terms the cabinet knew the documents were about the abuse of children. That comes from a minister of the cabinet at the time. Against the background that we have the actual minister herself talking about children being handcuffed, it comes as no surprise that a minister should be saying that in general terms it is about the abuse of children. Then we had a newspaper article dated 7 April 1990 where the minister's spokesperson—again, it was not the minister; but this is in evidence before you—where the minister said, 'We've known about the troubles for a long time at the centre and the first thing we did was get rid of the manager.' Nobody asked, 'What was the trouble? What were these things that were going on?' If it turns out that it is about

the abuse of children, it may be all very well to get rid of the manager but what if the manager was engaging in unlawful conduct? What if others were engaging in unlawful conduct? You hold them to account under a system of responsible government. Does that answer—

Senator SANTORO—It seems to me that your view in your submission to this committee is that the incoming government was pretty much aware of what it was all about.

Mr Lindeberg—And one of the things that got rid of Mr Coyne. This was a departmental inquiry. Why did the documents end up in cabinet? I think it is fair, given all of that, to suggest that one of the incoming government's plans—and I do not say that this is necessarily wrong because all governments have plans about what is going to happen—was that the first thing they were going to do was get rid of Mr Coyne. Mr Coyne objected to being made a scapegoat when he was telling his bosses about what was going on and they were not disapproving of him. That is the relevance of document 13. What puts the crown on it is the deed of settlement: the events leading up to and surrounding your relocation. What were those events? It is open to the conclusion that those events must have been about the maltreatment of children—which they all knew about but which they did not want the world to know about.

Senator SANTORO—Mr Lindeberg, I was going to come to the statements of Mr Comben much later in my questions.

Mr Lindeberg—I am sorry.

Senator SANTORO—No, don't be sorry, because it is opportune that I ask you the question now. What do you see as the significance of the statement by Mr Comben that cabinet was generally aware of the issue and of what it was doing? Have I paraphrased what Mr Comben said correctly, in your view?

Mr Lindeberg—I think he said, 'In general terms, we were aware.' I put the rider on this that Mr Comben is saying that he was quoted out of context. I accept that. But you watched the video. If you followed the thing, Channel 9 ran it over and over again—and they are suggesting that he was not quoted out of context. Let him come here and give evidence on oath and say otherwise. I am just telling you what is out there. But is it such a strange thing that he should say it, given that it went to cabinet on three occasions? They were saying, 'What are we going to do about these documents?' If they were documents about people having an extra five minutes tea-break, what is the point? When it goes to issues of the gravity of potential abuse of children and we are getting the manager out of the way, it starts to bring the colour into this whole thing.

You only have to look at what has gone on inside the churches—how they have handled abuse of children. They have never been open. And that is the reality of Heiner: what you are seeing in Heiner is the mirror reflection of what went on inside the churches. They all knew about the paedophiles, the abuse, and they did not address it—they just moved priests around—and it kept going until they were forced right out and they had to expose it. And that is what has happened in Heiner. It is only because of people like me, and particularly Bruce Grundy, that we have got to those truths—and those were the truths which were always known.

May I say that there is another element to this—and it is in my document: the fact that in March 1989, when there was a riot at the John Oxley Youth Detention Centre, in the *Courier-*

Mail of 17 and 18 May we have an anonymous youth worker whistleblower telling the *Courier-Mail* that the centre is a paradise for young criminals. He talks about the dot points—namely, that a 15-year-old girl had been pack-raped while on an art outing. The next day the minister, the Hon. Craig Sherrin, came out in the newspaper. Answering this, he said that the girl was not 15 but 17 and that the parents were called in and they decided not to charge anybody. Assuming it is the same incident, that girl was not 17, she was 14—and that is what Mr Grundy can talk to you about. You have a plain example here of a minister being misled, I assume, by a bureaucracy, which continued in the whole process. What would have revealed it all was public exposure on the Heiner inquiry documents. Like the senator said, rather than table them in the parliament to give them privilege, they shredded them, unlike what they did to the Anglican Church.

Senator SANTORO—Madam Acting Chair, I think it would be good for the committee to be able to view that interview with former Minister Comben. I remember seeing it several years ago, and it has force. I will just describe it as that. Do we have the actual tape of the interview, as opposed to a transcript?

Mr Lindeberg—It is called 'Queensland's Secret Shame'.

Senator SANTORO—It would be good. We should view that at some stage, I would suggest, but we can decide that.

ACTING CHAIR—I am told that we do have a copy of it and it can be made available to senators.

Senator SANTORO—Mr Lindeberg, when the government told the state archivist in its letter to her on 23 February 1990 that the records were in the safekeeping of cabinet—when one would have thought that they could have been just as safe in the hands of the department of families—it strikes me that this gives rise to what could be described as warehousing of documents, even offshore, if I could use those terms. If my memory serves me correctly, this was quite well criticised in the McCabe v. British American Tobacco case with regard to preventing discovery. What are your comments on that?

Mr Lindeberg—It is correct in this sense: the evidence is that there are the exhibits before you that Mr Coyne was seeking access to these documents and the department was having an investigation. They said, 'There are no records of this within the department,' and they knew that there were legal claims to it. But what they were not telling him, or us, was that they had transferred them across to the cabinet room. We did not know that they were within the cabinet room. We thought they were always within the safekeeping of the department and that they had not left their possession and control, because when those documents went to cabinet I believe that part of the plan was that crown immunity would go to the documents. The Crown Solicitor told them that the documents could not be properly covered by crown immunity because they were not created for a cabinet purpose. At that point in time they should have been referred back to the department. Instead of that, the cancer of Heiner being what it was, it had—at that point or at a previous point when they may have had a previous plan to send these things into cabinet—infected the entire cabinet because it was a cabinet decision. If it had been to family services it would have been a different matter.

That brings into play this whole business of warehousing, abuse of office and obstructing the administration of justice in relation to Mr Coyne's right pursuant to regulation 65. On top of that, you have the even worse abuse, in terms of contempt of the rules of discovery of the court, by the advice of 16 February where they talk about the documents and not cabinet. They knew that once the writ came the documents would be discoverable. Knowing that, that was the finish. You do not shred them when you know that you are under notice.

Senator SANTORO—I have one final question in this bracket of questions and it touches on the role of the Crown Solicitor. Much has been said this morning about the crucial role of the Crown Solicitor. The CJC has suggested in evidence that because the Queensland government acted on the advice of the Crown Solicitor, adherence to that advice that it had sought and acted upon afforded it protection against any breaches of the law, even if it involved criminality. What is your reaction? There are a lot of people out there that say that the cabinet and the government acted on advice and sometimes the cabinet has to take advice.

Mr Lindeberg—I appreciate that.

Senator SANTORO—My response to that is that there are lawyers and there are lawyers.

Mr Lindeberg—It is a profoundly serious question in the sense that it goes right to the core of whether everybody is equal before the law. I have made the point that former Chief Stipendiary Magistrate Di Fingleton acted on advice that she got from her solicitor. It was no protection for her from being charged with criminal offences and being sent to jail. If it means what the CJC is suggesting—that as long as you have advice it does not matter if the advice is unlawful, or what the hell, as long as you act on it you cannot be touched—that profoundly changes the whole structure of whether or not the rule of law counts, because you can get any crazy person to offer advice and wave it around. If a citizen has to go to jail when he or she is acting on advice which is wrong, why shouldn't that apply to government? That is not to say that government will then break down because everybody would be worried about whether they are breaking the law; all it does is to place a greater obligation on everybody to obey the law. The crown law advice is supposed to know the law and obey the law.

Senator SANTORO—And where there may be conflicting advice, or contention about the clarity of the advice irrespective of who it comes from, there should be an exercise of reasonable judgment.

Mr Lindeberg—That may be true, but on top of that, may I say, there is still another avenue that they could have gone to in this. Because the documents went to cabinet, they could have gone to the Solicitor-General. You appreciate the difference: the Solicitor-General gives all the government advice. They did not bring the Solicitor-General into the matter. I say to you again: it is very much an open question as to whether or not cabinet really did act on Crown Solicitor's advice, because the advice of 23 January was redundant—the facts changed. We gave further advice on the 16th, where they are talking about, 'When the writ comes, you have to hand the documents over.' And we got another advice, which you have, dated 26 February, from the Crown Solicitor, to Ms Matchett saying that this matter cannot be advanced until cabinet has taken its decision. In other words, 'We will defer to cabinet in anything that it wants.' When it says 'this matter can't be advanced', it is talking about the litigation to gain access to the documents.

So the Crown Solicitor basically took the proposition which I said in my opening statement—whatever cabinet wants, cabinet gets. It falls in behind. Of course once the decision was made and this matter suddenly took on mad proportions, because I lost a job, put a complaint in and so on, the Crown Solicitor, after that point in time, could not give independent advice—he was a player in it. The Crown Solicitor has provided advice to you on 129 that you can shred documents up to the moment of the writ, which is unlawful. There is no doubt about it: it is unlawful. So what he was doing was defending his own position. I am not embarrassed. I am sure that others, like Mr MacAdam, can talk to you more about 129 and whether it was ever open to that view. Quite plainly it was not. To sum up: I think a lot of it comes from the fact of having a unicameral system of government. What happened in 1989 after the Fitzgerald inquiry was that we were going to have a Labor government in power for a lifetime. At that point in time, I rejoiced with the incoming Goss government.

Senator SANTORO—We are all wrong at least once in our lives.

Mr Lindeberg—The point is that here was a government that came into power in a unicameral system of government with all power. They wanted to do certain things. 'Whatever you want, Sir, you will get.' You have got a Crown Solicitor who mismatches the documents required for court saying, 'We can't advance this matter until cabinet takes a decision as to whether or not we shred them,' when they know they have a duty protect them, you know that crown law is deferring to what cabinet wants, not to the law.

ACTING CHAIR—Thank you very much for giving your evidence to us here today.

Mr Lindeberg—Is there a prospect that I may still be called for further questions in relation to this particular matter?

ACTING CHAIR—Yes, there is the prospect, but it is something that the committee has to deliberate upon.

Mr Lindeberg—There are other things I would like to say. Thank you very much; I appreciate it.

ACTING CHAIR—Not today, if that is what you mean.

Mr Lindeberg—No, I appreciate that. I defer to other people today. Thank you very much for your time.

[2.34 p.m.]

MacADAM, Mr Alastair Ian, (Private capacity)

ACTING CHAIR (Senator Kirk)—Members, we do have a copy of Mr MacAdam's submission that was made available to us, but it has not been published as yet. We need a motion that this submission be made public.

Senator SANTORO—I so move.

ACTING CHAIR—It is so ordered. Welcome to the hearing today. Do you have any comments to make on the capacity in which you appear?

Mr MacAdam—I am a senior lecturer in law at the Queensland University of Technology School of Law. Although I have become involved in this matter in the course of my duties, I speak in a personal capacity here, not on behalf of the QUT.

ACTING CHAIR—Would you like to make an opening statement?

Mr MacAdam—I have only ever been involved on the fringes of this matter. I cannot remember exactly when or who, but many years ago someone rang the QUT and asked if there was anyone who knew anything about statutory interpretation. It was put through to me. I became involved in the matter in this way. Mr Lindeberg and, in more recent times, Mr Grundy are the people who have had the central carriage of this. I certainly support their efforts but I am not a prime mover. I have come here today to perhaps help the committee largely within the area of my expertise. As an academic lawyer I have been involved for many years with the general principles of statutory interpretation. I have three editions of a textbook that deals with that. I have prepared an outline of my submissions, in which I have listed three broad areas:

the fundamentally flawed interpretation of section 129 of the Criminal Code, 'Destroying evidence';

false claims that these matters have been investigated and nothing has been found; and

the failure of a whole range of Queensland government bodies to do their duty in relation to this matter.

I was originally involved in this matter in the interpretation of section 129 of the Criminal Code. As an appendix to my submission, I have extracted the relevant clauses, which are on the fifth page. The argument, as I understand what was originally advanced and has been picked up by a whole lot of other people anxious to say that nothing wrong was done, was to start with section 129, the key provision, 'Destroying evidence'. It says, 'Any person who, knowing that any book, document, or other thing of any kind, is'—and these are the key words—'or may be required in evidence in a judicial proceeding, wilfully destroys' that material creates a criminal offence.

Arguments have been advanced by all sorts of people. On the next page are the Criminal Practice Rules of 1900. They are in fact a piece of delegated or subordinate legislation. It is said that these provisions were largely drafted by Sir Samuel Griffith before his appointment as the first Chief Justice of the High Court. There is an optional form of indictment or an optional form of a charge that can be used in relation to these offences. That is extracted in the outline. It is No. 83, Destroying evidence, and refers to section 129. It says:

Knowing that a certain book [or deed (or as the case may be)], namely, a ledger (or as the case may be), was [or might be] required in evidence in an action then pending in the Supreme Court ...

It is argued that the use of those words in the optional forms of indictment means that no offence can be committed against section 129 unless proceedings have actually been commenced. This was something I wrote about as far back as 1983 in the first edition of my book. Indeed, it is perfectly clear that you cannot use after-the-event material of the executive to determine the intent of the words in the legislation that parliament has enacted. If you just think about it—and I take it that all the senators would well understand this—there is the legislative function of the Senate and there is the function of the government and often the parliament will authorise, usually by the Governor-General in council, the making of various forms of delegated or subordinate legislation. But they always follow the act. As far back as 1905 in the High Court, in the case the Great Fingal Consolidated v. Sheehan, the same Sir Samuel Griffith who allegedly drafted these Criminal Practice Rules made it perfectly clear:

I cannot assent to the argument that a regulation can be used for the purpose of construing the statute under which it is made.

Furthermore, around about the time this matter first arose, there was the High Court case of The Queen v. Rogerson. That case was about the disgraced New South Wales detective Roger Rogerson who had been charged and convicted of an offence of conspiring to pervert the course of justice. The High Court made it perfectly clear in relation to that related type offence that court proceedings did not have to be in existence in order for an offence to have occurred.

It seems to me that this position is perfectly clear and beyond doubt. I know that this committee is really looking at what was the state of play back in the past some years ago. But in more recent times there has been the case in the District Court of Queensland before Judge Samios where a Baptist pastor was prosecuted for a similar offence; no proceedings had been instituted and the judge ruled that that was not a necessary requirement—that you could not use these optional forms of indictment to read down the clear words of the act. The words of the act seem to me to be perfectly clear because they include the words 'that is or may be required in evidence', which, it has been explained, have an element of the future about them.

You ask why this interpretation was originally adopted by so many people. You can only speculate about that, but it seems that we have a lack of what I would describe as true independence in this matter. It was investigated by the CJC. It transpires that Labor lawyers were involved in the investigation and arguments were advanced that, when that was discovered after the event, it was too late to remove them. I would have thought that if someone was approached that had close connections—and this is the Labor Party—with the Labor Party, rather than wait for the employer to say, 'You should not act,' it was incumbent upon those persons themselves to say, 'I should not act in this matter.' Even if they act truly independently, that will never be

accepted by the wider community. There will always be this perception that there is something amiss. It seems to me that the original determination that was advanced led to everything else. We had a whole host of other government lawyers and a whole host of other officials who simply adopted that line.

You ask yourself, 'Well, why might that happen?' The thing that I and some of my professional colleagues could never figure is when the problem arose in the first place, rather than destroy the documents, if it was alleged the inquiry had not been properly appointed, why was not a short piece of retrospective legislation passed—not that I am a great one favouring retrospective legislation but this was in the nature of a piece of validating legislation which I think legislation committees tend to endorse—why was not a simple piece of legislation passed saying that Mr Heiner was at all times appointed under the commissions of inquiry act? That would have done away with all the problems.

You then ask, 'Why didn't we go down that path?' For many, many years, until Mr Grundy was involved, no-one knew that what was being covered up here was serious child abuse. It was thought that this was some intra- or inter-union dispute that no-one quite understood. When we look further, it seems to me if we look back in retrospect this can be explained something like the problems that some of the churches have been experiencing—the former Governor-General, Archbishop Hollingworth, and I notice just in the last two days in the paper the archbishop of Adelaide, George—that the people connected with the organisation are too keen to protect the organisation rather than doing the right thing. It seems to me that similar sorts of things occurred in this matter. I am involved assisting another organisation in relation to electrical deaths in Queensland—a matter about which this committee is in no way interested but similar things occur there. When it is alleged the government has done the wrong thing, there seem to be all spurious reasons constantly advanced why no action should be taken.

A second point that arises is that there are these constant claims that have been made, and from reading some material apparently made before former committees of the Senate, that all these matters have been investigated, and the word keeps cropping up to the nth degree, and nothing has been found. The current Premier of Queensland, Peter Beattie, constantly comes up with that almost religious mantra. To my way of thinking, to the extent this matter was investigated by government lawyers and was investigated by Labor lawyers that is correct; nothing was found. But the moment two independent lawyers were appointed, Tony Morris QC and Edward Howard, and all they were allowed to do was follow the paper trail, they found that it was open to conclude that very serious criminal offences had been committed. In my written submission to you I have taken extracts from that report and highlighted or put pen marks around some of the key provisions which are contained in there.

I note that at an earlier point in time the Criminal Justice Commission has come before former committees and said, 'This has been investigated and nothing has been found.' Paragraph 24 is instructive, where Morris and Howard say:

> We have no doubt that both individuals, the then chairman of the CJC, Mr Clair, and the new Premier, Mr Beattie, honestly believe that the matters the subject of our investigation had been exhaustively and independently scrutinised. We make no criticism of their scepticism in respect of our investigation. Nonetheless, we imagine that the results of our investigation must surely shake their confidence in the exhaustiveness—we say nothing as to the independence—of previous investigations.

It seems to me that at earlier points in time the spurious reasons that were trotted out for originally doing nothing were trotted out before the Senate committees. To the extent that some of these reasons are clearly not maintainable, I believe it is open to conclude that the earlier Senate committees were misled. People might say to me, 'Well, about law, lawyers are forever disagreeing. We have regular decisions in the High Court where the High Court splits four-three. Is this not just a matter like this where it was open to go one way, you thought the other way and thought there is nothing inherently wrong?' Very often that is the case, but this case seems to go so far the other way that the grounds advanced are so clearly not maintainable that you then ask yourself whether there were really other reasons why this occurred.

Here it was relatively junior people asked to do things about the Queensland cabinet. It was suggested that the whole of the Queensland cabinet ought to have been prosecuted for these matters. Maybe that was all too difficult. But what I have been looking at there are the details of it, and I notice one ground of this committee's terms of reference is not only the past but also the future. It is the future that concerns me. I have been talking here about how the facts were that it was a Labor government and Labor lawyers and government lawyers were involved.

I hope it does not displease members of the committee but I have a strong suspicion that if other parties were in power exactly the same thing would have happened. These people—these organs of government—believe that their job is to protect the executive government instead of to fulfil their obligations. Looking to the future in this, you will see on page 3 of my submission a great long list of bodies that I believe have let Queenslanders down. These bodies have the function of assisting the executive government but many of them have been established, at least in part, to protect us from the excesses of the executive government. We have the Criminal Justice Commission, Crown Law, the Crown Solicitor, the Director of Public Prosecutions, the Attorney-General, the Queensland Police Service, the Ombudsman, the Information Commissioner, the State Archivist and the department of family services. I believe that all those bodies and organisations have let Queenslanders down simply because they did not do their job. They thought their job was to protect the executive government. In my submission that is clearly not correct.

Mr Lindeberg—I am not sure whether he knew what he was writing at the time—presented a so-called one-man petition to the Queensland parliament. It ran to about 80 pages. I read that petition. It identified a crucial point: these organs of government simply do not do what is required of them. Since then other bodies could be mentioned as having done the wrong thing: the Queensland parliament as a whole; the Speaker; the parliamentary committees, particularly the Parliamentary Criminal Justice Committee; Premier Goss, a lawyer who was in the cabinet at the time the documents were destroyed; the Forde inquiry; National Party Premier Rob Borbidge, who initially investigated the matter but, for reasons that were totally unexplained, let it drop; and of course the current Premier. It has been investigated to the nth degree and nothing has been found.

Sometimes in matters like this people say that there is some conspiracy involved but it occurs to me that maybe things can be looked at in a different way. I would be very surprised if there were evidence that someone rang up someone and said, 'Do this; it will solve the problems.' I am reminded of the excellent British TV shows *Yes, Minister* and *Yes, Prime Minister*. In one of those shows Jim Hacker asked Sir Humphrey Appleby if he appointed a committee of inquiry how he could ensure getting the results he wanted. His idea was to ring up the chairperson of the

inquiry and tell them what to do but Sir Humphrey said, 'No, you cannot do that. You simply appoint a sound person to the inquiry, and sound people know what is expected of them. You do not have to do anything.' I suspect that that has occurred: people have thought that this was expected of them.

But we have the persistence of Mr Lindeberg, at great personal cost to himself. We have attempts to disparage his determined efforts. In more recent times we have had Mr Grundy. I have had dealings with Mr Grundy about this and other matters over the years, and he strikes me as an absolutely first-class journalist. Members of the committee as politicians might be open to the opinion that many journalists never allow the facts to get in the road of a good story. I have found Mr Grundy to be the exact opposite of that: he will not publish anything unless he has confirmed sources. It reminds me of the editor of the *Washington Post* who would not let his two journalists run stories about Watergate. I think his requirement was that he needed three independent sources.

Serious matters have arisen here. It has gone on for a long time but something ultimately needs to be done, not only for the past but also to protect us in the future. The prosecution of the Baptist pastor in Queensland seems to me to indicate that in Queensland there is one rule for ordinary people and another rule for the high and mighty.

CHAIR—That is very good evidence, Mr MacAdam. Senator Kirk, do you have a question?

Senator KIRK—No, I will defer to others at this point.

Senator SANTORO—I could ask a few questions if nobody else wants to. Mr MacAdam, thank you for your evidence. I found it very interesting and very stimulating. You talk about appointing a sound person. Within your formal submission you then proceed to outline a series of government bodies or statutory authorities and advisers, a lot of whom strike me as being umpires; they are people who often have to express judgment about conflicting submissions. Often those submissions are submissions from ordinary people—people who ordinarily do not have a lot of power within them or around them, supporting them. What you have outlined is a very sad state of affairs in terms of what you think exists in Queensland.

Mr MacAdam—I think it exists in Queensland but I suspect—although I do not have the detailed knowledge—it exists in a lot of other places as well.

Senator SANTORO—We are concerned about Queensland here today.

Mr MacAdam—Yes, Queensland in particular. We had an incident a year or two ago where an age pensioner at Hervey Bay fed a few undersized whiting to a pelican he had befriended. He was prosecuted. But we seem to have different standards in relation to other matters. I am reminded of a recent incident in Queensland—the Winegate matter—where it was said that the police commissioner was personally involved and that there were three legal opinions. I have been involved on a pro bono basis trying to assist people where I believed that they should not be prosecuted and attempted to make submissions, and you get the line: 'Tell it to the magistrate; we don't interfere.' There just seem to be double standards.

Senator SANTORO—Back at another time in this place—I frequented it for 12 years as a state member—one of my pet interests, at least initially, was the politicisation of the public service and a lot of the institutions. I was very heavily condemned for raising the issue of cronyism. I used to talk about cronyism a lot. Do you think there is a culture of cronyism and politicisation? I ask the question stimulated by your statement about the appointment of sound people. Sound people, if they are allowed to remain for long periods of time in the high office to which they are appointed, are very consistent in delivering the right outcomes, if I put it that way. Is that what is happening here?

Mr MacAdam—I think there are two levels of this. Looking at the holders of some of these offices—and we are talking between 10 and 14 years ago—I would say some of the people have no known political connections. I would not say, 'That person is a Labor man; that person is a Liberal.' You just do not know. They seem to be virtually apolitical. But that category of person, notwithstanding them having no known associations with any government, seems to be more the servant of the government and they do not see that, if the government is doing something wrong, they should intervene to protect the rights of the citizen. But I guess I am really getting away from my area of expertise. Maybe you should have a political scientist here. I know there is that conflict of views. I believe that, in the United States, when there is change of administration the top 5,000 public officials go out and they bring in 5,000 of their own. I have to be a bit careful: I am quite happy to comment about the law, but my opinion about that issue is no better or worse than yours or that of the other people in the room.

Senator SANTORO—Drawing on your familiarity with the people involved, particularly Mr Lindeberg and the people who are advising Mr Lindeberg—including some very distinguished colleagues of yours—how credible is the advice structure?

Mr MacAdam—Since I first got involved in this I always worry that I have overlooked something, that I have made a mistake and I will be made to look foolish—and I guess we all try to avoid that. But I am actually comforted in this, in that the opinion that I independently reached was reached by others. I refer to people like Ian Callinan, who before his elevation to the High Court was regarded as the dominant QC in Queensland. A person who was appointed to the war crimes prosecution by, I think, the Hawke government, the late Bob Greenwood, reached a similar conclusion. I have seen where a retired judge of the Supreme Court, Jim Thomas, known for his integrity, has been reported as saying that there was no reasonable basis upon which this approach could be adopted. So I am comforted by the fact that I—and I am only an academic lawyer, a senior lecturer in law—am in the company of people who hold the same opinion.

Senator SANTORO—The comment has been made today about the role of the Crown Solicitor. How unusual would it be for government to obtain advice from the Crown Solicitor, not accept it and perhaps look beyond that advice for additional advice, particularly in the contentious circumstances that are played in relation to the issue—and cabinet and government would have known that it was a contentious issue—regarding the application of section 129? There are a lot of people who suggest that having received that advice that is the end of the matter.

Mr MacAdam—I do not see it as that. I very regularly tell people, 'Don't let lawyers or accountants tell you what to do. Get advice from lawyers and accountants and form your own

opinion.' Some things you just know are not right, regardless of whether or not lawyers tell you they are legal. The cabinet had parliamentarians of considerable experience. Surely the first thing that would have cropped into their minds was, 'Let's pass a piece of retrospective legislation.' They had the numbers in the parliament. Why did they not do that?

Senator SANTORO—Or table the report in the parliament.

Mr MacAdam—Or that, yes; there are various other ways. Of course, it was said that there was no protection from defamation. I do not purport to be an expert in defamation but I know a little bit about it. If you set up under the Commissions of Inquiry Act there is absolute protection. However, if it is not set up under the Commissions of Inquiry Act, at least the defence of qualified privilege in any event would cover most, if not all, of what I understand the Heiner committee was inquiring about. But it then transpires—and I am relying upon what other people have said—that there was this very serious child abuse. Why would it not be in everyone's interests for all that to come out? It is said—and I believe, rightly—that some senior members of the clergy have not done the right thing by the victims of abuse, but can we not say exactly the same thing about some of these people in government?

Senator SANTORO—One last question: from what you have heard and read over the past number of years, particularly during the years when the Senate has considered this matter either directly or in a peripheral manner, do you believe that this committee has reasonable grounds to investigate possible contempt of a Senate committee or the Senate itself?

Mr MacAdam—I would like not to comment on contempt because it is clearly beyond my area of expertise to know the law of contempt of the Senate.

Senator SANTORO—Let me ask you in a different way. Do you think that previous Senate committees have been misled?

Mr MacAdam—Yes. I clearly believe they have been misled.

CHAIR—Deliberately misled or just misled?

Mr MacAdam—It is hard to say. You could look at it two ways and you could say we had on previous occasions a whole lot of honest bumblers.

Senator SANTORO—So all those people I listed before in my questioning of Mr Lindeberg, all those highly qualified and highly placed people, you would describe as 'honest bumblers'?

Mr MacAdam—In light of what has been done here, the arguments that were advanced for doing nothing are clearly not maintainable. The really condemning report is that executive summary of the Morris-Howard report. They simply looked at the papers and said it was open to a conclusion that these very serious criminal offences had been committed. The other thing of course that you can conclude—and these are findings of fact—is that the bumbling has gone so far that this was not honest bumbling but something more than that.

CHAIR—There have been overtones of political persuasion or looking after mates, but I remind you that the government you referred to was actually followed by a government of a

different political persuasion. That subsequent government, at cabinet level, made a decision not to pursue the grievance. So here we have a different government of a different political persuasion which had an opportunity to do so but did not pursue the grievance. How do you account for that? That is one of the mysteries to me.

Mr MacAdam—I have wondered about that myself. I am not sure that it was a cabinet decision not to pursue the grievance. I am not aware that it was a cabinet decision.

CHAIR—Perhaps we should be asking Senator Santoro about that. I think he led us to believe it was a cabinet decision.

Senator SANTORO—I humbly submit to you that I am not the witness here; I am actually the person asking the questions with you and the other members of the committee. I respectfully put that to you. The other thing is that, as I have explained to you and to the committee, I am restricted by cabinet confidentiality. I am still taking some advice in relation to that and how much I could say in a public forum or a forum under privilege, such as this one. I am not the person under cross-examination here. The issues being fundamentally questioned here are not those that pertain to the government that I was a member of.

CHAIR—I raised that because we are under the belief that it was a cabinet decision. Who should we be calling, Mr MacAdam?

Mr MacAdam—My understanding of this is that Denver Beanland, a former Liberal member for Indooroopilly, who was the opposition Attorney-General spokesman, initially raised this issue. He wrote to the then Director of Public Prosecutions, Royce Miller—who, until this matter, had a very good reputation. He then wrote a response to Denver Beanland when he was in opposition coming up with this argument that you could use the Criminal Practice Rules to read down the clear words of the act.

I was surprised, given his reputation, that he would allow his name to go on something like that, because it seemed to me so fundamentally wrong, but I dismissed it—that it might very well be what a busy man would do in responding to an opposition backbencher. When the government changed, Denver Beanland became the Attorney-General. His director-general was Kevin Martin. I understand that initially they had the carriage of this matter. When information was gathered, it was taken out of their hands and dealt with in the premier's department by a man I have never met—I would not know him if he came into the room—known as John Sosso. The matter then, for totally unexplained reasons, just died. It is said that Royce Miller, Director of Public Prosecutions, was asked for a second opinion. As I understand it, that second opinion never went anywhere near cabinet. It seems to me that if this committee could get its hands on that second opinion by Royce Miller, it might give some answer to your question.

I have heard all sorts of completely spurious reasons why nothing was done. The reasons are so spurious and fanciful I would not even repeat them in an open gallery. If you pressed me and you wanted to close the hearing I could tell you the ridiculous things that I have heard. Then the government changed. We have never had an explanation and I think the people of Queensland, including particularly Mr Lindeberg, are entitled to an explanation. On the face of it, something should have happened but nothing did. Then when the Baptist pastor is prosecuted that is an

even more fundamental reason why we should apply the same standards to everyone in Queensland.

Senator EGGLESTON—I have found your evidence very interesting. This is a very complex story with many threads in it. In a way you have covered what I was going to ask you as a question when you said that it could be just a series of events caused by bumbling incompetence. I remember seeing a film a few years ago where there was one story when a person got off a train and another story when the person stayed on the train—there were totally different outcomes. What seems to underlie a lot of the evidence that we have heard today is a sort of conspiracy theory that there really was a conspiracy to cover up things and to hide the fact that there was apparent child abuse at the John Oxley centre and that the people responsible were not pursued. Another alternative is the one you raised as an alternative. For example, the Senate Select Committee on Unresolved Whistleblower Cases commented in its report on page 60:

... the shredding—

of the Heiner evidence—

appears to have been a pragmatic solution to a difficult problem.

What the committee was referring to there was the problem with Mr Heiner's appointment so that he and his informants to his inquiry were vulnerable to a defamation action. The committee then went on to observe:

... the shredding of the Heiner documents may have been an exercise in poor judgment.

Is it not possible perhaps that this is really all this incident is about? The cabinet perhaps did not turn its mind to other potential approaches such as retrospective legislation. You suggested tabling the documents in the parliament and retrospective legislation to appoint Mr Heiner under the correct act. So that is what happens—bumbling. Then we go to the state archivist. We have to remember that the cabinet was acting on the advice of one of these bodies which you said were set up, at least in part, to protect citizens against the excesses of the executive—in this case the Crown Solicitor. The state archivist then in turn accepted the Crown Solicitor's advice in good faith. Later, when there were questions raised, we had another one of these bodies, the Criminal Justice Commission, finding that there was no case to answer. Then twice these matters have been to a Senate Committee on Privileges which has twice found that there was no question of the Senate being misled or any case of that kind to answer.

Is it not possible, in terms of what you have said, that that kind of scenario is equally as possible an answer to this rather complex story as the story of endless conspiracies, which we have been asked to accept today? Is it not possible that it was just a bit of bumbling on the part of the cabinet perhaps for not seeking other advice and what has happened has flowed from that through to the Criminal Justice Commission and so on to the Senate Committee on Privileges? In the end, it may be that indeed there were cases of child abuse in the John Oxley centre and other matters to do with the interpretation of this section 129 of your Criminal Code. Does it not really belong in the arena of the state of Queensland to sort those problems out? Here we have seen twice, as I have said, the Senate Privileges Committee not finding a case to answer. I wonder whether this is really an appropriate forum to be considering these matters. There are

real issues, it seems here, about child abuse and I would have thought perhaps they are matters which Queensland should be addressing.

Mr MacAdam—Could I answer that in a number of ways. Firstly, in relation to the point I made before about a conspiracy, a conspiracy is when I have a chat to you, Senator, and I say, 'Senator, let's play a trick on the chairman of this committee. You talk to him and I'll pull his chair out from underneath him.' That is a conspiracy where you and I agree to do something. But I do not know that there is hard evidence that it was like that—that people spoke and said, 'We are going to do this.' I have very grave doubts if anyone from the cabinet ever spoken to Mr Nunan, the investigating officer at the Criminal Justice Commission.

Let us have a very broad definition of conspiracy that might cover that, rather than specific discussions and agreed courses of action. What you say might be relevant, originally, to the cabinet. We might say: 'The cabinet was an inexperienced cabinet. It was new to government. Although they knew of child abuse and although there were experienced parliamentarians there, they just went down the wrong path.' In answer to that at the cabinet level, we have the statement I saw on the Channel 9 *Sunday* program some years ago, where Pat Comben, who seems to have a reasonable reputation in Queensland for being a decent and honest bloke, said, 'Yes, the cabinet knew there was child abuse involved in this.'

But when we move on from there, that is when it seems to me to get much worse. Lawyers would say, 'We can't have documents destroyed. That harms the whole nature of legal proceedings.' When we go on from there, and Mr Lindeberg discovers what goes on and starts complaining to the CJC, it is then a bit hard to say that all the goings-on from there can just be excused in that manner. The CJC not only reached their original clearly wrong conclusion but came to the Senate and repeated that clearly wrong conclusion. They have not sought to correct it. As far as I am aware, even to date, the new Crime and Misconduct Commission has not sought in any way to say, 'What we did back there was clearly wrong.'

CHAIR—Despite the fact that there might be repetition, can you just repeat why there was that misleading by the CJC.

Mr MacAdam—When they came back to the Senate inquiries—and I am only going on material that I have read—they seemed to want to maintain through those Senate inquiries that they had done the right thing, that there could be no offence committed by the cabinet, that they had rightly dismissed Mr Lindeberg's original claim. It seems to me that that is where the concerns started about the Senate being misled. They made the wrong decision and we left it there. Then they came back and they kept on saying that that wrong decision was right.

CHAIR—For the Senate record, why did they make that wrong decision?

Mr MacAdam—Why did they make the wrong decision? It was a matter of conflict of interest. You can have actual conflicts of interest or perceived conflicts of interest. I, from time to time, have been asked to sit on judiciary bodies involving sporting bodies. I have said, 'I can bring my mind to this issue and deal with it clearly.' But some other people will say, 'I know that person and therefore I will not deal with it fairly.' So they do not sit. That is what happened here. Mr Nunan, with very clear connections to the Labor Party, a Labor lawyer with close involvement in his working days with Premier Goss, should never have been allowed to

investigate it. The CJC should never have allowed it and he himself should have said, 'No, you need to get someone investigating these sorts of matters with no known political affiliations.'

Senator SANTORO—Was he what you would describe as a sound person?

Mr MacAdam—I think clearly.

Senator EGGLESTON—We are hearing a lot of unsubstantiated allegations. You have said that a person on the Channel 9 *Sunday* program said he knew that the Queensland cabinet knew that there was child abuse.

Mr MacAdam—No. Pat Comben was a member of the Queensland cabinet at the time.

Senator EGGLESTON—I did not know that because I am not a Queenslander.

Mr MacAdam—He was the minister for the environment.

Senator SANTORO—He might have been the minister for education at that stage.

Mr MacAdam—He sat in the cabinet. He said: 'Yes, when we were asked to destroy these documents, the cabinet knew in general terms that they concerned issues of child abuse.'

Senator EGGLESTON—But not in specific terms. Is that what you are saying?

Mr MacAdam—He did not go on with that. Maybe you could ask Mr Comben and members of the cabinet what they knew. But very clearly the child abuse that was covered up—through Mr Grundy's investigations—is of a very serious level.

Senator EGGLESTON—What we are talking about is the misleading of Senate committees. This begins with the misleading evidence given before the Senate Select Committee on Unresolved Whistleblower Cases and then two Senate Privileges Committee reports which looked into that and found that there was no case to answer. The onus falls on the witnesses before us to show very clearly and specifically how and where these Senate committees were misled.

Mr MacAdam—I believe they were misled through the maintenance of the view that the cabinet and all those other parties could be absolved on the basis that no legal proceedings had commenced. That clearly was not a maintainable view. I think I have expressed elsewhere that, if that had been written in a first-year law assignment, the person would have got a fail, and I stand by that.

Senator EGGLESTON—Nevertheless, the Crown Solicitor of the day advised the cabinet that that was a permissible course of action. As has been said today, lawyers are notorious for disagreeing over the meaning of the same set of facts. Essentially, aren't you just saying that there is another point of view about this?

Mr MacAdam—I am saying that, but I am always one to concede that there is another point of view and that I am not necessarily right. Often the High Court splits 4-3 and you cannot say

that three judges were wrong and four were right; that is just the mechanism. It seems to me that this case goes far beyond that sort of thing.

Senator EGGLESTON—In this case, the majority, if you like, was the Crown Solicitor. He had an opinion, and that was held by the majority of four in the High Court—that was the opinion which held the day. Isn't that a fair comment? People might have disagreed, but that was the one with the power of force.

Mr MacAdam—The original advice was to destroy the documents because there was no protection against defamation. I have not seen the documents of the Crown Solicitor; I have read the Morris report, and my understanding of that is that the Crown Solicitor did not even apply his mind to the issue of section 129.

Senator EGGLESTON—That is an interesting comment, but I would like to see some evidence that supports that.

Mr MacAdam—I am only speaking from recollection on the Morris and Howard report. The Morris and Howard report seems to talk about the Crown Solicitor giving advice to destroy the documents. It seems that the idea that nothing wrong had been done only arose when Mr Lindeberg went to the CJC and the CJC said that legal proceedings had to have actually been commenced for an offence to have been committed. I cannot recollect whether the Crown Solicitor actually gave any advice on section 129 at that earlier point.

Senator EGGLESTON—I am not in a position to say, but I assumed that that was the case, that—as was said earlier this morning—it was not until March 2004 in the Ensbey case that there was a determination that perhaps what had to be taken into account as well was the fact that there might be impending legal action rather than legal action which was actually under way and perhaps that that was an evolution of the law from a position some years earlier in interpreting that clause.

Mr MacAdam—I think that is clearly wrong. You had the High Court decision in Rogerson in 1992 and you had the clear words of the act. In addition to the decision in the Ensbey case, the point that you cannot use those rules to read down the clear words of the act—not in the context of 129 but in a more general context—has been confirmed by our Court of Appeal. It was never maintainable. It is not maintainable now, it was not maintainable in 1989 and it was not maintainable at any point in between. But, in any event, it is not too late. The limitation period does not apply in respect of indictable offences. Because of inaction in these matters, certain other offences, while known as simple offences in Queensland, have been found to have been likely to have been committed, but it was beyond the general one-year limitation period to institute proceedings in respect of them. But, as we have seen in Queensland in recent times, they have been prosecuting people for offences that took place in the middle sixties involving sexual offences against children. So there is no limitation period. If they were wrong then the matter should be reviewed now in light of what happened to the Baptist pastor.

Senator SANTORO—So you are saying that the precedent existed. Quite apart from the explicitness of the actual provisions within the statute, case law existed.

Mr MacAdam—The case law did not specifically exist on section 129 of the Criminal Code but case law existed in respect of similar provisions from other jurisdictions.

Senator SANTORO—Which was the evidence of Mr Lindeberg this morning.

Mr MacAdam—That is why I have been involved. The principle of interpretation was clearly established by the High Court back in 1905 or 1906 that you could not use these sorts of arguments. I would have thought that senators would well appreciate that—that they would not like the law as endorsed by them to be modified because of what the executive government does after the event.

Senator EGGLESTON—It is modified by the High Court all the time.

Mr MacAdam—That is a question of interpretation. That is what the courts are doing. They are interpreting the law. But what is alleged here is that by using the Criminal Practice Rules—the after-the-event actions of the executive—it has altered the meaning of the law.

Senator EGGLESTON—I want to finish on one thing. The core of all this is whether or not the Criminal Justice Commission provided false or misleading evidence to the Senate. We have to thereby come to the conclusion that the advice the CJC provided was not bona fide—that they knew that they were providing false evidence to the Senate—if we are going to find that the Senate has been misled and that a contempt has occurred. Would you like to give your views about the bona fides of the CJC's advice to the original Senate committee—possible false or misleading evidence to the Select Committee on Unresolved Whistleblower Cases?

Mr MacAdam—In relation to the position I repeat that I only have the vaguest knowledge about the law of contempt as it applies to the chambers of parliament.

Senator EGGLESTON—Not about the contempt; about the bona fides of the CJC.

Mr MacAdam—In relation to things being misleading, there are various levels at which things can be regarded as misleading. To use the jargon of the common law they can be fraudulently misleading, innocently misleading or negligently misleading. So far as the question of fraud, in a famous House of Lords case, Derry v. Peek, there were three tests for something being fraudulent: you knew it to be false, you did not believe it to be true or you had a reckless disregard as to whether it was true or false. Unless you have hard evidence—someone heard someone say something, you have phone taps or something like that—it is always difficult to prove the first thing. But in light of reading the material after the event and the Morris-Howard report, it may very well be that you are able to conclude that it was something more than honest bumbling—that these people made a wrong decision to protect the cabinet and they simply did what was necessary after the event to protect themselves.

Senator EGGLESTON—Are you prepared to comment definitively on the CJC? That is what we have to do.

Mr MacAdam—Indeed, I think that is your function. There are some things—

Senator EGGLESTON—We need your evidence upon which to base a decision—or evidence from people like you.

Mr MacAdam—I am not in a position to give hard evidence and to say that I know that the CJC deliberately misled the Senate. It is a matter of looking at the evidence that is before you, looking at what was said originally, looking at it in the light of what has transpired. I believe that an absolute key document for you is the Morris and Howard report—looking at it in the light of the Morris and Howard report. It is for you to look at all that information, maybe call other witnesses and say, after hearing all of this, 'This was just honest bumbling,' or 'We think it was something significantly more than that.' I would not think it is like what the CJC did to Mr Lindeberg. It was summarily dismissed. I would say that there appears to be enough material before you that this committee should at least make further inquiries.

CHAIR—It is probably a good time to take a break. We would like you to come back after afternoon tea. During the break, I would like to give you a letter from the Crown Solicitor dated 23 January 1990 for your comment. I think this could be quite persuasive.

Proceedings suspended from 3.31 p.m. to 3.51 p.m.

ACTING CHAIR (Senator Kirk)—We will continue with questions to Mr MacAdam.

Senator HARRIS—I would like to ask you a series of questions in relation to your position at the university, teaching law. When I look at the Criminal Code Act 1899, I am intrigued, to some extent, that it does not carry the preface that we normally see today whereby the act binds the Crown. I will read the preamble for the committee. It says:

Whereas it is desirable to declare, consolidate, and amend the Criminal Law;

Be it enacted and declared by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows—

An Act to establish a Code of Criminal Law.

In our modern legislation, the legislation would then go on and give the short title, as this does:

This Act may be cited as the Criminal Code Act 1899.

Then it makes a reference to binding the Crown. Because that is not in the Criminal Code, are you of the opinion that that in any way absolves the Crown from the content of the act?

Mr MacAdam—No. Some years ago I had noticed myself that there was not an express provision in the code that it does bind the Crown. I explored it with one of my colleagues who is a former senior crown prosecutor. I know that, under the rule of statutory interpretation, the Crown is not bound unless by express provision or necessary implication. Once it was very hard to get a necessary implication. I have written in my book about the case of Bropho, which must have been about 10 years ago now. It was a case that arose in Western Australia relating to the old Swan Brewery site: Bropho v. Western Australia (1990) 171 CLR 1. In that case, the High Court has now said it is much easier to establish that the Crown is bound by implication. I know

a bit about criminal law, but I do not profess to be a top expert on it. But any good criminal lawyer will tell you that, in the absence of a provision of that nature, the Crown is still bound. The simple example that is always trotted out is: what happens if the Crown murders someone? You just have to ask that question. Indeed, it is generally accepted that the provisions of the Criminal Code apply to the Crown.

Senator HARRIS—Going directly to section 129 of the Criminal Code 1899, the opening phrase is 'Any person'. In light of the answer that you have just given, is it reasonable to assume that you believe that the cabinet, as an entity made up of individuals, is also bound by this same Criminal Code?

Mr MacAdam—Yes. I think that would be generally accepted. I am not sure if the cabinet is a separate legal entity, but the individuals that make it up would generally be bound by the provisions of the Criminal Code, as they would generally be bound by the general law of Queensland.

Senator HARRIS—Moving on then, 129 goes on to say:

Any person who, knowing that any book, document, or other thing of any kind, is or may be required ...

If it was the intention of the parliament to only have that explicitly apply to a future act, would the parliament have expressed what I believe is two dimensions: 'is', which is present, and 'may'? I do not believe that is an expression of possibility; I believe that it is the parliament's will to express two distinct time frames. Taking into account your position as a lecturer, what would be your position in relation to that phrasing?

Mr MacAdam—I think that is clearly right. Judge Samios, in the matter involving the Baptist pastor, has ruled accordingly. If you look further—if you go back to section 119 of the code, which I have extracted in the appendix to my submissions—it says:

... "judicial proceeding" includes any proceeding had or taken in or before any court ...

There is an argument that is advanced that somehow that means that unless the proceedings are in existence it is not a judicial proceeding. But such an argument, I believe, is spurious because the word 'includes' is used. Senators would know that often in legislation something is said to 'mean' something or something is said to 'include' something. Where the word 'means' is used, that is an exhaustive statement. Where the word 'includes' is used, that is an inclusive statement—it means what is in the definition plus the ordinary meaning of the word.

There is another well-known principle of interpretation. If there are two or more interpretations open, consider the consequences of both. The consequences of the other interpretation here are quite ludicrous: 'We know these things might be needed for litigation or litigation might be immediately pending, so let's destroy them all.' If that represented the general law, that is what people would do in many cases to escape liability. We are not talking about governments. That is what you would do in business and in your own personal affairs—destroy them. Obviously, that interpretation is absurd. It would lead to the act being unjust, capricious and irrational, and there are a whole host of cases from the High Court, the House of Lords and the Privy Council that say you do not interpret things in that manner.

The element 'or may be required' is clearly widely worded. It may be that it is required for some future thing. There is that British American Tobacco case involving the unfortunate woman who has since passed away, Rolah McCabe. That was a case where, although ultimately she was unsuccessful in obtaining a summary judgment, the Victorian Court of Appeal reinforced those proceedings, as they were bound to—reaffirmed the Rogerson case—saying that you do not need proceedings to be in existence in order for these sorts of things to occur.

Senator HARRIS—Do you believe that if it were the intention of the parliament—and I stress 'the intention of the parliament'—that it be only documents that are required at foot, would the parliament have placed a singular time frame in 129? In other words, if it were the intention of the parliament to only take documents into consideration where a writ has been issued, in your opinion would 129 read 'or any other thing of any other kind' is required in evidence?

Mr MacAdam—Yes. There is a well-known principle of interpretation that supports that. In legislation, except in very exceptional circumstances, words are assumed not to be what is known as mere 'surplusage'—that is, where additional words are added, there is a very strong presumption that they have some meaning. That is very clearly the interpretation that is correct—it is the only interpretation that was ever maintainable—and the arguments that have been advanced that say you can do whatever you like if proceedings have not yet been instituted are ridiculous.

Senator HARRIS—Are you aware of any other situation or case law where the same opinion had been given in relation to section 129 and was then adopted?

Mr MacAdam—I have done a bit of research to see if I can turn up anything, but the only one I am specifically aware of is the recent case involving the Baptist pastor, over which District Court Judge Nick Samios presided. I was surprised that this old discredited submission was trotted out again. He clearly rejected it.

Senator HARRIS—In relation to the Criminal Practice Rules, do you believe it is possible for regulations to have a greater head of power than the act from which they derive their power?

Mr MacAdam—Generally that is not correct, although we have the largely discredited so-called Henry VIII clauses, whereby the parliament can authorise amendment of an act by regulations. I think there is a universal approach by all the scrutiny committees to say that such clauses are generally undesirable and there are very limited categories where they are regarded as not being offensive. But the general principle is overwhelming.

Senator HARRIS—As a lecturer, is there any doubt in your mind that the abuse of a child is a criminal act?

Mr MacAdam—I have not seen the document first hand but, if there is admissible evidence in relation to the reported allegations of abuse, there is no doubt that criminal offences have been committed there.

Senator HARRIS—The question goes specifically to the clinical definition. We are not talking about evidence; it is clearly the structure of the situation. Is the abuse of a child a criminal act?

Mr MacAdam—It is not normally expressed in those precise terms. We have the general label 'child abuse'. Some people would allege that if you give your kids a whack on the bottom for being naughty it is child abuse. It is probably fair to say that most Australians do not think that that is child abuse. At a further level there are a whole lot of specific offences. Some are under the Criminal Code. Some are under acts—I am not sure of the current names, but acts like the Children Services Tribunal Act—whereby a whole range of specific things amount to child abuse. For instance, some of the provisions in the Criminal Code about child sexual abuse are quite specific, and the seriousness of the offence can depend upon the age of the person.

Senator HARRIS—Following that line further, is it material how a person acquires material knowledge of an alleged fact?

Mr MacAdam—I like to be helpful. I know enough to answer the questions I have answered so far. I claim, rightly or wrongly, to be an expert on statutory interpretation and I know a fair bit about criminal law, but that is getting beyond my level of expertise. I might give you a wrong answer.

Senator HARRIS—Maybe I need to rephrase that in a slightly different manner. If a person has certain evidence put before them and they read that evidence, is that in itself a person having material knowledge? What I am looking for is—

Mr MacAdam—Something I know a bit more about is a concept under the Criminal Justice Commission Act, and now under the Crime and Misconduct Act, in relation to official misconduct which I believe is partly involved in this case. It is that, if the head of a unit of public administration has reasonable cause to believe that there is official misconduct, they must report it or they commit an offence themselves. It is then about the appropriate level of satisfaction. If you had a written report before you from an apparently credible person it would be reasonable to say that you might have a reasonable suspicion. In the end, fortunately, the ultimate guilt or innocence in serious criminal matters is determined by the jury. But with those sorts of things, if you have some reasonable evidence or reasonable suspicion, you need to investigate it further or refer it to the investigating bodies. In Queensland if you are the head of a unit of public administration and you have a reasonable suspicion and fail to pass it on you commit a separate offence yourself, even if you are in no way involved in the original child abuse or, indeed, in any other criminal offence.

Senator HARRIS—So that premise, again, would place a duty of care on a minister in a cabinet which is being asked to agree to the shredding of documents? Would it be reasonable to expect that that minister would make themselves acquainted with the material facts contained within the documents that they are being asked to shred?

Mr MacAdam—You would like to think so, but it might be more appropriate to ask senators who are associated with ministers. Maybe not everyone reads every single document. I know from personal experience of sitting on committees that you are so pressed with other things that perhaps you scan things, but you would like to think that in serious matters at least some people

would need to look at them. In this matter it may very well be that some members of the cabinet say, 'I was out of the cabinet room at the time and I didn't know anything about it; I was more worried about dealing with these amendments to the stock inspectors act,' or something like that.

Senator HARRIS—If it became clear to a Senate committee that a decision had been reached based on mistaken facts, do you believe that that decision should be allowed to stand?

Mr MacAdam—Sometimes decisions should not be allowed to stand or go uncontested, but I am not sure of the powers of this committee.

Senator HARRIS—I am asking you in your position as a lecturer at law: if sufficient evidence is provided that a decision has been made and that decision has been reached based on a mistake of fact, should that decision stand?

Mr MacAdam—In a perfect world the answer to that is clear: no, it should not. But sometimes the great inertia that we have in governments or organisations, as we all know, makes it very difficult to do anything about it. There is a clear answer: those things should be corrected but unfortunately the practicalities are that often they are not—and often people suffer because of it.

CHAIR—I gave you a letter and I ask you to comment on it. I give you the opportunity to make some observations—I will put it that way—on that letter.

Mr MacAdam—This is a letter dated 23 January 1990 signed by Crown Solicitor K.M. O'Shea. At the top there is a note 'Mr Thomas'. I do not believe I have seen this previously but I may have. The letter looks at the reasons why the inquiry should be closed down and how Mr Heiner should be given indemnity from costs or any legal proceedings that are to be brought against him. It acknowledges—and someone else has already marked this—that the informants have no statutory immunity but would appear to have qualified privilege. That is a point I made earlier. On the second page, it says:

I do not see any difficulty in the destruction of the material supplied to Mr. Heiner, naturally any material removed from official files should be returned to those files but the tape recordings of interviews had with people or any notes or drafts made by Mr. Heiner should I suggest be destroyed.

You notice that advice is about tape recordings of interviews and Mr Heiner's notes. It does not seem to mention the destruction of a range of other documents. I understand that Mr Coyne's solicitors were after the written complaints by other officers of the John Oxley Youth Centre. Then the letter goes on:

This advice is predicated on the fact that no legal action has been commenced which requires the production of those files and that you decide to discontinue Mr Heiner's inquiry.

It goes on to note in a letter that solicitors have requested that they be allowed to have copies of all allegations and evidence taken to date. It says:

However, such a request is related to the continuation of the inquiry which is now to be halted, therefore, it is my recommendation that the solicitors for Mr. Coyne and Mrs. Dutney be advised that the inquiry has been terminated, no

report has been prepared, and that all documentation related to the material collected by Mr. Heiner has been destroyed. I have enclosed a draft letter to that effect.

That almost seems to be illogical to me. Just because the inquiry has been closed down, is that justification for the destruction of the documents? Senator Watson, is it the first sentence of that paragraph that you are concerned about? That sentence says:

This advice is predicated on the fact that no legal action has been commenced which requires the production of those files ...

There is no mention here of section 129 of the Criminal Code.

CHAIR—I saw a bit of an inconsistency in the letter.

Mr MacAdam—In civil proceedings, as distinct from criminal proceedings, once proceedings are under way there is a general right to the process that is known as discovery where other parties need to make lists of their documents relevant to the proceedings. That seems to be what he was alluding to. It looks like he was alluding to the civil proceedings because he says:

This advice is predicated on the fact that no legal action has been commenced which requires the production of those files ...

When civil legal proceedings commence and the process of discovery is embarked upon, both sides provide a list of the documents that are relevant. The other side can then ask, unless the documents are under privilege, to see documents—for example, documents 1, 3, 4 or 126. I do not know the particular background of Mr O'Shea, or indeed Mr Thomas.

Senator SANTORO—Do you think that he may not have known that legal proceedings had been foreshadowed?

Mr MacAdam—No, I think he did know that they had asked for these documents—and he did know about defamation. The problem might be that people expect lawyers to know all about everything. Senator, if you asked me something about family law, I regret to say that I know virtually nothing about family law. We had an incident that our Chief Justice in Queensland recently highlighted in the prosecution, conviction and jailing of Pauline Hanson. I do not want to go into the merits of that, but the Chief Justice pointed out that, although that matter was a criminal matter, the essential facts were matters of contract law. He said it would have been a good idea earlier in the piece to have someone who knew about the civil contract law and not just a criminal lawyer. It may be that this was around the other way: maybe it was the case that the Crown Solicitor—or Mr Thomas, whoever he is—knew an awful lot about civil liability but did not know an awful lot about the criminal law.

Our Criminal Code has 600 sections in it. There are some really obscure and surprising provisions in there. It may very well be the case that this had not been looked at. In my view, if this comes before the cabinet—and here they want to destroy documents—you have to ask yourself, regardless of the advice you have received, 'Is this right or is this wrong?'

Senator SANTORO—It is a judgment.

CHAIR—But in terms of the letter, the problem of inconsistency was that the advice from Mr O'Shea—

Mr MacAdam—Mr O'Shea signed that letter.

CHAIR—indicated that the tapes et cetera should be destroyed, but later on he refers to 'documents'—which appears to have been interpreted as all the documents.

Mr MacAdam—Early on he talks about 'notes or drafts made by Mr Heiner'.

CHAIR—That is right. So what he initially asked to be destroyed is fairly restricted.

Mr MacAdam—Yes.

CHAIR—But later in his letter there is the inference that everything should be destroyed. Am I reading that correctly? That must have been the presumption on which cabinet acted in destroying everything.

Mr MacAdam—He says later in his letter:

... that all documentation related to the material collected by Mr Heiner has been destroyed.

You wonder why that advice was given. Senator, let us say that you or I get the best legal advice in the country—we go to a QC and get advice about a matter and they say, 'It is perfectly legal for you to do that.' If it turns out not to be legal, we have no defence. It is no defence—except in some very limited cases—to act in accordance with legal advice. There seems, again, to be one law for the high and mighty and one law for the ordinary Queenslanders. If ordinary Queenslanders act in accordance with legal advice and it turns out that, nevertheless, they commit a criminal offence then they are prosecuted—it is no defence. There is some suggestion that in DPP Royce Miller's second opinion, which we have not seen, a similar line is trotted out—that if people have acted in accordance with crown law advice, they should not be prosecuted.

It is drawing a very long bow, but a similar sort of principle is known as the Nuremberg defence—just following orders, just following the legal advice of crown law. If crown law says, 'It shall be lawful to take all people over 50 with beards to a place in western Queensland and shoot them,' and someone does, is that lawful? That is an extreme case, but the point I am making to you is this: if crown law says that something is lawful, sometimes crown law is right, but crown law is wrong all the time, as it appears by matters that are litigated in the courts. Mostly, unless there is a really bloody-minded litigant, in every case that has gone to court one lawyer was right and one lawyer was wrong.

CHAIR—Do you think that letter was sufficiently clear as to what had to be destroyed?

Mr MacAdam—It is certainly, at best, ambiguous. But I ask myself this. We had lawyers in the cabinet. We had Premier Goss; we had the Attorney-General, Dean Wells; we had Mr Braddy.

Senator SANTORO—No, he was not.

Mr MacAdam—If someone comes to me as a lawyer and says, 'The tax office is coming to investigate; let's destroy these documents,' I would be thinking to myself, 'That's not the right thing to do.' There almost seems to be some reason why this matter should not go on. But again there is the problem of a piece of retrospective legislation. He seems to be saying that the complainants will not be satisfied with the outcome of the higher inquiry, and that does not seem to be self-evident at all.

CHAIR—Senator Moore?

Senator MOORE—My questions have been answered, thank you.

CHAIR—There being no further questions, I thank you, Mr MacAdam.

[4.22 p.m.]

GRUNDY, Mr Grahame Bruce, (Private capacity)

CHAIR—I invite you to make an opening statement.

Mr Grundy—Thank you. I am here today because I saw an advertisement in the newspaper. That advertisement is headed 'Select Committee on the Lindeberg Grievance'. Part of the advertisement calls for submissions relating to the destruction and concealment by government of information of public interest, matters relating to the protection of children and matters relating to the protection of whistleblowers.

CHAIR—And also whether the Senate was misled.

Mr Grundy—Indeed. If it should be the view of the committee that my evidence is not germane to your terms of reference, I apologise. I am here because I read your advertisement.

CHAIR—Thank you, we appreciate it.

Mr Grundy—I responded on the basis of a citizen responding to an advertisement that mentioned those matters. If it should transpire that you do not think that my evidence is germane to your terms of reference, please tell me, and I will leave.

CHAIR—We welcome your attendance and your submission.

Mr Grundy—It has been mentioned many times today, 'What has this got to do with our terms of reference?' I just want to be clear that I am responding because it was in the newspaper. I have quite a lot to say. I hope that you will bear with me. If I am going on for too long, let me know, because you may prefer to question me rather than to listen to a diatribe from me. But I believe that unless I take you through my information it may not be clear to you how it is relevant. I believe and I am prepared to go on oath—I am on oath far as I am concerned—that the Senate, through the unresolved whistleblower cases committee, was told in 1995 a series of nonsenses. They were not just nonsenses; the Senate was told a series of deliberate, disingenuous, deceitful and dishonest falsehoods. I believe the Senate was misled by the falsehoods it was told and I believe it was also misled by what it was not told. I will detail the matters involved in a moment.

Deceiving the Senate is one thing. What is equally serious is the reality that over the years these falsehoods and that deception had to be maintained to protect not only those who benefited from them but also those responsible for them. The maintenance of the deceit has required a whole range of other people and agencies becoming involved. Like a cancer, the deceit has spread throughout public administration in this state. The deceit was about cover-up and the cover-up has gone on to infect almost every arm of government in this state. My point is this: the original deceit is serious enough, but the consequences of it are also serious and have to be exposed to some sunlight. What we are considering here, I believe, is not just a matter of what

you were told or not told in 1995; what we must appreciate as well is what happened after 1995, for you cannot isolate the events back then from what has happened since.

You, I suggest, were told three things in 1995 that I wish to deal with—that is, that a legal proceeding had to be under way to trigger section 129, destruction of evidence under the Criminal Code, when it did not; that Public Service Management and Employment Regulation 65 did not mean what it said; and that the matter at the heart of your deliberations had been investigated to the nth degree. You were also not told a whole lot of things. Had you not been told the nonsenses I mentioned above or had other relevant material been provided to you, I believe your predecessors might have reacted very differently. Indeed, many wretched things that have happened since may have been prevented.

I do not wish to bore you by going over all the ground covered by Mr Lindeberg and Mr McAdam, but let us for a moment take these deceits one at a time and then consider the consequences of them. We do not need to rely on what happened to the Baptist minister to know that what you were told then about section 129 of the Criminal Code was rubbish. Apart from the simple fact that the wording of the law, as former Judge James Thomas has said to the justice project, which I superintend, meant that such an interpretation as the one you were given in 1995 was never available, it should be remembered that the High Court in Rogerson and also in Murphy meant that such an interpretation was nonsense. However, there were important people who had to be got off the hook. It is no good those who gave you that interpretation now saying, 'Oh really, the Ensbey case? Oh well, we'll just have to change our opinion then. We got it wrong.' Not so. The interpretation of section 129 that was peddled by the CJC and its consultants and senior officers back then was a ruse. It was a deceit, I believe. No-one with any inkling of the law could pretend that such a proposition as was put by the CJC was a reasonable view. I have said so for almost a decade in my newspaper. I have written editorials about it. It was nonsense, but it worked.

The same situation applied to the CJC's view of regulation 65, only the deceit in this case was even more stark. They changed the wording of the law to have it read what it did not say when it left the parliament. The CJC just amended the law unilaterally—no debate, no division, no vote. My view is that this represented deliberate deceit. If you want to go back to the record and look at what they said about regulation 65 and then check it against what it actually says, you will see that what I am saying is right.

They claimed that the whole of this matter had been investigated to the nth degree. It was not and still to this day it has never been investigated to the nth degree or anything like it. Morris and Howard looked at some of the documents but they make it absolutely clear in their report that they had only a limited brief. The nth degree claim was another deceit.

Then there is document 13, which speaks for itself. You got an edited version of it but nobody mentioned the Dutney document about what was going on in John Oxley. Nobody mentioned what had happened to a 14-year-old girl at the Lower Portals, and that document was in existence at that time as well. But those documents, of course, would not have served a useful purpose. They would have cast some doubt on what the staff were up to at John Oxley, and the purpose of the exercise was to cast doubt on the manager.

So now we come to the next stage of the process. Once these deceits were in place, everyone thereafter had to fall in line to maintain them, and at the same time it was necessary that the lid be kept well and truly on what was really going on in that place, which brings me to these documents that I have submitted to you, and the second phase of the deceit—maintaining the cover-up. In relation to these documents that I have submitted to you and that you have published, I wish firstly to refer to the statement released by the Chairman of the CJC, now the CMC, Mr Butler. He said, following the appearance of a newspaper story about a girl being raped on an excursion from the John Oxley centre, that there had been no official misconduct on the part of anyone and at the time the police had been advised and had looked into the matter and that the girl had been medically examined at the request of the police. The head of Families, Mr Peach, then went public, welcoming the news that everyone had been cleared by the CJC. But what if the CJC had found otherwise? Of course, it would have been untenable for them to have found otherwise. That would have been terribly embarrassing.

Let us look for a moment at what the CJC did and said. The CJC said there was no official misconduct. Official misconduct by a person who is employed in the public sector can involve carrying out duties in a dishonest way or in a way that lacks impartiality or is a breach of the community's trust, and in any case constitutes or could constitute a criminal offence or a disciplinary breach that provides reasonable grounds for the termination of his or her employment. I am not sure whether you want me to provide that but I could if you so wish. The duty of care is a long-established principle in the common law, and such a notion is also enshrined in various examples of statute law, including the Children's Services Act, which was involved at the time that this matter of what happened to the girl took place. Section 40 of the Children's Services Act states:

Duties of persons in charge of institutions

40. The governing authority and person in charge of an institution (whether or not established or licensed under this Act) having in its, his or her custody a child shall—

(a) provide such child with adequate food, clothing, lodging and care

… … …

(d) ensure that such child receives adequate medical and dental treatment ...

There is also the matter of, I believe, section 92 of the Criminal Code, because we have to establish criminality or a matter on which someone can be dismissed for there to be official misconduct. Section 92 of the Criminal Code states:

92 Abuse of office

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

That is a criminal offence. Let us now look at the events of 24 May 1988. Six boys and one girl, a 14-year-old Aboriginal girl, are taken by five members of the non-custodial staff of the John Oxley centre on an outing entitled 'socialisation within a natural environment'. The trip and its title were proposed by two male teachers who subsequently went on that excursion. I ask that

you note those facts. The natural environment chosen was the Lower Portals waterholes in the Mount Barney National Park near the New South Wales border. I have a substantial range of photographs to pass on to you if you should wish to look at the environment of the Lower Portals. I would be happy to do that.

CHAIR—Is the inference that you are making that it was an unusual place to take these people?

Mr Grundy—Indeed.

CHAIR—You did have a map.

Mr Grundy—Yes, I have copies of the map. I will hold it up so that you will know what I am talking about. This shows John Oxley, the border and Mount Barney.

CHAIR—What distance is it?

Mr Grundy—It is about 110 kilometres. It is a 1½-hour drive without stopping.

CHAIR—What were the unusual features of that location?

Mr Grundy—It is then a 1½-hour, extremely difficult walk to get to the Lower Portals from the car park. You drive an hour and a half, park the car and then you set off on an exceptionally difficult walk.

Senator SANTORO—Is it isolated?

Mr Grundy—It is totally isolated. Even to this day there is no mobile telephone.

CHAIR—When they started off on this walk how many supervisors were there?

Mr Grundy—Five.

CHAIR—There were five supervisors and—

Mr Grundy—Seven kids. I will just hold these pictures up so that you know when you reach them. Unfortunately I do not have a copy each because they are in colour and they are expensive. That is Mount Barney, down near the border. When you get to the car park at Mount Barney in a little pavilion there you will find a whole range of posters about the animals, the birds and the bees and so on. One of these posters says:

We were never allowed to go onto it, go up it, climb it or anything. It wasn't nothing to do with women. We'd go so far and that was it. You're not allowed to go, women aren't allowed to go on that place. That's taboo to women, I know that.

Phyllis Dillon, Mununjali tribe

The following set of pictures indicates the kind of environment that you have to walk through to get there. It is very difficult and if I was not so young and fit it would be almost impossible for me to do it.

CHAIR—Have you actually walked that area?

Mr Grundy—Many times. When you get to the Lower Portals now you find a sign in a little flat, cleared space—which is about the size of the area from that table over to the wall, perhaps five metres; it is the only flat, cleared space there—that is where the kids had lunch. Behind that you can see a big rock wall. That big rock outcrop prevents anyone in that cleared space where they had lunch from seeing anything behind. The only view those people had at the lunch area was an interrupted view 180 degrees in front of them downstream. They could see nothing behind. At the Lower Portals there are two waterholes. That is the lower one—quite close to where they had lunch. That is the area between the two waterholes. That is not visible from where you would be sitting if you were having lunch. You would have to be out in the middle of the stream to see up that particular part of the stream. This is a portion of the upper pool. The other pictures are fairly small, so I will not try and hold them up. Behind this area here is where they had lunch; so you can see that you have no view behind you looking up towards the upper pool.

CHAIR—These seven people under the care, including the lass—were they all Aboriginal students?

Mr Grundy—I cannot answer that, for two reasons. One is: I am not sure. The second reason is: what is an Aboriginal person? An Aboriginal person is one who claims aboriginality and is recognised by the community to be an Aboriginal person.

CHAIR—You are querying the motives for taking students to this sort of place. I submit to you that if they had Aboriginal connections then maybe visiting a place of their ancestors or of interest to Aboriginal people may be of some relevance in the choice of location.

Mr Grundy—I accept that, but I do not know. What if women were not permitted to go there, culturally? It says on this sign that the area was taboo to women.

CHAIR—So that is a bit of a challenge; yes. Continue.

Mr Grundy—I just think it is culturally insensitive. It may be culturally appropriate that we take people to such a place and I acknowledge what you are saying.

CHAIR—I take your last point.

Mr Grundy—But if it is culturally appropriate in one context, it is not in another. That gives you some idea of the undergrowth, the overgrowth and the boulders and rocks. It is just not possible, if someone wanted to be out of sight, 15 or 20 yards away, for them not to be out of sight. Finally, because we get around to it, when they were returned after this expedition to the car park, the boys went to the toilets and four of them absconded. That is the environment in which they absconded. So if you wish to have a look at those—

CHAIR—When they absconded did they actually return to the party for the return home?

Mr Grundy—They were picked up by the police. May I continue?

CHAIR—Yes.

Mr Grundy—I would like to go through the reports of those who were involved in the excursion before moving on to documents that reveal what happened after the excursion. I hope that you can follow me, because these are things that need to be said about those reports and subsequent events. In a sense, you possibly need to check this with the documents that I have given you and that are now up on the Internet. The Lower Portals is not only a most isolated spot and, given the terrain, I would say an extraordinary place to take young people who are in custody but also is off limits to women. The first report—

CHAIR—In custody or just in care?

Mr Grundy—Both.

CHAIR—Some of the people were in custody and some were just in care?

Mr Grundy—For serious offences. Those on that trip, I have no idea who was in—

CHAIR—The correction centre.

Mr Grundy—It was a youth detention centre and into that place were placed people who had problems and were under care and control orders. Others were in for murder. Certainly, I know of one who was in there on the basis that she was facing a murder charge. She subsequently pleaded guilty to manslaughter but she was not the only one that I am aware of. I am referring now to the documents that I sent you. The first report is from the people involved in that and you will be able to check it. It is circled on page 15. The writer does not make too much of the fact that the party split into two between the car park and the Lower Portals but that is what happened. It is clear that he and his male teacher companion arrived at the portals with all but one of the boys and the lone single girl. We discover that the two women and the third man are lost somewhere out on the track. He says that they selected a lunch area, which is not hard to believe because there is only one area that is flat and clear. As I have already said, because of bushes, boulders and trees it commands a very limited view of the lower pool and the descending creek line. Because the flat area butts up against that large rock outcrop, it has no view of the upper creek or the upper pool. The limited view that you have from this spot is an uninterrupted 180 degrees at most, looking downstream. The other 180 is totally blocked by the outcrop just mentioned. The writer in this report notes or says that the girl took off her jeans and then slipped in the water. The girl says she slipped and fell into the water and the men hassled her to take her jeans off. She did not want to but she says they went on and on about it until she did. I have the tape recording of her and if you wished I would play it to you but I would prefer to play it to the committee separately without others hearing.

CHAIR—We will take your word.

Mr Grundy—The writer says that after lunch they let the young people wander off upstream where they cannot be seen.

CHAIR—Without supervision?

Mr Grundy—Without supervision. That, I suggest, is quite extraordinary. Putting that minor detail aside, the boulders there are so large and there is so much undergrowth overhanging anyway that a person 20 feet away might be out of sight. Never mind, the children are allowed to wander off upstream where they cannot be seen. Subsequently, the writer says, he goes looking for the missing children and starts whistling loudly. I find that very odd. If you wanted to get them back and they were missing, wouldn't you start yelling out and calling them? Why would you start whistling? I see a different connotation in that, I have to tell you. He says nothing at all about a serious matter that three of the other staff mentioned in their reports. How could that be? He does not mention that back at the car park four of the boys clear off into the bush. There is a lot missing from his report.

The writer is sent to phone the police and the John Oxley centre. He does not say, but did he tell the police what he knew, why the boys might have absconded into the bush, and about the suspicions that one member of the party had imparted to him and the others of what had happened to the girl? He is talking to the police on the telephone but there is no mention in his report that he explained to the police that he was also worried about a sexual assault as well as an absconding. He does not say so. In fact no-one on that party tells—and they all saw the police at various times—anything about what might have happened to the girl.

If I may interpose at this stage and not refer to his report, I will just tell the committee that I spoke to a man who said he was on duty back at John Oxley on that day. He said to me when I phoned him that he remembered the incident very well because he had been troubled by it for years. He told me that when the phone call came in there was panic at the centre, and he said voluntarily in the course of our conversation that their story was that the girl had egged them on. He rang me back a couple of hours later and said he was wrong about any mention being made of a sexual assault on the girl. The phone call that had come in had only been about the boys absconding. There was no mention of anything sexual. His back-pedalling was most unconvincing.

Back to the man's report. The writer said he flagged down the Rathdowney police officer as he was leaving the car park and spoke to him. Did he mention any suspicion of a sexual assault on the girl? It seems not. But why not? In the second report, the party is allowed to separate into two groups. The girl is in the leading group, now supervised by two men, and the girl tells that she is being hassled and harassed by the boys, who are pinching her on the bottom, so she has to be in front of the staff to prevent this kind of activity going on on the way up. She is the only female, then, in the group. The writer notes it is possible to go only about 100 metres further along the bank from the lunch site, and he is right. He also notes the girl was wearing a long T-shirt and panties, but he did not insist that she sit down until her jeans dried, or he did not insist that she leave them on wet. With respect, he should have.

After lunch, he says, the children left and went back up the creek. That is, they were completely out of sight from the lunch area. The children cannot be seen, which is no surprise, because you cannot see upstream. Then he says that when it became clear that the children were

missing he went up a steep hillside with one of the male members of the party to look for them. That would be true, Senator —a very steep hillside indeed, almost too steep to climb. I know: I have been there, with two ABC film crews. They tried to get up as high as they could, and it was a struggle, even for one of them who had a small camera. In the third report, the slower group with the two women got lost. Is this an appropriate place to take children in custody, when the staff are getting lost? The writer says they reached a river and took a wrong turn. I have been there umpteen times. I have not yet seen a river, anything like a river or a turning that you could take and get lost, on any of my visits.

There is a creek, indeed, that on one visit after heavy rain was knee-deep and about 10 metres wide at the most. I went there with an ABC film crew and I took a rope and an anchor in case we needed to throw it across so that we would have a rope to hang on to when we were going over with the gear. It was about as wide as the distance between me and you now, and that was after heavy rain. There is no river; there is a trickle, for the most part, except after heavy rain. A river—it is nonsense. When the children went missing the writer of this report No. 3, the man who we just learned went up a steep hillside, instead 'scaled a nearby small hill'. Here is a steep hillside that suddenly becomes a small hill. He says that he saw the girl and one of the boys embracing. The girl says that is not what he saw. She says he saw exactly what was happening to her. He does say that his suspicions about possible sexual contact between the children were aroused.

CHAIR—How far away was the witness—400 metres, 100 metres?

Mr Grundy—I am not sure. I cannot relate any of this to the environment. He says that his concerns about possible sexual contact between the children were aroused because of what he saw 'on top of the mountain'. He has just 'scaled a nearby small hill' but somewhere on a mountain he sees them embracing. If you were to get to the top of the mountain that is up at the Lower Portals you would need to be a very good rock climber and you would probably need ropes. That is my view—unless I missed something at the various times when I was there. It does not make sense to me.

He says that a brief investigation failed to prove this hypothesis. What kind of investigation did he undertake in these circumstances that might have proved his hypothesis? However, I believe it does not matter one scrap. He had a suspicion that the girl had been sexually assaulted. He writes that in his document. She was a 14-year-old girl. That required an immediate, appropriate response, given his position and her position. He should have separated the girl, reported the matter to the police as soon as possible, reported the matter to John Oxley as soon as possible and got the girl medically examined as soon as possible. Those requirements were spelled out in the police handbook at that time and would have been known to people running a detention centre. But none of those things happened, although his suspicions were passed on to other adult members of the party—they were all told of his suspicions.

Some stayed behind because of the absconding boys. They were trying to locate them and hoped that the police could find them. We learn that, when they got back with the girl about whom one of the party had had suspicions of a sexual assault on, they did not tell the people at John Oxley. That did not occur until the others got back with the boys. Then, when they did tell the manager, it was decided that the matter would be investigated the following morning.

The writer of the fourth report says, 'Two men raced up the mountain.' You could not race up anything at the Lower Portals in search of the missing children; that is rubbish, believe me. I would be happy to take you there. No-one races anywhere at the Lower Portals; the rocks are so slippery from being water washed for aeons that, even walking on the dry rocks, you can quite easily slip and fall. How do I know this? I have done it.

She says that when they got back to the car park the boys absconded. Then she says one of the men went back to the portals. That is a 1½ hour walk back and then a 1½ hour walk back again. That is three hours—a three-hour round trip. That did not happen, because it does not fit the time line involved. Other evidence from the report says that the police picked up the boys within an hour to an hour and a half. How did he walk back to the portals and then come back to the car park in the space of an hour to an hour and a half? You would have to run. Nobody would run to the portals and back in that time. She also says that the police arrived, and she gave a brief description of the boys to them so they could go and look for them. She does not mention anything about saying to the police, 'We have a suspicion there has been a sexual assault.' Why not? I do not know.

Let me go to the last report. The writer says the men ran up to the top of the portals. That is just nonsense—or they were somewhere else and it was not the portals. She states that the group was told the girl may have been assaulted, so they all knew. She also says one of the men went back to the portals—I do not know how that could be—but he was back before the policemen arrived. That was only an hour to an hour and a half later.

I turn to the manager's report. These are the points I would like to make. He notes that one of the men on this expedition phoned in and reported the absconding of the four boys. There is no mention, at the point of phoning John Oxley, of any suspicions that the girl had been sexually assaulted. Why not? Even when they returned, the first two men who had brought the girl back did not apparently mention that there were suspicions of the girl being sexually assaulted, although they knew, because they were all told by the person who had had his suspicion aroused. There was great concern that the boys might have been left out overnight and great relief when the boys were found. There was no such concern about what might have happened to the girl.

When they were returned, the four boys—who had been seen as appropriate company for a single girl on an outing into the middle of nowhere and left unsupervised with her for 15 or 20 minutes, according to their reports, which is probably on the good side when you think about it—were attempting, according to the manager, to provoke staff and were yelling, swearing, banging walls and doors and whistling on a high note. The manager chose not to enter the room where they were in case he should escalate the situation. These were boys that were considered suitable to go with one single, lone girl into such an environment, but the manager, with four of them in there, is not going to go into the same room as them because they are kicking up a hell of a fuss.

It is only at this point that the matter of suspicions about a sexual assault is raised. This is some considerable time after the girl has been returned. When the manager then goes to see the girl because of what he has been told, she is asleep and he lets her sleep on. The next morning the matter of the assault was raised at a meeting of the staff involved in this expedition, but no direct evidence of any assault was available. My suggestion is that that was probably because no attempt had been made to collect any.

Then a youth worker tells the manager something that is deemed to be exempt by the FOI authorities and that the woman herself is not entitled to see. She applied for these documents. When they black out the things that you will see in there, they are blacking them out from her eyes, not mine.

CHAIR—She asked to see the documents?

Mr Grundy—She asked for her documents under FOI, and she got them. She gave them to me, and I have a letter from her which says, 'You may do with this as you wish in my best interests to get to the bottom of this matter.' I have done that, and that is why I do it.

CHAIR—When the girl came back to the camp, as it were, did she protest that she had been raped or interfered with?

Mr Grundy—It is not clear from their reports, but remember that we only have their reports.

CHAIR—Did the girl make that known to you?

Mr Grundy—I have to tell you that, when I discovered the girl, I discovered her because of another expedition and another rape. Indeed, it is true. It was in the paper only as recently as last week. You might think it odd, but it is true that a large percentage of women are capable of putting it out of their minds—blocking out horrendous things like this. She had not recalled this incident until she saw her FOI documents. When I took her back it came back to her, and I have those recordings. You might think that is fanciful on my part, but if you refer to the criminal misconduct commission inquiry into foster care abuse it is noted that in 28 per cent of cases women who have been sexually assaulted have no recollection of it years later, and those are proven cases of sexual assault. She fits that category. What she was able to tell me about what happened on that day is considerable because the memories have come back to her. I have the tape recordings. I cannot say what she said, and they certainly do not say in their reports. However, the next morning the matter was raised, but there was no direct evidence.

Then a youth worker told the manager something that was deemed not for her eyes. However, we can glean that he was concerned about her safety in the wings and he was dispatched to secure her safety. He subsequently wrote a two-page report about what he was concerned about, but that two-page report is blacked out. It is in the documents that I have provided to you. He said it was a very serious matter and it gravely concerned him, or words to that effect. I have suggested to you in my written submission that you should call him. He was not very helpful when I spoke to him, but I am aware of other reasons for that. I have spoken to a former resident who was there at that time and I can advise that, according to her, the girl's safety was well and truly in jeopardy.

The manager spoke to the boys concerned. Again, it was deemed that this is not material that is sufficiently pertinent to allow the woman to see it. It is blacked out. Nevertheless, the manager asked the girl if she wanted the boys charged and she said 'yes'. In his report he says 'tentatively yes', and I say yes is yes—not 'tentative', not 'maybe'. She said 'yes', not 'tentatively yes'. The manager then told the staff he believes the girl was sexually assaulted and that they should make reports on the outing. The girl was moved to other quarters but, on the basis of the records that I

have here and what I have been told by others, this did not stop the girl from being threatened or assaulted.

The girl was still insisting on the matter being passed to the police. To cut a long story short—but I would encourage you to read this document—eventually, three days later, that happened. The police were called and eventually, three days later, the girl was medically examined. I would encourage you to read the doctor's report because it is extremely disturbing. The police came the next day and had a chat to the girl, who had a chat to a couple of the staff and withdrew her complaint, they say. I would say that as a 14-year-old she does not have the standing to do so, and she is in the custody of the state. But why worry about that. It is a good outcome because everyone gets off scot-free. The girl said she made the decision—and it is noted in the documents—because she was being teased and threatened. She will clearly be held in that environment for several months because her sentence is not due to be completed until mid-August—and we are talking about May. So she was going to be in the environment of being teased and threatened by the people that she might have made a complaint against, because they had not made any attempt to secure her safe accommodation as a safe witness, let alone as a safe complainant. Her rights, I am suggesting, ladies and gentlemen, were trampled on.

But the travesty does not end there. Although she was not given protection, not medically examined for three days and the police were not advised for three days, one thing was done for the girl. While no-one thought to call the cops and have her medically examined, it was thought necessary to give her an abortion-inducing dose of a contraceptive preparation. It is in the documents. The effect of that dosage was operational by the time she saw the paediatrician. I think you know what I mean, if you know what those morning-after preparations do—they bring on the onset of a woman's period. Whether such an action was culturally appropriate, I know not, but I doubt anybody would have bothered to check. That was all that was done for the girl. But none of this is a bother to the Criminal Justice Commission. After its investigation, the chairman released a statement. I have provided a copy to you but I will just read a bit of it. It says:

> CJC investigators have since examined department of family services records from 1988 which show the allegations were referred to police at that time. The CJC has obtained and examined relevant police notebooks and diaries which further confirm this fact. CJC investigators also inspected medical records confirming that the girl was examined by a paediatrician at the time at the request of the police.

That is a most outrageous and disingenuous document. It is also dishonest. At the time, the police were not notified. At the time the girl was not examined by a paediatrician, and nothing was done for the girl for three days. But I am suggesting that the duplicity involved in that statement is consistent, because they told everybody concerned that section 129 did not mean what it meant, that regulation 65 did not mean what it meant and that the whole thing had been investigated to the nth degree when it had not.

Did the CJC question any of the staff for this document to be released? Did they question any of the boys? It does not say so. My bet is that they did not. Did they read the paediatrician's report—that stunningly salutatory document? I do not believe it would matter; they did not want this matter to get out. So no official misconduct, nothing there that would lead you to have a reasonable view that somebody might be dismissed, let alone whether an abuse of office had occurred and the girl's rights had been trampled on.

That statement sends a message to people involved in the care of children in this state, and it is this: if you are in charge of a girl—she is in your care—who claims to be raped, you give her a morning-after dose, leave her in the company of her abusers or their friends so that she can be intimidated and threatened sufficiently to drop any notion of pursuing the matter, wait for three days so that all the clothing can be laundered and she will have had a couple of showers or baths, then when the morning-after pill has kicked in, so there can be no remaining evidence, call the cops and have her medically examined. That is what that document says to the carers of children in this state.

Can I tell you what I believe? We know from a statement prepared by Ms Beryce Nelson who set up the Heiner inquiry that she had received information that some boys and some girls were being forced into sexual activity against their wishes at John Oxley for the benefit of others. Ms Nelson says that in her statement; I certainly passed that on to the House of Reps committee and I am happy to give you a copy of it should you wish. I believe, from what those documents reveal and from what I know, that this is an example of that situation. I believe that at least two people on that expedition knew exactly what was going to happen to that girl. I believe that the girl was the victim of a set-up. That no-one was dismissed or dealt with under section 92 of the Criminal Code or indeed no suspicion that anyone might have been terminated is a joke.

But it gets worse. The blame is then shifted to the girl. I have documents here which I can provide. The local area office of the department of families is notified about this and makes some internal references where they talk about the girl involved in an escapade with some boys, who had sex with some boys, but there was no suggestion of rape even though she may have been subject to considerable pressure and so on. So there is a process that has begun of shifting the blame onto the girl. Then, as the message goes up the line about what happened, it gets watered down in true *Yes, Minister* style. The DG tells the minister that a girl was interfered with. I do not know what your interpretation of 'interfered with' is but as far as I am concerned it is different from sexual assault or rape. My view of somebody interfering with a girl would be perhaps putting a grubby hand on her bosom. But she is interfered with. But the parents are not blaming the department although he supposes there is some possibility of the interference leaking to the media. So it all ends happily for everyone except the girl, who goes on being threatened and assaulted and having to defend herself for some time in that place.

Some time later, a story appears in the press about a 15-year-old girl who was raped on an art excursion from the centre. As you have heard already today, the minister at the time says, on advice, that she was 17 and that, despite being encouraged to do so, she did not want to press charges. We asked him, but the minister at the time cannot remember. So we asked the current minister—the Minister for Child Safety, mind: 'Is the 14-year-old girl who was taken to the portals the one referred to in those press stories or is this another separate rape of a 17-year-old? If a 17-year-old has been raped and a 14-year-old, how many others are there? Was this common?' The minister does not even acknowledge that he has received our questions, which we have put several times over several months. Silence is what is known, in Queensland, as accountability. Like the questions we put to the police commissioner about charging some people for destroying evidence—like Mr Ensbey, but not others, and we have heard about them—thunderous silence is the courageous response of the police commissioner.

Speaking of the police, I would like to say a few words about the documents relating to them which you have. These are document 90, circled. I can assure the members of the committee that

the person who contacted the police inquiring about any records existing of being raped while she was held in John Oxley was not—absolutely not—the girl who was raped in John Oxley. There is no way that girl would contact the police about anything—believe me.

However, let me say this. It is clear that, by the time this person calls the police and asks if there is any record of a rape in John Oxley—we are talking August 2001—my activities in pursuing this matter of the rape of the John Oxley girl had become known to the authorities. I had tracked down a number of former staff who told me about it. As was said today, I do not move until I have my sources impeccable. I did not have just three sources for this; I had half-a-dozen. Then I got the girl. And I know that they chatted to others. In addition, I saw a police car drive by several times when I was visiting the girl at the home of one of her sisters and I said at the time that they would be doing a rego check on who owned the car.

But regardless—this is where it gets serious—the police asked the department if there was any record of a rape at John Oxley. 'No,' the department says; 'We had a thorough search—and not a skerrick. Sorry.' Then my first story appears in the press. Lo and behold: 'Goodness gracious; look here: we do have something after all.' What an outrage when a government department conceals information from the state's police service. When it comes to John Oxley, we have to maintain the cover-up. The travesty and the cover-up go on and on. Then we get around to retribution: 'We will teach the wretched woman to go chattering to some grubby journalist.'

CHAIR—Who is the 'wretched woman' you are referring to?

Mr Grundy—The girl who was raped, because she is talking to me.

CHAIR—At the isolated outpost?

Mr Grundy—Yes. On 7 February 2002, the woman, through a legal representative, seeks to clear her slate with the authorities in Queensland. There is a District Court matter she wishes to resolve—which I do not believe she committed—and a breach of parole matter that is four years old. The request is denied by the parole authorities despite the fact that she has done nothing to come to the notice of the authorities for four years.

The woman has also placed her case with a firm of lawyers in case there was a claim for compensation for what happened to her. On her behalf, they file a claim for what occurred in John Oxley. Then, as new material comes to light, they file a second claim. But this time the second claim is made under the new rules that flowed in the wake of the insurance payout premium crisis that causes governments to change the law in relation to compensation claims. In early December 2002, crown law is notified of the existence of this second claim, because they are required to under the demands of the law as it currently stands. Because of the requirements of such a claim, it is clear that the woman will have to undergo psychiatric examination to see what effect these events might have had on her—to assess her claim for compensation. Given that her lawyers are in Brisbane, she will probably attend a specialist here at their request.

The woman returns to Queensland from interstate for the appointment and, whilst staying with her family, is arrested by the local police. She calls me and I go and see her in the police station. I hear her story, which I will write one day when this matter is finally resolved. She had to appear in court on the following Monday. I attend and spend the day running up and down the

stairs between the District Court and the Magistrate's Court because no-one can tell me—or will tell me—where she will appear. Of course, they knew, but they kept me on the hop. She eventually appeared in the Magistrate's Court. It was a brief hearing. The magistrate said that it was a straightforward matter. No detail was provided in the court and the woman was taken off to the watch house and then to Brisbane women's prison.

I eventually got hold of the warrant under which she had been dealt with that day. It was not the District Court warrant that had been in existence for some years, or even a breach of parole warrant that might have been raised, one might expect, at the time of the parole breach; it was a new one. It was a warrant for her arrest over the parole breach matter, however. It is interesting that such a warrant is not bailable; parole breach means straight to jail. The District Court warrant was potentially bailable. This was a go-straight-to-jail warrant which meant serving the whole of the time she was paroled when she made the breach—not just what was left, but the whole of it—despite the woman's not coming to the attention of the authorities for four years. Had she appeared on the District Court matter there was a chance she might have been bailed.

I will go back to the warrant. I noted at the time that the warrant was quite fresh. It had been signed less than three weeks after crown law had been advised of the woman's second claim against the state for what had happened to her in John Oxley. I also noted that this new warrant—considering that there was probably one already in existence for the parole breach four years ago—was signed by magistrate Noel Nunan. Why, all of a sudden, was this warrant raised? I have asked numerous legal people that I know. No-one can explain it to me. So I wrote to the local Magistrate's Court registrar under section 154 of the Justices Act for access to the records of her appearance that day and to access the warrant. The reply came back that the warrant under which she had appeared that day was a District Court warrant signed by Judge Forno, some years before. It was not, and I told the registrar so: 'I have a copy of the warrant; I can show it to you.' It was not the District Court warrant; it was the warrant that was signed by Noel Nunan on 22 December, a matter of days after her second claim was advised to the Office of Crown Law. I have a copy of it and I am happy to let you have a look at it. I think I have provided it to the House of Representatives.

So, all of a sudden, having been a law-abiding citizen for four years, the system decided to pull her back into jail for nine months. Consider what she had been through in John Oxley—and this was only one of the circumstances in which the girl had been abused. What happened in jail towards the end of her sentence is another matter, and that will be written about when this business is finally over, too. I might say that during that period in jail, while privately denying she had anything to do with the District Court matter that Judge Forno's warrant related to, the woman was taken to court and she pleaded guilty to the charge. I wish she had not.

CHAIR—What charge was this?

Mr Grundy—This was a charge that some four or five years earlier she had been involved in a break and enter. I wish she had not pleaded guilty. I have seen the charge sheet; I have it here. I can show it to you. I believe it is yet another travesty of justice. I do not believe the girl was there, I do not believe that she was involved and I do not believe that the evidence that they had would have convinced any jury. I am saying that the problem is this: the girl has had the system up to here. She knows they can get her on anything, any time they like. That is just part of life for her. When they can take you out in the bush and let the boys rape you they can do anything.

That is part of her story. That is only one of the rapes she suffered in the care of the state and it is only one of the rapes that occurred at John Oxley. Then there is the funny business about the man—

CHAIR—How many rapes do you think did occur?

Mr Grundy—I know of three and there are two others that I am still searching for.

CHAIR—Over a period of how many years?

Mr Grundy—Probably three. They do not keep good diaries, you see. I am not being facetious. It bothers me that you try to get to the facts and you cannot because they just do not. Then there is the funny business—

CHAIR—You say they do not keep diaries, but—

Mr Grundy—The girls do not keep diaries.

CHAIR—there must have been a record of those rapes. Were they reported?

Mr Grundy—No. This one was. That is why I have concentrated on it.

CHAIR—So you are saying that three other unreported—

Mr Grundy—No, I am saying that there were two more on this girl and two other girls were raped by staff. If you think that is the end of this strange story, and if you think I am making all of this up, just wait till you hear this—if you have not caught up with it from the justice project. There is the funny business about the man with the same name as one of the boys who raped the girl at the portals killing his cousin with a double-barrelled shotgun blast in the streets of Brisbane. Despite his being in hospital himself from a shotgun wound to the leg, nobody ever interviewed him about the killing and no inquest was ever held into the death. No-one thinks it is funny, apart from me. I am happy to talk to you about all of those things, not to mention what really happened—

CHAIR—What is your view as to why he was not interviewed?

Mr Grundy—I think he had a very charmed passage through the rape incident. The police never talked to him. I think he had a charmed life and I recommend to him today that when he gets out—because he is currently in jail and I cannot talk to him—he buy a few Tattslotto tickets, because he has incredible luck. I am happy to talk to you about all of these things, not to mention what really happened at the time of document 13 and the handcuffing—because I can tell you what really happened at that time and what happened to the girl who was handcuffed to the bottom of the tennis court fence.

CHAIR—Is that the same girl or another girl?

Mr Grundy—A different girl. I have already mentioned that other girls were raped in that place. I could go on and on, but I think I should allow you to quiz me rather than just go on with this litany of abuses.

CHAIR—It is certainly a very unsatisfactory situation.

Mr Grundy—I have given you a summary of those reports, the manager's reports and the officials' reports as they went up, but you will not get a real picture of it until you read them. I encourage you to read them. If the matter in that advertisement is what you are on about, you must read that material.

CHAIR—If you had gone off the reference we would have drawn your attention to it. Thank you for what you have said. You are prepared to respond to some questions?

Mr Grundy—Absolutely.

Senator HARRIS—Mr Grundy, I start by referring to a document that you have provided to us. It is marked G and carries the number 10. This document is under the hand of Anne Dutney, acting manager of the John Oxley youth centre.

Mr Grundy—Is this the Dutney document?

Senator HARRIS—Yes.

Mr Grundy—I will look for it.

Senator HARRIS—The document is dated 1 March 1990. The document goes on to speak about the administration. I apologise; this is one of those situations where you cannot find something that you are looking for. Is that particular incident related to the portals issues or is that another issue?

Mr Grundy—I cannot answer that. I do not know. The time frame is that the portals incident was on 24 May 1988, so it would not have been related. The girl was gone. She was released. It is interesting. Her release date is missing.

Senator HARRIS—Her release date from John Oxley—

Mr Grundy—Her release date after the portals incident is missing from the records. We know that because the minister was asked in parliament what her incarceration dates were. The minister said that her release date after this matter is missing; it is not available. But I can tell you that there is no doubt she was out of John Oxley by the end of August 1988.

CHAIR—You are referring to documents that we have not published.

Senator HARRIS—I am speaking to submission No. 3, which was submitted by Mr Bruce Grundy.

CHAIR—It is the attachments you are referring to. They are the ones that we have not yet published.

Senator HARRIS—Okay. I apologise for that. It is just one of the vagaries of not knowing what has been published. I will rephrase it.

CHAIR—So long as you do not refer to the attachments.

Senator HARRIS—To your knowledge, do you know who the person was who prescribed, using your terminology, the morning-after contraceptive pill?

Mr Grundy—Yes.

Senator HARRIS—Are you prepared to place on record who that person is?

Mr Grundy—I think I have sent it to you. I can name the person, but, again, Chair, should I name the person?

Senator HARRIS—Without naming the person, was the person employed by the state?

Mr Grundy—They must have been. The person was a medical practitioner operating in town. At one time he was my doctor. I knew him well. He is no longer with us.

Senator HARRIS—In your evidence you also spoke about the CJC report.

Mr Grundy—I did. Here is the document.

Senator HARRIS—With regard to the CJC report, you questioned whether the CJC investigated either the staff or the boys. Are you aware of whether the CJC interviewed the girl involved?

Mr Grundy—My information from her is no.

Senator HARRIS—So we have a situation where a group of children are taken on an outing that is more than 100 kilometres from the centre. Am I correct in understanding that some of the youths involved in that were being held in what we would call detention?

Mr Grundy—Absolutely—custody.

Senator HARRIS—In custody?

Mr Grundy—Yes, and not just for care and control orders is my understanding, although you will understand that I have no right to access the records of any of those people. I have not sought it and I would not be granted it—appropriately. But from what I have been told by those who were there—and I have talked with quite a range of people—they were not there because there was no home for them, their family was dysfunctional or whatever. They were there—at least some of the boys on that expedition—for custody.

Senator HARRIS—The focus of this committee is primarily on whether the information that was provided to previous committees was provided in such a way as to induce the Senate committee to find—as I would say, in my terminology—an error based on law, basing their decision on material fact that is incorrect? In that light, can you walk through the procedure again—whether this group of people was brought back to the home?

Mr Grundy—They went out in two vehicles; they came back in two vehicles. The girl and all but four of the boys and two of the staff came back while the police were called. The rest stayed behind to search for the absconded boys. When they were located by the police—apparently, according to their reports—they came back as well, some time later. The first group were back at about 5 p.m. The girl was back by 5 p.m. I am sure it is no surprise to you that I would think they should have put into operation a series of actions to deal appropriately with the circumstances that they were there faced with. But they were not even told at that time that there was some concern that the girl might have been assaulted. That did not happen for a couple more hours. And then nothing happened.

Senator HARRIS—In your introductory remarks, you made reference to a series of actual reports by staff.

Mr Grundy—Yes, and you can read them.

Senator HARRIS—Would it be reasonable to assume that those reports were contained within the departmental file?

Mr Grundy—Had to be. That is where they came from when the girl put the FOI request in. Mind you, that very same department told the police that after a thorough search there was no such material available. That is why, I suggest, it is yet more circumstantial evidence of the cover-up. But they could not get away with it for ever. One of the things that happen to journalists is that, when you put in FOI requests, quite often you put them in but you already have them.

Senator HARRIS—Can I take you to the CJC? The CJC was asked to inquire into this issue.

Mr Grundy—Yes, by Minister Spence. They were asked to inquire—it says it in Mr Butler's statement—into allegations of a cover-up of an alleged rape of a girl in John Oxley. Those are roughly the words.

Senator HARRIS—During the course of that investigation, you were not aware whether the CJC called the staff, called the boys or interviewed the girl in relation to the issue?

Mr Grundy—I am not aware of it. They might have done it. I am not aware of it.

Senator HARRIS—If the CJC were required to investigate the issue, would it be reasonable to assume that, if they did not request this specific girl's files, they would broadly ask the department if any files existed that would assist them in their inquiry?

Mr Grundy—They certainly had access to some documentation, because in Mr Butler's press statement he says that his investigators had access to the police notebooks at the time.

Remember that the police were called in three days later; they talked to the girl. If you read the documents, the girl signed a statement saying, 'I don't wish this matter to be pursued any more and I am happy with the investigations that have been done.' Given that no investigations were done, that was quite a cute thing for them to ask her to sign. But that is the reality. The CJC mentions their notebooks. I assume that, if they got to that level, they probably saw this other material that I have outlined to you today. But I do not know.

Senator HARRIS—Do the three reports that you referred to in your introductory statement actually carry dates on which those reports were filed?

Mr Grundy—Yes.

Senator HARRIS—Are you aware whether those dates precede the time at which the CJC was asked to investigate the issue? In other words, were the reports made—

Mr Grundy—I think I have misconstrued your question. When you asked whether those reports had dates, I thought you were referring to the reports of the staff involved in that—

Senator HARRIS—My recollection is that you referred to reports 1, 2, 3 and 4.

Mr Grundy—And report 5.

Senator HARRIS—Do those reports carry dates that would identify the time at which they were placed on the record?

Mr Grundy—Yes, but remember that the CJC did not investigate this matter for some years, because we did not know about it.

Senator HARRIS—I understand that. The point I am walking towards is establishing whether those reports were contained within the family services files.

Mr Grundy—They must have been, in my view, because, when the girl—now a woman—applies under FOI for documents relating to her, as she is entitled to do, these documents appear.

Senator HARRIS—So we have the situation where the CJC provides for the Senate committee an edited version of document 13—

Mr Grundy—Yes.

Mr Lindeberg—The Queensland government—

Senator HARRIS—Mr Lindeberg, please! We have the situation where—my apologies—the Queensland government provides for the Senate committee document 13.

Mr Grundy—Yes.

Senator HARRIS—Did the CJC provide any information to that same Senate committee?

Mr Grundy—About?

Senator HARRIS—Just any information at all.

Mr Grundy—They provided a very substantial document in terms of a submission.

Senator HARRIS—So the CJC provided a submission to the Senate committee—

Mr Grundy—In 1995, yes.

Senator HARRIS—So the Queensland government has provided document 13.

Mr Grundy—Yes.

Senator HARRIS—The CJC provides a submission.

Mr Grundy—And answers questions.

Senator HARRIS—And had been previously asked to investigate an alleged rape.

Mr Grundy—No; that did not happen until many years later. What I was asking when I started today was why, if you get document 13, you only get document 13—unless the Senate specifically asked a question and they responded to it, and I do not know about that. I think people have asked the Senate what communication there was between the committee and the Queensland government. I do not know of any communication or what it was. My point of view is: if document 13, which is a truncated version of the story of the handcuffing incident, was material that should have been presented to the Senate, what was so different about the Dutney document and what was so different about these documents? Why that one?

Senator HARRIS—That is the point I am trying to establish.

Mr Grundy—As I said at the outset, my view is that of course—and this is why people rant and rave about me and my stupidity—it would not have been convenient to produce the Dutney document or the other one.

Senator HARRIS—I would like to walk you back through the process. The outing occurred in May?

Mr Grundy—On 24 May 1988.

Senator HARRIS—When was the CJC asked to investigate any rapes?

Mr Grundy—After my story appeared in the *Courier-Mail* in early November 2001.

Senator HARRIS—That is the clarification that I was looking for—in 2001. So the Queensland government in 1995 provided document 13 but did not provide either the Dutney document or the contents of the file held by the department.

Mr Grundy—And there may be an explanation for that, but I would like to hear it.

CHAIR—There has been a lot of mystery associated with the true story of document 13. Mr Grundy alluded to it, and I think it would be unfair to Mr Grundy if we did not ask him about it. What is the true story behind document 13? Then at six o'clock we will have to adjourn.

Mr Grundy—It is a long story, sadly.

CHAIR—That is why I mentioned six o'clock.

Mr Grundy—I will try to fit it into five minutes. An unfortunate 12- or 13-year-old who was the victim of violence in the home ran away from home and took up with some other homeless people in a squat. There were three men in this group and the girl. She had a little dog. One day, the oldest of the group kicked her dog. As you might, if someone did it to your dog, she gave him a whack; but the other two set on him and beat him up, and he died. She was now on a murder rap. She was taken into custody and placed in the John Oxley youth centre on a charge of murder. She was a bit depressed, as you might be if you were 12 or 13 and facing a life sentence. In her view, she did not really kill him; but she was an accomplice. She became so depressed that eventually they put her in an adult psychiatric institution—because apparently, according to the information that I have seen from the psychiatrist, this was the only place for her to go. However, before she was sent to that place, one of the staff struck up a relationship with her.

CHAIR—At John Oxley?

Mr Grundy—At John Oxley. It was an improper relationship, because she was in his care and under his control. One of the things that are so important about this is that she believed—at least, this is what she told me—that if she did anything in that place to cause them to have a concern or a bother about her and her behaviour they could whack another year on her. That may or may not be true but it is what she believed. So this relationship was struck. While she was in the psychiatric institution she wrote some letters to this person and this person wrote some letters to her.

CHAIR—That is her superior at John Oxley.

Mr Grundy—Yes. The letters apparently were intercepted. I know about this because Morris and Howard in their report—I have it here and I can provide it to you—note the existence of a document that is sent from John Oxley to head office recommending disciplinary action against this person, because of a letter that he has written to a 14-year-old girl in care, which the people in personnel in town believe he should have been disciplined for. They mention this. One of the wonderful things about the Morris and Howard report is that, while they code named everybody, in the back of their report—that is why you have to read all these things very carefully—they break their own code and they name the guy. So we know who he was. We find the girl; she confirms all of this. I have seen the letters that she wrote to him. He wrote letters to her. He should have been disciplined but he was not.

Very shortly after, on 26 September 1989, the manager is at home and gets a phone call about an inmate having to go to hospital. In the background he hears some noise and says, 'What's going on?' To cut a long story short he orders that the people making the noise, one of whom

happens to be the girl, be taken down into the secure yard and handcuffed. The boy who was making noise with the girl was handcuffed to a grating where the snakes lived and she was handcuffed to the bottom of the tennis court fence. What transpired was that during that night a member of staff was required to sit on a form or a seat, a matter of six feet away from the girl, so I am told, to watch over her. He was kept on for a double shift. Nobody else was kept on for a double shift that night but he was. He was the person who was having the improper relationship with the girl. This did not come out at the Forde inquiry despite the fact that they were both in the stand. I believe a royal commission should have questioned them about what was in the Morris and Howard report.

CHAIR—Did anything further happen at the snake pit that night?

Mr Grundy—It was a stormwater drain. What I believe is that, from what I have been told, some day a kid saw a snake go in or come out of there and so the myth grew that this was where the snakes live. But I have to tell you that they believed it. The manager knew of the myth, and handcuffing the boy to that was absolute torment and torture. It was torture handcuffing the girl to the tennis court fence, I have to tell you, but the boy stuffed the blankets—or at least most of the blankets—that he was given into the stormwater grating to prevent the snakes getting him. I also have to tell you that the Forde inquiry was told, because they did ask, 'What was the temperature on the night in question?' The answer was something like it was 16 degrees, which is a relatively pleasant evening. Now it was 26 September 1989. I am sure you know if you are out all night—what is the coldest part of the night?

CHAIR—About three o'clock in the morning.

Mr Grundy—Up to six, frequently—normally dawn, which was the 27th. I rang the weather bureau. The weather bureau is an absolute minefield of marvellous information. I said to them, 'Where is the nearest reporting station to Wacol?' They told me. I said, 'What was the minimum temperature on 26 September 1989?' They said it was 16 degrees. I said, 'What was the temperature on the 27th, the next morning?' They said 3.9 degrees. A cold snap came in and 3.9 is very cold, as a Tasmanian would know.

CHAIR—At the time that the lad was handcuffed to the snake pit, was the lass confined to a tennis court environment?

Mr Grundy—Yes, the bottom of the tennis court fence.

CHAIR—For the whole night?

Mr Grundy—For the whole night.

CHAIR—She was exposed to the same temperature changes?

Mr Grundy—And as she tells the story it was the wrong time for a girl to be out in the freezing conditions contained by a set of handcuffs to the bottom of a tennis court fence. The next morning when she was released she wrapped the blankets around herself when she was taken back to the wing, not to keep herself warm but to protect her dignity and her modesty.

CHAIR—What is the inference there?

Mr Grundy—The inference there is that it was an act of great bastardry to do that to a girl.

CHAIR—Who was not properly clothed?

Mr Grundy—Who was not properly clothed and had no access to the things that she needed at that time of the month.

CHAIR—I see.

Senator HARRIS—I think that the inference there was that you asked about the relevance between document 13 and that issue.

CHAIR—Thank you very much. I think we have got a lot of information today. More research will be needed by the committee secretariat into this matter. We thank all the witnesses who have appeared before the committee today.

Committee adjourned at 6.03 p.m.