

THE HEINER AFFAIR

Alleged *Prima Facie* Criminal Counts

COUNT 57

Section 87 of the *Criminal Code* – Official Corruption in regard to the Conduct of certain officials of the Queensland Crime Commission in respect of their handling of the allegations by one Kevin Lindeberg and related matters at certain material times.

That on divers dates between the thirteenth day of December 2001 and the thirty-first day of December 2001, at Brisbane in the State of Queensland, one **Timothy Carmody**, to the extent of his involvement, being a holder of office in the Queensland Crime Commission [QCC], pursuant to the ***Crime Commission Act 1997*** at material times, did corruptly confer an advantage on another in respect the handling of allegations by one **Kevin Lindeberg** by failing to act honestly, impartially and in the public interest. That is, one **Timothy Carmody:**

- (1) following the lodgement of a complaint by Mr. Kevin Lindeberg on 13 December 2001 with **Timothy Carmody**, did fail to establish a QCC file and to investigate, pursuant to a standing reference under section 47(6) of the ***Crime Commission Act 1997***, an incident of criminal paedophilia concerning the alleged sexual assault of a 14 years and 4 months old female inmate of the John Oxley Youth Detention Centre at the Lower Portals, Mt. Barney during a supervised bush outing on or about 24 May 1988.

SUMMARY OF COUNT 57

- 57.1 The accused, **His Honour Justice Timothy [Tim] Carmody SC**, is currently a judge of the **Commonwealth of Australia's Federal Family Court** in Brisbane. He was appointed to the post by then Commonwealth Attorney General the Hon Daryl Williams QC on 7 July 2003. At the material time in this matter concerning His Honour's conduct, namely, from early November to 31 December 2001, he held the position of Commissioner of the Queensland Crime Commission [QCC] pursuant to Division 2 of the **Crime Commission Act 1997**.
- 57.2 On 1 January 2002, the QCC and CJC amalgamated under the **Crime and Misconduct Commission Act 2001** to become the Crime and Misconduct Commission under the chairmanship of Mr. Brendan J. Butler AM SC. Commissioner Carmody SC returned to the private bar while Assistant Crime Commissioner John Callanan joined the CMC.
- 57.3 **The amalgamation date of both bodies is a relevant factor in this bracket of the submission.**
- 57.4 Given His Honour's status as a judicial officer, other relevant considerations may have to be exercised in a similar manner as is suggested concerning other judicial officers mentioned in this audit [i.e. Her Honour Justice Catherine Ena Holmes of the Queensland Court of Appeal, Her Honour Judge Julie Maree Dick SC of the Queensland District Court, and their Honours Michael Allen Barnes [State Coroner and Magistrate] and Magistrate Noel Francis Nunan of the Queensland Magistracy] in respect of the existence of "judicial misconduct" albeit before his appointment to the Bench.
- 57.5 We make no adverse submissions or inferences against His Honour Justice Carmody SC in respect of the performance of his judicial duties on the Federal Family Court Bench.
- 57.6 Out of respect for the Judiciary, we shall refer to His Honour in this matter in his former public office of Crime Commissioner.

Duty to act honestly, impartially and in the public interest

- 57.7 Commissioner Carmody SC was appointed to his position pursuant to section 14 (1) (2) (4) (5) and (7) of the **Crime Commission Act 1997**, and was also subject to the relevant provisions of the **Criminal Justice Act 1989** and **Public Sector Ethics Act 1994** to act honestly, impartially and in the public

- interest in the performance of his statutory duties, and not advantage another.
- 57.8 Commissioner Carmody SC was the chairman of the QCC management committee Pursuant to section 39 (1) of the **Crime Commission Act 1997**. The QCC was established by the Borbidge Queensland Government in 1997. It came into force on 1 December 1997. Its creation came about after the extraordinary closure of the **Connolly/Ryan Judicial Review into the Effectiveness of the CJC** by Queensland Supreme Court Justice James Burrows Thomas AM's ruling in August 1997 of ostensible bias, [**Re Carruthers v Connolly, Ryan & A-G**. [1997] QSC 132 (5 August 1997)] and the Queensland Government's desire to have a standing Commission dedicated to the investigation of (a) criminal paedophilia; and (b) major and organised crime, additional to the CJC's function concerning the investigation of official misconduct, and the Queensland Police Service's function concerning "general" crime.
- 57.9 All the agencies were obliged to work together cohesively to maximise the use of public resources in the common cause of eradicating crime and protecting the community. The QCC's creation also coincided with the establishment of the **Queensland Children's Commission** under Commissioner Norman Alford.
- 57.10 Section 4 (1) of the **Crime Commission Act 1997** – Objects – defines them, relevant to this matter, as thus: The objects of this Act are to provide for — (a) the establishment of a permanent crime commission to investigate criminal activity referred to it and, in particular, criminal paedophilia and major and organised crime.
- 57.11 At all material times, Commissioner Carmody SC was an officer of the court and bound by his associated paramount duties as were expressed on 29 January 2007, Queensland's Chief Justice the Honourable Paul de Jersey AC, when speaking at an admissions ceremony in the Supreme Court of Queensland. His Honour said: "*...The English jurist Lord Maugham described lawyers some decades ago, and his words are as apt today, as "the custodians of civilisation, than which there can be no higher or nobler duty".* **This is not empty grandiloquence: you do, now, become part of the mechanism which guards the lynchpin of our civil society, the rule of law, and you must take that responsibility seriously. What**

distinguishes a profession is an ideal of public service. What distinguishes the legal profession is the lawyer's predominant duties to the law and the court: you now undertake faithfully to maintain the existing law and assist in its enforcement; and while you are bound to do your best to advance the interests of your clients, you are subject to at least a very strict negative duty, to refrain from obstructing the administration of justice by deceiving the court. We expect much of you: integrity, legal understanding, sound judgment, practical wisdom, and not the least, moral courage – we expect this depth of character and learning so that you will best serve the people who will depend on your expert capacities for the resolution of their difficulties." [Underlining and bold added]

A standing reference for the QCC to investigate allegations of criminal paedophilia

57.12 It is relevant to look at the meaning of "criminal paedophilia" as defined in section 6 (1) of the **Crime Commission Act 1997** which states "criminal paedophilia" means activities involving (a) offences of a sexual nature committed in relation to children; or (b) offences relating to obscene material depicting children; (2) It is immaterial whether the offence is committed in Queensland or elsewhere if the offender or the child is ordinarily resident in Queensland. Section 46 (7) of the **Crime Commission Act 1997 - referrals to QCC** – states: "*Despite this section, QCC is taken to have a standing reference from the management committee to investigate criminal paedophilia.*"

57.13 Mr. Lindeberg took the view that once the alleged incident of the sexual assault of the 14-year-old minor [i.e. allegation of pack rape] on the 24 May 1988 bush outing had been made public [**See The Courier Mail 3 November 2001 pages 3 and 14 by journalist Mr. Bruce Grundy; ABC Radio 612 4QR interview between presenter Mr. Stephen Austin and "Michael" (a.k.a. Mr. Michael Roch former senior JOYC Youth Worker); and The Courier-Mail 8 November 2001 confirming that Mr. Heiner was aware of the alleged sexual assault incident during the course of his inquiry because he asked a witness about it [i.e. Mr. Michael Roch] by journalist Mr. Bruce Grundy**], and because of its connection to

[child abuse] matters brought before the Heiner Inquiry and the related subsequent destruction of that probative evidence by order the Executive Government of Queensland to (i) prevent its use in judicial proceedings; and (ii) prevent its use against the careers of certain staff at the JOYC, then the QCC had jurisdiction to hear a complaint made by him the heading of "**major crime.**" At that time, Mr. Lindeberg took the view that rape fell into the category of "major crime", not "criminal paedophilia."

57.14 On 12 December 2001 Mr. Lindeberg phoned the QCC to arrange an urgent meeting with Commissioner Carmody SC. Mr. Lindeberg learnt that he was on holidays. His secretary said that she would contact him over the request, and within the space of 10 minutes, a meeting was arranged for the following day at 1.30pm at Unisys House, Toowong, QCC's Head Office.

The Lindeberg Complaint to the QCC on 13 December 2001

57.15 The meeting between Commissioner Carmody SC and Mr. Lindeberg was held on Thursday 13 December 2001 in the QCC's conference room. It lasted approximately 90 minutes. It was not witnessed. Mr. Lindeberg lodged a complaint under section 4(1)(a) of the **Crime Commission Act 1997**.

57.16 His complaint concerned the following: (a) the major crime of pack-rape of a 14-year-old Aboriginal girl occurred at the John Oxley Youth Detention Centre sometime in 1988 while she was held in the care and protection of the Crown by court order; (b) it was open to conclude that the pack-rape was not properly investigated at the time by the police thereby leaving the crime still open to prosecution as no time bar existed on the crime of rape and, therefore, also leaving certain police officers and public officials who had knowledge of the incident open to covering up a major crime by obstruction of justice; (c) the CJC's recent investigation of the pack-rape incident [as reported in its media release of 16 November 2001] gave rise to more serious questions than it answered by its false claim that the incident was investigated "...at the time" as if to suggest that it was done immediately when it was known the passage of three days had occurred; (d) it was open to conclude that the pack-rape was covered up at the time using the suggestion that the girl's mother, in 1988, would not press charges because the alleged rapists were indigenous when (i) it was not the mother's duty to

do so because her daughter was a minor at law and in the care and control of the Crown at the time of the incident; and (ii) the mother had since claimed that she was not informed about the pack-rape at the time, and had she been told, she would have insisted on charges being laid; (e) it was open to conclude that certain public officials within the DFS were derelict in their duty of care to the 14-year-old Aboriginal girl pursuant to the provisions of the **Children's Services Act 1965** and therefore may have engaged in official misconduct by knowingly covering up a major crime; (f) evidence of this major crime was provided to Mr. Noel Heiner during the course of his 1989/90 Inquiry into JOYC's management, and that it was therefore open to conclude that certain public officials [elected and appointed] were aware of this fact when assuming responsibility for his evidence upon the termination of his Inquiry on 11 February 1990; (g) in light of those new revelations, clearly indicating that evidence of the major crime of pack-rape was gathered by Mr. Heiner during his Inquiry, it was therefore now open to conclude that the subsequent shredding of his Inquiry documents by order the Executive Government of Queensland on 5 March 1990 may have knowingly covered up a major crime and perverted the course of justice [not to the exclusion of other possible illegal consequences flowing from the shredding relevant to the facts confronting the Executive Government and others at the time in regard to other legal demands being made on the records in question] based on the state of knowledge at the time, and reasons publicly stated by then Minister for Family Services and Aboriginal and Islander Affairs, the Hon Anne Warner to Parliament, which were: (i) the inquiry had ceased and no report would be produced, therefore there was no further need for the material; (ii) all parties involved in the inquiry would be assured that any evidence gathered would not be used in future deliberations or decisions. This applied to Mr. Coyne as well as to all other staff members; and (iii) disposal of the material reduced the risk of legal action against any party involved such as Mr. Heiner and Youth Workers employed in caring for children at the John Oxley Youth Detention Centre [See **State Hansard** 18 May 1993 p2871]; (h) the disbursement of public monies in the sum of \$27,190 in accordance with certain terms in a Deed of Settlement dated 7 February 1991 between the State of Queensland and Mr. Peter William Coyne, JOYC manager at the time of the [alleged] pack-rape and who had knowledge of it, was deliberately

designed for the unlawful purpose of covering up a major crime because the Deed required Mr. Coyne's [and the State of Queensland's] lifetime silence in respect of not publishing [information about] all events leading up to and surrounding his relocation from the Centre; (i) the involuntary retrenchment of Mr. Peter William Coyne on 7 February 1991 in *prima facie* breach of section 28 of the **Public Service Management and Employment Act 1988** and the **Income Tax Assessment Act 1936** may have been motivated by agreement between certain public officials and the Executive Government of Queensland, extending to the misleading of His Excellency the Queensland Governor Sir Walter Campbell AC QC to sign [unwittingly] a false and misleading Executive Council Minute to effect the fraudulent involuntary retrenchment and unlawful disbursement of approximately \$80,000 of public monies, in order that Mr. Coyne's services could be terminated while permitting a major crime committed under his management of the John Oxley Youth Detention Centre to go unaddressed.

- 57.17 Mr. Lindeberg provided the following supporting material: (a) the **Lindeberg Petition** tabled in the Queensland Legislative Assembly on 27 October 1999 and related correspondence with Queensland Premier the Hon Peter Beattie MLA; (b) the Robert F. Greenwood QC submission to the **Australian Chapter of the International Commission of Jurists [ICJ]** dated 25 April 2000; (c) the Greenwood QC submission dated 9 May 2001 to the Australian Senate outlining the Lindeberg Grievance in which it was suggested that both the Queensland Government and the CJC may have misled the Senate and obstructed justice when the Heiner Affair came before it in 1995, 1996 and 1997/98 concerning (i) the destruction of evidence matter; and (ii) the deliberate concealment of known abuse of children at JOYC; (d) his submissions to the **Forde Commission of Inquiry into Abuse of Children in Queensland Institutions** and related correspondence with counsel assisting, Ms. Catherine Ena Holmes, who had since been appointed by the Beattie Queensland Government to Supreme Court of Queensland Bench.
- 57.18 He also provided two submissions to the Office of the Information Commissioner for examination within the context of this request for a referral: (a) His submission to former Information Commissioner Frederick Albietz dated 12 May 1999 on a matter of apprehended bias giving rise to suspected official misconduct concerning himself and others within his Office

- for failing to report suspected official misconduct to the complaints section of the CJC pursuant to his obligation under section 37(2) of the **Criminal Justice Act 1989** [See **File Ref: S3/99 REM**]; and (b) his submission to [new] Information Commissioner David J. Bevan dated 14 November 2001 [on the **File Ref S3/99 REM**] addressing the unacceptable manner in which both he and his staff handled his application which involved the serious charge of apprehended bias giving rise to suspected official misconduct, obstruction of justice, and a failure to comply with section 37(2) of the **Criminal Justice Act 1989**. [At the time Information Commissioner Bevan had not yet responded to this letter].
- 57.19 Mr. Lindeberg stated his concerns regarding the CJC's protagonist status, and the "tainted" make-up of the **QCC Reference Committee** involving: (i) CJC Chairperson Mr. Brendan Butler SC; (ii) Queensland Police Commissioner Mr. Robert Atkinson; (iii) PCJC Chairperson Mr. Geoff Wilson MLA; and (iv) PCJC Deputy Chairperson the Hon Howard Hobbs MLA. He cited **Livesey v New South Wales Bar Association** [1983] 151 CLR 288 per Mason, Murphy, Brennan, Deane and Dawson JJ at 294-294 as a relevant authority.
- 57.20 Mr. Lindeberg suggested to Commissioner Carmody SC that the following option may be available to him: (a) in the first instance, in any associated deliberations, automatic disqualification should apply to **QCC Management Committee** members allegedly tainted by apprehended bias and/or prejudgement, namely: CJC Chairperson Mr. Brendan Butler SC; Queensland Police Commissioner Mr. Robert Atkinson; PCJC Chairperson Mr. Geoffrey Wilson MLA; and PCJC Deputy Chairperson the Hon Howard Hobbs MLA; and then; (b) in accordance with the doctrine of necessity, the remaining members of the QCC management committee might consider that owing to the complaint's seriousness and because (i) the makeup of their committee may have been so compromised and depleted; and (ii) the time constraints on the QCC owing to its closure on 31 December 2001, that, via his [Commissioner Carmody SC] good office, an extraordinary referral to his accountable Minister, Police and Corrective Services Minister the Hon Tony McGrady MLA be made, recommending that a Special Prosecutor with appropriate powers, resources and sufficiently wide terms of reference to cover all aspects of this Affair be appointed to: (a) independently investigate and hold public hearings; (b) prosecute where sufficient evidence existed;

and (c) make recommendations to changes in the law where required, and to the structure of the governance of Queensland flowing out of those matters involving *prima facie* major crime and relevant criminal activity thereby restoring integrity and public confidence in Queensland's criminal justice and public administration systems so that such systemic wrongdoing and abuse of office might not happen again or be corrected sooner; and (iii) make a reference to the QCC, within its limited time constraints before closing on 31 December 2001, whereupon he and/or a QCC agent might suggest an appropriate manner in which the matters could be properly and independently advanced and resolved.

- 57.21 **Mr. Lindeberg claims that Commissioner Carmody SC said at the meeting that (a) he did not intend remaining a bystander in the matter any longer; and (b) he would endeavour to obtain a reference from the QCC Reference Committee before the QCC's jurisdiction ceased at midnight on 31 December 2001 in order to establish an inquiry.**

The QCC's Response of 19 December 2001

- 57.22 On 19 December 2001, Assistant Commissioner Mr. John Callanan wrote to Mr. Lindeberg *inter alia* informing him that (a) the alleged sexual assault incident fell within the definition of "criminal paedophilia" under section 6(1) of the **Crime Commission Act 1997**; (b) under section 46 (7) of the **Crime Commission Act 1997**, the Commission had a standing reference to investigate all instance of real and/or suspected criminal paedophila; (c) it would be impracticable for a request to be made by the Crime Commissioner to the QCC management committee for the referral of a major crime to the QCC for investigation, assuming that the Crime Commissioner was minded to seek such a referral, indicating that since the inception of the QCC in 1998, there had been no requests for a referral by the Crime Commissioner himself to investigate a matter of major crime, and if such a request had been made, it would not be made lightly or without extensive preliminary inquiries into the matter in question; (d) the Crime Commissioner had no statutory authority to make "an extraordinary referral to the responsible minister [who was the Queensland Premier, not the Minister for Police], and under the

circumstances he suggested that Mr. Lindeberg renew his request to the CMC once it became operational on 2 January 2001.

- 57.23 Relevantly, Assistant Crime Commissioner Callanan then admitted the following *"...in addition to constituting a major crime, the alleged rape of a fourteen year old girl would fall within the definition of "criminal paedophilia" in section 6 of the **Crime Commission Act**. Under section 46(7) of the Act, QCC is taken to have a standing reference from its management committee to investigate criminal paedophilia. However, by virtue of section 355(2) of the **Crime and Misconduct Act 2001**, the standing reference ends upon the repeal of the Crime Commission Act. Accordingly, for practical purposes, any investigation of criminal paedophilia undertaken by the CMC, after 1 January 2002 will first need to be the subject of a specific reference from the CMC Crime Reference Committee."* [See the **Bishop Report** p85 Point 3.125]

The Lindeberg's final response of 21 December 2001 to the QCC

- 57.24 On 21 December 2001 Mr. Lindeberg replied to Assistant Commissioner Callanan. He hand-delivered his letter to QCC Head Office and was told that he [Callanan] was on holidays also. Mr. Lindeberg insisted to QCC officer Mr. Ian Thomas that both Commissioners receive a copy immediately. On 24 December 2001, Mr. Thomas confirmed that copies of Mr. Lindeberg's letter of 21 December 2001 had been provided to Commissioners and, in the case of Commissioner Carmody SC, he had also been faxed a copy of Assistant Commissioner Callanan's letter of 19 December 2001.
- 57.25 The following matters of relevance were therefore drawn to the attention of both Commissioners on 21 December and no later than 24 December 2001, some 7 days before the QCC's responsibilities at law ended by repeal of the **Crime Commission Act 1997** at midnight on 31 December 2001. *Inter alia*, they were: (a) his initial approach to the QCC sought a referral from its management committee to have the Heiner Affair investigated by the QCC in light of new evidence published in **The Courier-Mail** by journalist Mr. Bruce Grundy which Mr. Lindeberg held to have enlivened the QCC's jurisdiction under the meaning of "major crime"; (b) it was now clear that the new [alleged pack rape, Heiner affair related] evidence enlivened the QCC's jurisdiction on "criminal paedophilia" within its meaning under section 6 of the

Crime Commission Act 1997, and that the QCC had acknowledged this fact itself; (c) the crime of “criminal paedophilia” **did not require** a reference from the management committee to investigate because the QCC had a standing reference under section 46 (7) of the **Crime Commission Act 1997**; (d) given that the QCC had a standing reference to investigate criminal paedophilia, and the fact that evidence of such an incident was first published on 3 November 2001 clearly linking it to the Heiner Affair, it is reasonable to assume that the QCC had already been enlivened to investigate, and therefore a file may already be open; (e) Notwithstanding that possibility, Mr. Lindeberg thereupon lodged a complaint concerning the cover-up of criminal paedophilia at John Oxley Youth Detention Centre in which the shredding of the Heiner Inquiry documents and related matters are indissolubly linked [as provided in his submission to Commissioner Carmody SC on 13 December], he requested that an investigation commence immediately, and that the QCC’s reference number of the file and its creation date be provided for his record purposes; (f) The body of facts surrounding this complaint pointed towards the credible and unacceptable existence of systemic corruption on a wide scale over a prolonged period which had irrefutably contaminated Queensland’s justice system; (g) The Heiner affair carried with it, for all sworn statutory law-enforcement agents and officers [i.e. decision-makers] who handled it, the threshold questions of prejudgement, apprehended and/or actual bias, and apprehended bias giving rise to suspected official misconduct, and that those questions had to be settled before any law-enforcement agency or official could touch the matter, notwithstanding that the immediate obligation cast on the QCC was to ensure that justice was not denied by any further delay; (h) It was both illogical and inappropriate for the QCC to argue, at the same time, that the matter could not be advanced then because (i) the QCC management committee lacked a community representative; or (ii) the Crime Commissioner had not sought a referral, when, by law and the QCC’s own admission, the QCC did not need a referral because it already had a “standing” referral [hence duty] pursuant to section 46(7) of the **Crime Commission Act 1997** and (i) the QCC’s duties and obligations [i.e. on Commissioner Carmody SC and Assistant Commissioner Callanan], under the **Crime Commission Act 1997** extended up to midnight 31 December 2001 and therefore to do nothing at that time when the QCC

had a standing reference [i.e. the authority at law] to investigate immediately, would be, in Mr. Lindeberg's opinion, tantamount to denying justice by obstructing it; (k) the police and others were tainted and could not come to the matter free of apprehended bias; (l) the evidence showed that (a) Mr. Heiner took evidence on the matter; (b) the Executive Government shredded the gathered evidence, which it knew was required for litigation, to cover up criminal paedophilia and other abuses of children held in the care and protection of the Crown at John Oxley Youth Detention Centre by court order; and (c) the Crown unlawfully disbursed public monies by use of an illegal **Deed of Settlement** to effect a cover-up. Mr. Lindeberg submitted that the [Heiner] affair was about *prima facie* State-sanctioned criminal paedophilia against children placed in its care and protection by court order; (m) what happened after 31 December 2001 because of the extraordinary circumstances surrounding the matter was something which he [Lindeberg] would be handled at the time in order that justice was served honestly and impartially so that any wrongdoer [in the matter] was brought to justice. For the QCC to suggest that there was no statutory vehicle whereby notice could be given to the Queensland Government and people that a Special Prosecutor should ideally handle this matter, was to suggest that those who have engaged in systemic corruption and abuse of office for over a decade, which aided in covering up State-authorized criminal paedophilia, would [be permitted to] escape independent public scrutiny. Mr. Lindeberg submitted that it would be simply intolerable and unacceptable by societal standards if the rule of law and care for our children, wherever they may live, was of paramount importance; and (n) The aforesaid values were not mutually exclusive for men and women of goodwill who sought to respect the law, otherwise, the law, instead of being an instrument of justice, would have become the instrument of continuing injustice and held in contempt by all. He said that he could not permit that to happen.

- 57.26 Mr. Lindeberg did not lodge a fresh complaint with the Crime and Misconduct Commission after 2 January 2002, as the QCC had suggested, because he still believed that its independence was so compromised that its legal standing, in respect of the matter, was a **protagonist at law**. [see *R v Australian Broadcasting Tribunal; Ex parte Hardiman* (1980) 144 CLR 13]

- 57.27 The Lindeberg/QCC complaint of 13 December 2001, in effect, evaporated into thin air both within the QCC and the CMC as if it were never laid in the first place.
- 57.28 In summary, we submit that it is open to conclude that, at all relevant times, both Commissioner Carmody SC and Assistant Commissioner Callanan were completely aware of each other's actions and correspondence [as set out above] pertinent to Mr. Lindeberg's complaint.
- 57.29 It is beyond any reasonable doubt, that at all material times, both commissioners had the power to commence an investigation into his complaint - which the QCC acknowledged involved the potential crime of criminal paedophilia within its statutory objects - because under the **Crime Commission Act 1997**, a standing reference existed which they must have known **did not require** any prior approval from the **QCC's Management Committee** before such an investigation could commence. In this respect, both commissioners failed to carry out their statutory duty under the **Crime Commission Act 1997**, and thereby knowingly advantaged another.

The creation of a QCC file

- 57.30 It was Mr. Lindeberg's reasonable and legitimate expectation that an inquiry would be established within the days left before midnight on 31 December 2001. Or, at the very least, a QCC file created which could not then have been easily closed down once the amalgamation with the CJC took place on 1 January 2002 to form the CMC.
- 57.31 We submit that such a belief was not unreasonable on Mr. Lindeberg's part under the circumstances. It was not open to him to properly approach the QCC until such time as the alleged criminality involved in the Heiner affair reached the QCC watermark of either (i) a major or organised crime; or (ii) criminal paedophilia. That occurred once the May 1989 *prima facie* pack rape incident was made public in **The Courier Mail** on 3 November 2001. **The QCC acknowledged that Mr. Lindeberg's complaint involved both a major crime [i.e. rape] and criminal paedophilia [i.e. sexual assault involving a minor], and therefore, it is not open to suggest that his complaint lacked substance.**

- 57.32 Notwithstanding the shortness of the time available, we submit that Commissioner Carmody SC, under the ***Crime Commission Act 1997***, had the undoubted statutory authority to embark on such an inquiry even though he had never done so before. We submit that this matter could be reasonably described as “exceptional circumstances.”
- 57.33 We submit that a claim of insufficient time after the meeting to put arrangements in place, due to Commissioner Carmody SC’s holiday period, carries no weight because he knowingly took the decision to come into work to acquaint himself personally with Mr. Lindeberg’s complaint. At all relevant times, he was aware of Mr. Lindeberg’s concerns regarding the presence of apprehended and/or real bias inside the CJC.

An Earlier Meeting between Crime Commissioner Carmody SC and Mr. Lindeberg in 1998

- 57.34 It is not feasible to suggest that, in coming back to work during his holidays, Commissioner Carmody SC had no prior knowledge of what Mr. Lindeberg’s complaint may have consisted because they had previously met, on 25 September 1998 at “*Yungaba*” Kangaroo Point Brisbane, at a public meeting called for potential stakeholders in the **Forde Commission of Inquiry into the Abuse of Children in Queensland Institutions**. **Mr. Lindeberg was specially invited to attend by invitation from the QCC, presumably authorised by Commissioner Carmody SC himself.**
- 57.35 At this meeting, Mr. Lindeberg met Commissioner Leneen Forde AC and counsel assisting, Ms. Kate Holmes, for the first and only time. Commissioner Carmody SC attended because of his statutory involvement in criminal paedophilia under the ***Crime Commission Act 1997***. The QCC’s **Operation Axis** and how it would interface with the Forde Inquiry was discussed at the special meeting.
- 57.36 **Mr. Lindeberg is prepared to swear on oath that this meeting took place and that during their discussion Commissioner Carmody SC told him that he suspected their paths [i.e. the QCC’s] would cross at some future time over the Heiner affair.** [Mr. Carmody was also one of the counsel assisting the **Connolly/Ryan Judicial Review into the Effectiveness of the CJC** in July 1997 when the Heiner matter came before

it, and he witnessed a relevant verbal interview of Mr. Desmond O'Neill conducted by Inquiry counsel Mr. Sandy Thompson around March/April 1997.]

A duty to act

- 57.37 We submit that it is also open to suggest that the QCC ought to have acted in a proactive manner in respect of the May 1989 pack rape incident when it was first published in **The Courier Mail** on 3 November 2001, again on 8 November 2001, and broadcast on 7 November 2001 on **ABC Radio 612 4QR** by presenter Mr. Stephen Austin with former JOYC senior Youth Worker "Michael." We submit that QCC would have been aware of these public broadcasts as part of its normal intelligence-gathering functions.
- 57.38 There is no public evidence, however, indicating that the QCC did anything pursuant to its statutory duty under the **Crime Commission Act 1997** to investigate this incident of *prima facie* criminal paedophilia. Instead, it appears not to have even considered it until Mr. Lindeberg was interviewed by Commissioner Carmody SC on 13 December 2001.
- 57.39 Under the **Crime Commission Act 1997**, the QCC had the statutory powers enabling it to: (a) compel government officials to produce documents or provide other information relevant to an investigation; (b) require others to produce relevant records or other things within a specific time or immediately if necessary; (c) covertly search private places and persons with judicial approval; (d) use secret surveillance devices under judicial warrant; and (e) conduct compulsory hearings for investigative purposes.
- 57.40 Mason CJ, Deane and Dawson JJ in **Ridgeway v The Queen** (1995) 184 CLR 19 at 44 observed: *"...If it be desired that those responsible for the investigation of crime should be freed from the restraints of some provisions of the criminal law, a legislative regime should be introduced exempting them from those requirements. In the absence of such a legislative regime, the courts have no choice but to set their face firmly against grave criminality on the part of anyone, regardless of whether he or she be government officer or ordinary citizen. To do otherwise would be to undermine the rule of law itself."*
- 57.41 Section 87 of the **Criminal Code – official corruption** – states: *"Any person who corruptly gives, confers, or procures, or promises or offers to give*

or confer, or to procure or attempt to procure, to, upon, or for, any person employed in the public service, or being the holder of any public office, or to, upon, or for, any other person, any property or benefit of any kind on account of any such act or omission on the part of the person so employed or holding such office; is guilty of a crime, and is liable to imprisonment for 7 years, and to be fined at the discretion of the court. (1A) If the offence is committed by or in relation to a Minister of the Crown, as the holder of public office mentioned in subsection (1), the offender is liable to imprisonment for 14 years, and to be fined at the discretion of the court.”

57.42 We submit that the accused, one **Timothy Carmody SC**, as Crime Commissioner, because of his undoubted awareness of the unresolved alleged pack rape incident of 24 May 1988 [i.e. an incident of suspected “criminal paedophilia”] and related matters involving all aspects of the Heiner affair having been brought to his attention on 13 December 2001 by way of official complaint from Mr. Kevin Lindeberg at (a) an official 90-minute meeting between them; and (b) at which a major submission and exhibits were tendered in support of the said complaint, and, at material times, by act of wilful blindness in failing to establish a QCC file to commence an investigation pursuant to section 46(7) of the **Crime Commission Act 1997**, knowingly advantaged another and thereby, in turn, may have placed himself in *prima facie* breach of section 87 of the **Criminal Code**.

[See Chronology Entries:](#)

288, 289, 291, 292, 293, 294.

1. Documents needed:

- (a)** The Cabinet Attendance Register for 12 and 19 February and 5 March 1990;
- (b)** Cabinet submission briefing notes/cover sheets for 12 and 19 February, 5 March 1990 and February 1991 by ministerial advisers and chief-of-staff regarding Heiner Inquiry and related matters;
- (c)** Crown Solicitor Mr. Kenneth O’Shea’s advice [via Crown Law legal officer Mr. Barry J. Thomas] dated 23 January 1990 to DFSAIA Acting Director General Ms. Ruth Lewin Matchett

- (d) QPOA General Secretary Mr. Donald Martindale's letter dated 29 January 1990 to DFSAIA Acting Director-General Ms. Ruth Lewin Matchett;
- (e) Mr. Peter William Coyne's solicitors letters dated 8 and 15 February 1990 to DFSAIA Acting Director-General Ms. Ruth Lewin Matchett;
- (f) DFSAIA Executive Officer Mr. Trevor Walsh's department memorandum of 14 February 1990 to DFSAIA Acting Director-General Ms. Ruth Lewin Matchett;
- (g) Acting Cabinet Secretary Mr. Stuart Tait's letter dated 13 February 1990 to Crown Solicitor Mr. Kenneth O'Shea;
- (h) DFSAIA Acting Director-General Ms. Ruth Lewin Matchett's letter dated 16 February 1990 to Coyne's solicitors;
- (i) Crown Solicitor Mr Kenneth O'Shea's advice dated 16 February 1990 to Goss Cabinet;
- (j) QPOA Assistant General Secretary Ms. Roslyn Mary Kinder letter dated 1 March 1990 to DFSAIA Acting Director-General Ms. Ruth Lewin Matchett;
- (k) Cabinet Submission for Cabinet Meeting of 5 March 1990;
- (l) DFSAIA Acting Director-General Ms. Ruth Lewin Matchett's memorandum dated 19 March 1990 to Mr. Peter William Coyne;
- (m) Queensland Acting Solicitor-General Mr. Kenneth O'Shea's advice dated 30 June 1989 to the Director-General of the Department of Family Services regarding the proper interpretation of **Public Service Management and Employment Regulations 46, 63 and 65.**
- (n) Memorandum from Mr. Kevin Lindeberg to QPOA Executive dated 12 June 1990;
- (o) Letter dated 15 September 1994 to Police Commissioner James P. O'Sullivan from Mr. Kevin Lindeberg *inter alia* in relation to Police File MS93/25262;
- (p) Letter dated 15 October 1994 to Police Commissioner James P. O'Sullivan from Mr. Kevin Lindeberg *inter alia* in relation to Police File MS93/25262
- (q) Letter dated 22 November 1994 to Police Commissioner James P. O'Sullivan from Mr. Kevin Lindeberg *inter alia* in relation to Police File MS93/25262

- (r) Letter dated 7 January 1995 to Police Commissioner James P. O’Sullivan from Mr. Kevin Lindeberg *inter alia* in relation to Police File MS93/25262;
- (s) Letter dated 25 January 1995 from Assistant Police Commissioner Graham J. Williams, State Crime Operations Command, to Mr. Kevin Lindeberg;
- (t) Queensland Police Service written record of Mr. Kevin Lindeberg’s visit to Police Headquarters on 7 August 1995;
- (u) Queensland Police Service letter dated 31 August 1995 by Chief Superintendent Wayne J. King to Mr. Kevin Lindeberg;
- (v) Mr. Kevin Lindeberg’s letter dated 16 January 1996 to Queensland Police Commissioner James P. O’Sullivan;
- (w) Queensland Police Service letter dated 15 February 1996 to Mr. Kevin Lindeberg;
- (x) Mr. Lindeberg submission of complaint dated 13 December 2001 to Crime Commissioner Tim Carmody SC;
- (y) Letter dated 19 December 2001 from Assistant Crime Commissioner John Callanan to Mr. Kevin Lindeberg
- (z) Letter dated 21 December 2001 from Mr Kevin Lindeberg to Assistant Crime Commissioner John Callanan.

2. Documents available and where now situated (if known):

- (a) **The Cabinet Attendance Register for 5 March 1990** - Search Warrant may be required in order to access. Held by: (1) Queensland Office of the Cabinet.
- (b) **Cabinet submission briefing notes/cover sheets** for 12 and 19 February, 5 March 1990 and January/February 1991 by ministerial advisers and chief-of-staff regarding Heiner Inquiry and related matters. Held by: (1) The Queensland Office of the Cabinet;
- (c) **Crown Solicitor Mr. Kenneth O’Shea’s advice [via Crown Law legal officer Mr. Barry J. Thomas] dated 23 January 1990 to DFSAIA Acting Director General Ms. Ruth Lewin Matchett** advising *inter alia* that (1) the Heiner Inquiry was lawfully established under section 12 of the **Public Service Management and Employment Act 1988** and that there was “...no legal impediment to the continuation of the inquiry”; (2)

Mr. Heiner receive indemnity by the Crown for any legal proceedings which may commence against him in relation to his involvement in the Inquiry; (3) Mr. Heiner's informants were covered by qualified privilege; (4) the Heiner Inquiry documents, although in the hands of the Crown, were seen as the private possession of Mr. Noel Heiner, [see Crown Law advice dated 16 February 1990] and, if Ms. Matchett decided to discontinue the Inquiry, those records might be destroyed but this advice was "*...predicated on the fact that no legal action has been commenced which requires the production of those files*"; Held by: (1) Mr. Kevin Lindeberg; (2) Crime and Misconduct Commission; (3) Queensland Police Service; (4) Queensland Government; (5) Australian Senate; (6) Federal House of Representatives; (7) Queensland State Archives; and (8) Mr. Peter William Coyne;

(d) QPOA General Secretary Mr. Donald Martindale's letter dated 29 January 1990 to DFSAIA Acting Director-General Ms. Ruth Lewin Matchett seeking access to the Heiner Inquiry documents and original complaints pursuant to ***Public Service Management and Employments Regulations 46 and 63***. - Held by: (1) Mr. Kevin Lindeberg; (2) Crime and Misconduct Commission; (3) Queensland Police Service; (4) Queensland Government; (5) Australian Senate; (6) Federal House of Representatives; (7) Queensland State Archives; (8) Mr. Peter William Coyne; and (9) QPSU;

(e) Mr. Peter William Coyne's solicitors letters dated 8 and 15 February 1990 to DFSAIA Acting Director-General Ms. Ruth Lewin Matchett (a) seeking access to the certain extracts of the Heiner Inquiry documents pertaining to their clients [Mr. Peter William Coyne and Mrs. Anne Dutney] and the original complaints pursuant to ***Public Service Management and Employment Regulation 65***; (b) seeking an assurance that aforesaid documents would not be destroyed; and (c) that court proceedings would commence to achieve same objective. Held by: (1) Mr. Kevin Lindeberg; (2) Crime and Misconduct Commission; (3) Queensland Police Service; (4) Queensland Government; (5) Australian Senate; (6) Federal House of Representatives; (7) Queensland State Archives; and (8) Mr. Peter William Coyne.

- (f) **Acting Cabinet Secretary Mr. Stuart Tait's letter dated 13 February 1990 to the Crown Solicitor Mr. Kenneth O'Shea** seeking advice concerning the discovery/disclosure of the Heiner Inquiry documents once court proceedings commence. Held by: (1) Queensland Government; (2) Crime and Misconduct Commission; (3) Queensland State Archives; (4) Australian Senate; (5) Federal House of Representatives; and (6) Mr. Kevin Lindeberg.
- (g) **DFSAIA Executive Officer Mr. Trevor Walsh's department memorandum of 14 February 1990 to DFSAIA Acting Director-General Ms. Ruth Lewin Matchett** confirming phone conversation with Mr. Coyne's solicitor placing the Queensland Government on notice regarding a foreshadowed court proceeding in which the Heiner Inquiry documents and original complaints would be centrally relevant evidence. Ms. Matchett initials the **Walsh Memorandum** on 21 February 1990 as having been seen and read by her. Held by: (1) Mr. Kevin Lindeberg; (2) Crime and Misconduct Commission; (3) Queensland Police Service; (4) Queensland Government; (5) Australian Senate; (6) Federal House of Representatives; (7) Queensland State Archives; and (8) Mr. Peter William Coyne;
- (h) **DFSAIA Acting Director-General Ms. Ruth Lewin Matchett's letter of 16 February 1990 to Mr. Peter William Coyne's solicitor** indicating that the question of access was still the subject of "on-going" legal advice. Held by: (1) Mr. Kevin Lindeberg; (2) Crime and Misconduct Commission; (3) Queensland Police Service; (4) Queensland Government; (5) Australian Senate; (6) Federal House of Representatives; (7) Queensland State Archives; and (8) Mr. Peter William Coyne;
- (i) **Crown Solicitor Mr Kenneth O'Shea's advice of 16 February 1990 to Acting Cabinet Secretary Mr. Stuart P. Tait** *inter alia* pursuant to ***Sankey vs Whitlam & Ors*** (1978) 142 C.L.R. advising that (1) the Heiner Inquiry documents would be discoverable under **Order 35 Rule 28 of the Rules of the Supreme Court of Queensland** once the [expected/anticipated] writ was served because the records could not be fairly described as being brought into existence for a Cabinet purpose, and any claim of "Crown privilege/Cabinet confidentiality" would fail; and

(2) contrary to the earlier advice of 23 January 1990, the “better view” was that the Heiner Inquiry documents, being in the possession or power of the Crown, were “public records” within the meaning of section 5(2) of the ***Libraries and Archives Act 1988***, and therefore, prior approval for their lawful disposal would be required from the State Archivist pursuant to section 55 of the ***Libraries and Archives Act 1988***. Held by: (1) Queensland Government; (2) Crime and Misconduct Commission; (3) Queensland State Archives; (4) Australian Senate; (5) Federal House of Representatives; and (6) Mr Kevin Lindeberg;

(j) QTU’s Acting Secretary Mr. Steve Knudsen letter of 27 February 1990 to DFSAIA Acting Director-General Ms. Ruth Lewin Matchett seeking access to the Heiner Inquiry documents pursuant to ***Public Service Management and Employment Regulation 65***. Held by: (1) QTU; (2) Queensland Government; (4) Queensland State Archives; and (5) Mr. Kevin Lindeberg;

(k) QPOA Assistant General Secretary Ms. Roslyn Mary Kinder’s letter of 1 March 1990 to DFSAIA Acting Director-General Ms. Ruth Lewin Matchett seeking access to the Heiner Inquiry documents and original complaints pursuant to ***Public Service Management and Employment Regulation 65***. Held by: (1) Mr. Kevin Lindeberg; (2) Crime and Misconduct Commission; (3) Queensland Police Service; (4) Queensland Government; (5) Australian Senate; (6) Federal House of Representatives; (7) Queensland State Archives; (8) Mr. Peter William Coyne; and (9) QPSU;

(l) Cabinet Submission for Cabinet Meeting of 5 March 1990 *inter alia* informing the Cabinet that the Heiner Inquiry documents were being sought by solicitor for a foreshadowed judicial proceeding but that the expected writ had not yet been served to commence the proceedings. This awareness, i.e. the state of mind of the doer, provides sufficient evidence to enliven the triggering elements of sections 129, 132 and/or 140 of the ***Criminal Code***. Held by: (1) Mr. Kevin Lindeberg; (2) Queensland Legislative Assembly; (4) Queensland Government; (5) Australian Senate; (6) Federal House of Representatives; and (7) Queensland State Archives;

- (m) DFSAIA Acting Director-General Ms. Ruth Lewin Matchett's memorandum of 19 March 1990 to Mr. Peter William Coyne** informing him that the question of access was still the subject of "on-going" legal advice from Crown Law. Held by: (1) Mr. Kevin Lindeberg; (2) Queensland Legislative Assembly; (4) Queensland Government; (5) Australian Senate; (6) Federal House of Representatives; and (7) Queensland State Archives;
- (n) DFSAIA Acting Director-General Ms. Ruth Lewin Matchett letter of 19 March 1990 to the Crown Solicitor** seeking advice regarding access to the original complaints pursuant to ***Public Service Management and Employment Regulation 65***, enclosing copies of same. Held by: (1) Mr. Kevin Lindeberg; (2) Queensland Legislative Assembly; (4) Queensland Government; (5) Australian Senate; (6) Federal House of Representatives; and (7) Queensland State Archives;
- (o) Crown Solicitor Mr. Kenneth O'Shea's letter dated 18 April 1990 to DFSAIA Acting Director General Ms. Ruth Lewin Matchett** confirming that Mr. Coyne had a legal entitlement to access the original copies pursuant to ***Public Service Management and Employment Regulation 65***, and returns photocopies of the original complaints. Held by: (1) Mr. Kevin Lindeberg; (2) Queensland Legislative Assembly; (4) Queensland Government; (5) Australian Senate; (6) Federal House of Representatives; and (7) Queensland State Archives;
- (p) Mr. Donald A. C Smith's letter dated 8 May 1990 to the Crown Solicitor Mr. Kenneth O'Shea** seeking to avoid legal obligations sets out in advice of 18 April 1990; Held by: (1) Mr. Kevin Lindeberg; (2) Queensland Legislative Assembly; (4) Queensland Government; (5) Australian Senate; (6) Federal House of Representatives; (7) and Queensland State Archives;
- (q) Crown Solicitor's Mr. Kenneth O'Shea letter of 18 May 1990 to DFSAIA Acting Director-General Ms. Ruth Lewin Matchett** assisting her, in accordance with her "expressed desire", to avoid her known obligation to provide access to Mr Coyne to the original complaints. Draft Crown Law letters to respective parties seeking access to the documents are provided to Ms. Matchett. Held by: (1) Mr. Kevin Lindeberg; (2) Queensland Legislative Assembly; (4) Queensland Government; (5)

Australian Senate; (6) Federal House of Representatives; and (7) Queensland State Archives;

- (r) **DFSAIA Acting Director-General Ms. Ruth Lewin Matchett letter of 22 May 1990 to (1) Mr. Peter William Coyne’s solicitor; (2) QPOA; and (3) QTU** indicating that the documents being legally sought [and known to be evidence for a foreshadowed judicial proceeding] have been destroyed and not in the Department’s possession. Held by: (1) Mr. Kevin Lindeberg; (2) Queensland Legislative Assembly; (4) Queensland Government; (5) Australian Senate; (6) Federal House of Representatives; (7) Queensland State Archives; and (8) QPSU.
- (s) **DFSAIA Executive Officer Mr. Trevor Walsh’s memorandum of 24 May 1990 to DFSAIA Acting Director-General Ms. Ruth Lewin Matchett** recording Mr. Peter William Coyne’s solicitor, Mr. Ian Berry’s, phone call of protest over the destruction of the evidence saying that “...**the department was in a lot of trouble.**” Held by: (1) Mr. Kevin Lindeberg; (2) Queensland Legislative Assembly; (4) Queensland Government; (5) Australian Senate; (6) Federal House of Representatives; and (7) Queensland State Archives;
- (t) **Mr Kevin Lindeberg’s internal memorandum dated 12 June 1990 to the QPOA Executive “The Heiner Inquiry at John Oxley Youth Centre”**. Immediately after being conditionally reinstated by the QPOA Council, when QPOA General Secretary Mr. Donald Martindale was approached by **ABC’s The 7.30 Report** presenter Mr. Alan Hogan to appear on the program to discuss the treatment of QPOA member Mr. Peter William Coyne and the destruction of the Heiner Inquiry documents, Mr. Martindale approached Mr. Lindeberg, as QPOA Media/Publicity Officer/Senior Organiser [in the face of having sacked him on 30 May 1990 over his handling of “the Coyne case”] to advise himself and the Executive what the union ought to do. *Inter alia* Mr. Lindeberg informed the QPOA Executive, in particular QPOA President Mr. William Henry Thornton Yarrow and QPOA General Secretary Mr. Donald Martindale (a) of the background to the establishment of the Heiner Inquiry and that QPOA members Mr. Peter William Coyne and Mrs. Anne Dutney were seeking access to certain Heiner Inquiry documents in which certain allegations had been made against them and that they were seeking to

do so under **Public Service Management and Employment Regulation 65**; (b) that DFSAIA Acting Director General Ms. Ruth Lewin Matchett had been informed of the importance of the “access question” to the QPOA because of its general applicability across the entire Queensland Public Service and that the QPOA was contemplating legal action along with the QTU, joining such legal action already under way by Mr. Peter William Coyne and Mrs. Anne Dutney; (c) that the QPOA ought to vigorously pursue the matter with (i) the media; (ii) the Public Sector Management Commission [PSMC]; and/or (iii) Premier Goss [while he warned the QPOA Executive that careful consideration should be given regarding Premier Goss because of potential [criminal] ramifications of the shredding]; and (d) that documents had been deliberately destroyed when known to be required for legal proceedings thereby being a potential breach of the **Criminal Code** which may mean: (i) if DFSAIA Minister the Hon Anne Marie Warner properly informed all members of the Goss Cabinet before they ordered the destruction of the evidence, that all said members may be [criminally] culpable; (ii) if the Goss Cabinet was not correctly informed by the responsible Minister, then only DFSAIA Minister Anne Marie Warner may be [criminally] culpable; (iii) if DFSAIA Acting Director General Ms Ruth Lewin Matchett did not properly inform her Minister, then she may be [criminally] culpable; and (iv) that Mr. Peter William Coyne was entitled to be treated “equally, justly and fairly” under section 12(3)(9) of the **Public Service Management and Employment Act 1988**; Held by: (1) Queensland Public Sector Union (QPSU); (2) Queensland Government; (3) Crime and Misconduct Commission; (4) Australian Senate; (5) Federal House of Representatives; (6) Queensland Police Service; and (7) Mr. Kevin Lindeberg;

- (u) Letter dated 15 September 1994 to Police Commissioner James P. O’Sullivan from Mr. Kevin Lindeberg** *inter alia* in relation to Police File MS93/25262 setting out (1) 12 points factual points relating to the destruction of the Heiner Inquiry documents sufficient to satisfy the triggering elements of sections 129, 132 and/or 140 of the **Criminal Code**; and (2) the potential unlawful conduct by certain CJC officers in handling his original complaint of 14 December 1990 [i.e. (i) ignored

evidence and failed to interview key witnesses; (ii) tampered with evidence; (iii) fabricated evidence; (iv) misquoted a statute in its findings; and (v) provided false and misleading evidence to the Australian Senate. Mr. Lindeberg suggests that *prima facie* breaches of the **Criminal Code** and **Criminal Justice Act 1989** exist involving the Queensland Cabinet and CJC. Held by: (1) Mr. Kevin Lindeberg; (2) Queensland Legislative Assembly; (4) Queensland Government; (5) Australian Senate; (6) Federal House of Representatives; (7) Queensland State Archives; and (8) Queensland Police Service;

(v) Letter dated 15 October 1994 to Police Commissioner James P. O’Sullivan from Mr. Kevin Lindeberg *inter alia* in relation to Police File MS93/25262 bringing to his attention an extraordinary DFSAIA meeting at “Yungaba” Kangaroo Point on 12 October 1994 attended by DFSAIA Minister the Hon Anne Marie Warner, DFSAIA CEO Ms. Ruth Lewin Matchett and her Executive at which “Issues Politically Damaging” were addressed which included “Heiner/Coyne/Lindeberg” when the issue was the subject of an “on-going” police investigation. He informs Commissioner O’Sullivan that the meeting was attended by “...some of the *prima facie* conspirators” and that it could reasonably be assumed that “...they agreed upon containing strategies.” Held by: (1) Mr. Kevin Lindeberg; (2) Queensland Legislative Assembly; (4) Queensland Government; (5) Australian Senate; (6) Federal House of Representatives; (7) Queensland State Archives; and (8) Queensland Police Service;

(w) Letter dated 22 November 1994 to Police Commissioner James P. O’Sullivan from Mr. Kevin Lindeberg *inter alia* [in relation to Police File MS93/25262] bringing to his attention the release by the Deputy Information Commissioner Mr. Gregory J. Sorensen of (1) Crown Solicitor’s advice of 16 February 1990 to the Acting Cabinet Secretary; (2) Acting Cabinet Secretary’s letter to the State Archivist dated 23 February 1990; (3) State Archives internal memoranda dated 23 February and 30 May 1990. Mr. Lindeberg believes that the Crown Solicitor’s advice of 16 February 1990 has been released because he had satisfied the demand placed on him by the Information Commissioner on 9 November 1993 to prove that the legal professional privilege exemption

could be overcome because he [Lindeberg] could provide sufficient *prima facie* evidence in "clear and definite terms" that a conspiracy to pervert the course of justice existed in respect of the shredding of the Heiner Inquiry documents. (See **Attorney-General (NT) v Kearney** (1985) 61 ALR 55). Mr. Lindeberg enclosed copies of (a) his letters dated 2 August and 6 September 1994 to Information Commissioner Frederick Albietz; and (2) Crown Solicitor's advice of 16 February 1990. He informs Commissioner O'Sullivan that (a) "...the Goss Government knowingly destroyed "public records" in order to obstruct court proceedings foreshadowed in Mr. Coyne's solicitor's letter dated 15 February 1990" ; and (b) "...the State Archivist was deceived by the Government on 23 February 1990 to achieve that objective when she gave her approval to destroy the evidence." Held by: (1) Mr. Kevin Lindeberg; (2) Queensland Legislative Assembly; (4) Queensland Government; (5) Australian Senate; (6) Federal House of Representatives; (7) Queensland State Archives; and (8) Queensland Police Service;

(x) Letter dated 24 November 1994 from Acting Assistant Commissioner Wayne J. King, State Crime Operations Command, to Mr. Kevin Lindeberg *inter alia* [in relation to Police File MS93/25262] informing him that (1) the fraud investigation into the QPOASF would continue; and (2) the appropriate body to investigate the shredding of the Heiner Inquiry documents was the CJC and therefore the investigation into that matter would be discontinued. Held by: (1) Mr. Kevin Lindeberg; (2) Queensland Legislative Assembly; (4) Queensland Government; (5) Australian Senate; (6) Federal House of Representatives; (7) Queensland State Archives; and (8) Queensland Police Service;

(y) Letter dated 29 December 1994 from Detective Senior Sergeant Merv J. Swindell to Mr. Kevin Lindeberg *inter alia* [in relation to Police File MS93/25262] acknowledging receipt of his letter dated 22 November 1994 and that the appropriate body to investigate the shredding of the Heiner Inquiry documents was the CJC. Held by: (1) Mr. Kevin Lindeberg; (2) Queensland Legislative Assembly; (4) Queensland Government; (5) Australian Senate; (6) Federal House of

Representatives; (7) Queensland State Archives; and (8) Queensland Police Service;

- (z) Letter dated 7 January 1995 to Police Commissioner James P. O’Sullivan from Mr. Kevin Lindeberg *inter alia*** [in relation to Police File MS93/25262] informing him of (1) the elements associated with the Heiner Affair and its previous improper handling by certain past and present CJC officers [e.g. fabricating evidence, attempted intimidation, misquoting and misinterpreting the law etc]; (2) the distress at reading that his complaint was being handed back to the CJC officers against whom he had complained; and (3) that under the **Police Service Administration Act 1990**, the police had a duty to act on the evidence and that it was totally inappropriate to refer his case back to the CJC. Held by: (1) Mr. Kevin Lindeberg; (2) Queensland Legislative Assembly; (4) Queensland Government; (5) Australian Senate; (6) Federal House of Representatives; (7) Queensland State Archives; and (8) Queensland Police Service;
- (aa) Letter dated 25 January 1995 from Assistant Police Commissioner Graham J. Williams, State Crime Operations Command, to Mr. Kevin Lindeberg *inter alia*** acknowledging his letter of 7 January 1995 and saying that (1) the Australian Senate was the appropriate body to investigate his [alleged criminal] matter; and (2) *“the ... [QPS] would be happy to address any matters which remains for investigation upon the report of the Senate Inquiry.* Held by: (1) Mr. Kevin Lindeberg; (2) Queensland Legislative Assembly; (4) Queensland Government; (5) Australian Senate; (6) Federal House of Representatives; (7) Queensland State Archives; and (8) Queensland Police Service;
- (bb) Queensland Police Service written record of Mr. Kevin Lindeberg’s visit to Police Headquarters on 7 August 1995.** At the meeting with Detective Senior Sergeant Peter Gleeson and Detective Senior Constable Darren Padget, Mr. Kevin Lindeberg informs them of Mr. Gordon Kent Rutherford’s attempts to intimidate him when he [Lindeberg] is aiding them in a related police investigation. Mr. Lindeberg leaves a copy of the document containing a relevant falsehood which Mr. Rutherford wants him to sign in order to lift the defamation

writ executed by Mr. Rutherford wherein Mr Rutherford claims that he [Rutherford] is not the subject of a police investigation when in fact he is.
Held by: (1) Queensland Police Service;

(cc) Queensland Police Service letter dated 31 August 1995 by Detective Chief Superintendent Wayne J. King to Mr Kevin Lindeberg regarding the concluded police investigation into possible misappropriation of monies from QPOASF. The letter states that charges against Messrs. Donald Martindale, Kerry Daly, Gordon Kent Rutherford and Ms. Roslyn Mary Kinder involved in the withdrawal of their superannuation monies from QPOASF would not be heard as it had no chance before the criminal courts. In the course of the police investigation, acting on legal advice, Messrs. Donald Martindale and Gordon Kent Rutherford decline to be interviewed by the police but provide written statements. [*This letter was not received by Mr. Lindeberg until 1996 because it was sent to the wrong house address*]. Held by: (1) Queensland Police Service; (2) Australian Senate; (3) Federal House of Representatives; and (4) Mr. Kevin Lindeberg;

(dd) Mr. Kevin Lindeberg's letter dated 16 January 1996 to Queensland Police Commissioner James P O'Sullivan referring specifically to the shredding of the Heiner Inquiry document complaint matter, and informing him that new clear and compelling evidence has emerged during the Senate hearing which a Senior Counsel [i.e. Mr Ian D. F. Callinan QC] advised may have enlivened certain sections of the **Criminal Code** [i.e. sections 129 and/or 132]. Mr. Lindeberg wished to know what the Police proposed to do about the matter affecting the due process involving "...the admitted deliberate destruction of known and foreseeable evidence to stop a citizen accessing the material in foreshadowed litigation." Held by: (1) Queensland Police Service; (2) Australian Senate; (3) Federal House of Representatives; and (4) Mr. Kevin Lindeberg;

(ee) Queensland Police Service letter dated 15 February 1996 to Mr. Kevin Lindeberg inter alia acknowledging Mr. Kevin Lindeberg's letter of 16 January 1996 concerning the "shredding of the Heiner Inquiry documents." It dismisses his [Heiner] request by referring to the QPS' previous letter of 31 August 1995 which dealt specifically with the

separate police complaint matter concerning possible misappropriation of monies from the QPOASF, not the so-called Heiner affair. Held by: (1) Queensland Police Service; (2) Australian Senate; (3) Federal House of Representatives; and (4) Mr. Kevin Lindeberg.

- (ff) The Miller QC 6 January 1997 advice to the Borbidge Queensland Government addressing the findings and recommendations of the Morris/Howard Report.** *Inter alia* the advice (a) misinterprets section 129 of the **Criminal Code**; (b) illegally permits the Indictment Schedule to prevail over the Code contrary to well-established case law; (c) fails to apply the law properly regarding the illegal destruction and/or disposal of the original complaints on 22 May 1990 by Ms. Matchett when being knowingly aided into the illegal enterprise by the Office of Crown Law; (d) fails to recognise that the **Morris/Howard Report** is not a proper brief upon which to adjudicate pursuant to his statutory function in respect of the laying or otherwise of criminal charges; and (e) fails to apply his prosecutorial discretion honestly and impartially. Held by: (1) Queensland Government; (2) Queensland Office of Cabinet; and (3) the Leader of the Office of the Queensland Opposition.
- (gg) Letter dated 13 December 2001 from Mr. Kevin Lindeberg to Crime Commissioner Tim Carmody SC [together with detailed submission]** *inter alia* setting out the background to his complaint of “a major crime” [i.e. the pack rape of a minor at the JOYC as reported in **The Courier-Mail** on 3 November 2001] and its relationship with the Heiner affair.
- (hh) Letter dated 19 December 2001 from Assistant Crime Commissioner John Callanan to Mr. Kevin Lindeberg** acknowledging his letter of complaint and *inter alia* (a) admitting that the rape incident reported in **The Courier Mail** fell within the legal definition under of **Crime Commission Act 1997** of “criminal paedophilia”; and (b) admitting that the QCC had a standing reference to investigate incidents of criminal paedophilia without need for a referral from the QCC’s management committee.
- (ii) Letter dated 21 December 2001 from Mr. Kevin Lindeberg to Assistant Crime Commissioner John Callanan** *inter alia* stating that (a) if the QCC had a “standing reference” under the **Crime Commission**

Act 1997 then an investigation ought to commence immediately [and therefore he requested the creation of a file and being told of its file number], or ought to have already been opened after **The Courier Mail** articles had been published; (b) its duty to act existed until midnight on 31 December 2001 before the expected amalgamation with the CJC came into legal effect; (c) because of the existence of real and/or apprehended bias within the CJC, it ought to be open for the QCC to recommend to the Queensland Government the need for the establishment of a special prosecutor to investigate the matter. Held by: (1) Crime and Misconduct Commission; and (2) Mr. Kevin Lindeberg.

- (jj) **Letter dated 10 May 2005 from Police Commissioner Robert Atkinson to Leader of the Queensland Opposition the Hon Lawrence Springborg MLA** *inter alia* (a) acknowledging that section 129 of the **Criminal Code** previously used in respect of Mr. Lindeberg's 1994 complaint concerning the destruction of the Heiner Inquiry documents was wrong, in light of **R v Ensbey**, and the matter may need to be revisited; and (b) that as the complaint had been referred to the CJC in 1994, the CMC may now have to be consulted. Held by: (1) Queensland Police Service; (2) Office of the Leader of the Queensland Opposition; (3) Queensland Government; (4) Crime and Misconduct Commission; and (5) Mr. Kevin Lindeberg.

3. Witnesses needed:

- (a) Mr. Kevin Lindeberg
- (b) His Honour Tim Carmody J – Federal Family Court;
- (c) Mr. John Callanan;
- (d) Mr. Brendan John Butler AM SC;
- (e) Mr. Michael Allen Barnes, State Coroner/SM;
- (f) Mr. David J. Bevan;
- (g) Mr. Mark Pierre Le Grand;
- (h) Mr. James Patrick O'Sullivan AC;
- (i) Mr. Royce Noel Miller QC;
- (j) Mr. Robert Atkinson;
- (k) Mr. Desmond Francis O'Neill

4. Witnesses likely to be available and where now located:

All of the above witnesses are available and, to the best of our knowledge, reside in Queensland.

5. TV video interview tapes available and where now located:

- (a) **Channel 9's Sunday program "Queensland's Secret Shame" 21 February 1999.** Held by: (1) **Channel 9's** archives; (2) Queensland Legislative Assembly Library; and (3) Mr. Kevin Lindeberg and others;
- (b) **Channel 9's Sunday program "Cover ups and Neglect" 28 March 1999.** Held by: (1) **Channel 9's** archives; (2) Queensland Legislative Assembly Library; and (3) Mr. Kevin Lindeberg and others;
- (c) **ABC's Australian Story "Three Little Words" Monday 17 May 2004;** Held by: (1) **ABC-TV** archives; (2) Queensland Legislative Assembly Library; and (3) Mr. Kevin Lindeberg and others; and
- (d) **ABC's The 7.30 Report Tuesday 23 May 2006.** Held by: (1) **ABC-TV** archives; (2) Queensland Legislative Assembly Library; and (3) Mr. Kevin Lindeberg and others.

6. Relevance of each such video:

- (a) **Channel 9's Sunday program "Queensland's Secret Shame" Sunday 21 February 1999.** A public admission is freely given by former Environment and Heritage Queensland Government Minister the Hon Pat Comben in which he admits that all members of the Goss Cabinet in attendance were aware that evidence contained in the Heiner Inquiry documents concerned the abuse of children in State care. Mr. Comben's public admission caught Ms. Warner by surprise wherein she claimed to have no knowledge what was in the Heiner Inquiry evidence, and made it her business **not to do so**. Mr. Comben threatened to sue **Channel 9** for misrepresentation on Monday 22 February 1999 but did nothing whatsoever in that regard. In the wake of the Hon Dean McMillan Wells MLA's later similar-in-character [privileged] admissions on 24 May 2006 in the Queensland Legislative Assembly, his attempted denial gives reasonable rise to the prospect that Mr. Comben may have been improperly pressured by others with a vested interest in the matter to

make such a legal threat, albeit designed only for public consumption in order to distract attention from the real issue;

- (b) **Channel 9's Sunday program "Cover ups and Neglect" Sunday 28 March 1999.** After attempting to refute his public admission in "**Queensland's Secret Shame**", **Channel 9 Sunday** rebroadcast former Environment and Heritage Queensland Government Minister the Hon Pat Comben's video taped evidence that all members of the Goss Cabinet in attendance were aware that evidence contained in the Heiner Inquiry documents concerned the abuse of children in State care to confirm that he was not misquoted. [See confirming [privileged] statement in the Queensland Legislative Assembly by the Hon Dean McMillan Wells MLA [former Attorney-General in the first Goss Queensland Government] in an adjournment debate on the Heiner affair on 24 May 2006 that the Goss Cabinet was aware of the allegations of abuse of children, which also included concerns about evidence from JOYC witnesses to Mr. Heiner which may have involved "criminal defamation"];
- (c) **ABC's Australian Story "Three Little Words" Monday 17 May 2004.** Reveals the relevance of **R v. Ensbey; ex parte A-G (Qld)** [2004] QCA 335 to the Heiner affair, the existence of child abuse at JOYC going to the *prima facie* crime of criminal paedophilia [within the meaning of the **Crime and Misconduct Act 2001**] before the gathered Heiner Inquiry documents were ordered destroyed; and Queensland Premier the Hon Peter Beattie's awareness of same;
- (d) **ABC's The 7.30 Report Tuesday 23 May 2006.** Reveals three former JOYC inmates, alleged to have been sexually assaulted [including Ms. Annette Harding], the shredding of relevant probative evidence gathered at the Heiner Inquiry, and the related *ex gratia*/special payment of \$27,190 to JOYC Manager Mr. Peter William Coyne on the *proviso* that certain events leading up to his relocation away from the Centre were never publicly broadcast.

7. Broadcast audio and/or interview tapes available, where now located and their relevance:

- (a) **ABC-Radio 612 4QR** Interview between former JOYC Youth Worker Mr. Michael Roch – called "Michael" on air - and presenter Mr. Stephen

Austin on 7 November 2001 in which Mr. Roch confirmed that he was asked questions about the alleged pack rape of Ms. Annette Harding during his appearance before the Heiner Inquiry. This broadcast provided supporting credible information to the Bruce Grundy **Courier Mail** articles of 3 and 8 November 2001 concerning the crime of "criminal paedophilia" of which the Queensland Crime Commission had a standing reference under the **Crime Commission Act 1997** to proactively investigate, but which it failed to do so upon its publication
 Transcript of the interview held by: (1) Federal House of Representatives; (2) Queensland Legislative Assembly; (3) Australian Senate; and (4) Mr. Kevin Lindeberg and others;

8. Documents tabled in Parliament, either Legislative Assembly (Qld), House of Representatives and/or Senate, where now located and their relevance:

- (a) **Queensland Cabinet submissions for February and March 1990 concerning the information upon which Members of the Executive Government of Queensland on 5 March 1990 ordered the destruction of the Heiner Inquiry documents. Tabled in the Queensland Legislative Assembly on 30 June 1998 by Queensland Premier, the Hon Peter Beattie MLA.** These submissions contain inculpatory evidence relevant to the triggering elements of sections 129, 132 and/or 140 of the **Criminal Code**. Copies are held by: (1) Queensland Legislative Assembly; (2) Federal House of Representatives; (3) Australian Senate; (4) Queensland Audit Office; (5) Queensland Government – the Office of Cabinet; and (6) Mr. Kevin Lindeberg.
- (b) **Report by the Senate Select Committee into Public Interest Whistleblowing entitled "*In the Public Interest*" tabled in the Australian Senate on August 1994 and chaired by Tasmanian Senator Jocelyn Newman.** The Report unanimously recommended that the Queensland Government revisit 9 "unresolved whistleblower cases," which included the Lindeberg disclosure case. Held by: (1) Australian Senate; (2) Federal Parliament; (3) Crime and Misconduct

- Commission; (4) Queensland Police Service; (5) Queensland Government; and (6) Mr. Kevin Lindeberg.
- (c) **Special Submission dated 7 August 1995 by barristers Messrs. Ian D. F. Callinan QC and Roland Peterson to the Senate Select Committee on Unresolved Whistleblower Cases** opining that those involved in the shredding of the Heiner Inquiry documents may be in *prima facie* breach of section 129 and/or 132 of the **Criminal Code**. Messrs. Callinan QC and Peterson advise that the CJC's strict, narrow interpretation of "judicial proceedings" was too significant to ignore. The submission is held by: (1) Australian Senate; (2) Queensland Government; (3) Crime and Misconduct Commission; and (4) Mr. Kevin Lindeberg.
- (d) **Report of the Senate Select Committee on Unresolved Whistleblower Cases entitled "*The Public Interest Revisited*" tabled in the Australian Senate in October 1995 and chaired by ALP Tasmanian Senator Shayne Murphy**. The Report described the order by the Queensland Government to destroy the Heiner Inquiry documents as "*...an act in poor judgement.*" Regarding Ms. Matchett's conduct from 19 March to 22 May 1990, the SSCUWC Report [at Point 5.41 page 61] found her responses to Mr. Coyne and **Solicitors Rose Berry Jensen** as unhelpful, and described it in the following terms: "*...The Committee regards her final advice to the solicitors as late as 22 May 1990 as unacceptable and reflecting bureaucratic ineptitude at best or deliberate deceit at worst.*" Held by: (1) Australian Senate; (2) Federal Parliament; (3) Crime and Misconduct Commission; (4) Queensland Police Service; (5) Queensland Government; and (6) Mr Kevin Lindeberg.
- (e) **The Morris/Howard Report into Allegations by Mr. Gordon Harris and Mr. John Reynolds and Allegations by Mr. Kevin Lindeberg tabled in the Queensland Legislative Assembly on 10 October 1996**. The **Morris/Howard Report** sets out certain *prima facie* charges against those involved in the destruction and/or disposal of the Heiner Inquiry documents, original complaint and photocopies of the original complaints and related matters [i.e. the unlawful disbursement of \$27,190], and recommends a public inquiry into Mr.

Lindeberg's allegations because of their seriousness and public interest considerations. The **Morris/Howard Report** is held by: (1) Queensland Legislative Assembly; (2) Queensland Government; (3) Queensland State Archives; (4) Federal House of Representatives; (5) Queensland Office of the Director of Public Prosecutions; (6) Crime and Misconduct Commission; and (7) Mr. Kevin Lindeberg and others;

- (f) **The Forde Commission of Inquiry into the Abuse of Children in Queensland Institutions June 1999 Report – Tabled in the Queensland Legislative Assembly on 8 June 1999.** This Report *inter alia* investigated the JOYC handcuffing incident in or around September 1989 involving three inmates to fences [pp170-177] finding the conduct to be unlawful and in breach of section 69(5) of the **Children's Services Act 1965** and Regulation 23(10) of the **Children's Services Regulations 1966**, but failed to consider it in terms of potential applicable offences under the **Criminal Code**, namely (i) assault, and (ii) deprivation of liberty. This unlawful conduct was known to have come before the Heiner Inquiry in late 1989/early 1990 by all Queensland Governments at relevant times, but was subsequently ordered to be destroyed by the Goss Cabinet to prevent its use in judicial proceedings or against the careers of the JOYC staff. The Forde Inquiry failed to investigate: (1) other alleged assaults incidents against children in care [i.e. involving Senior Youth Worker Mr. Frederick John Feige and others], (2) alleged sexual assaults incidents [i.e. involving Ms. Annette Harding and others [see **ABC's The 7.30 Report** of 23 May 2006]; or (3) Mr. Lindeberg's two submissions to the Forde Inquiry *inter alia* highlighting the destruction of relevant evidence to cover up known abuse of children at JOYC and the disbursement of public moneys [i.e. \$27,190] to Mr. Peter William Coyne, the Centre manager, on the *proviso* that certain "events leading up and surrounding his relocation from the Centre" were never publicly broadcast. The **Forde Report** is held by: (1) Queensland Legislative Assembly; (2) Queensland Government; (3) Queensland State Archives; (4) Mr. Kevin Lindeberg and others.
- (g) **The Lindeberg Petition tabled in the Queensland Legislative Assembly on 27 October 1999 [Tabled Document No 2596]. The**

Lindeberg Petition is an 84-page document which sets out the systemic corruption known to be associated with the Heiner affair as at 13 September 1999. Held by: Queensland Legislative Assembly; (2) Queensland State Archives; (3) Crime and Misconduct Commission; (4) Federal Parliament Standing Committee on Legal and Constitutional Affairs; (5) Australian Senate; (6) Queensland Audit Office; and (7) Mr. Kevin Lindeberg;

- (h) **DFSAIA/DFS files on 24 May 1988 Sexual Assault Incident at the Lower Portals [Harding, Annette Louise/John Oxley File/Admin File 1904/ aged 14 years and 4 months]: Tabled before the House of Representatives Standing Committee on Legal and Constitutional Affairs on 23 October 2003.** *Inter alia* the file contains statements by DFS Minister the Hon Peter McKechnie MLA and Executive staff [i.e. Messrs. Alan C. Pettigrew and George Nix], JOYC staff [i.e. Messrs. Peter Coyne, Jeffrey Manitzky [psychologist], Gordon Cooper [teacher], Robert J. O’Hanley [teacher], Trevor Cox, Mark Freemantle, Rudi Pikelharing, and Ms Karen Mersiades [Teacher-in-charge] Lorraine Hayward, Jenny Foote, Sarah Moynihan, and related professionals [i.e. Dr. Maree Crawford – Paediatrician Mater Misericordiae Childrens Hospital] in respect of what each did when the sexual assault incident came to his/her attention. The file contains a “blanked out” 2-page **Freemantle Memorandum** [blanked out under freedom of information processes] dated around 2 June 1988, by JOYC Youth Worker Mr. Mark J. Freemantle to JOYC Manager in which it records his conversation with Mr. Coyne and Ms. Wendy Kopp regarding [quote] “... *this information was to say the least, startling in my opinion, had to be passed to management as soon as possible*” and that Mr. Coyne “...*requested that I not speak to other staff members about this incident until he had had the opportunity to speak to all the persons involved and gather more information himself, this I did.*” Held by: (1) Queensland Government; (2) Crime and Misconduct Commission; (3) Queensland Police Service; (4) Federal House of Representatives; (5) Australian Senate; and (6) Mr. Kevin Lindeberg.

- (i) **August 2004 Report into the Heiner affair by the House of Representatives Standing Committee on Legal and Constitutional Affairs as part of its national inquiry into "Crime in the community; victims, offenders and fear of crime" Volume Two. Tabled in the House of Representatives by the Committee chairman the Hon Bronwyn Bishop MP on 11 August 2004. The Bishop Report *inter alia* recommends that (1) all members of the Goss Queensland Cabinet of 5 March 1990 be charged pursuant to section 129 of the **Criminal Code**; (2) an independent Special Prosecutor be appointed to investigate the Heiner affair; and (3) the **6 January 1997 Miller QC advice** regarding the findings and recommendations of the **Morris/Howard Report** be made public.** Held by: (1) Crime and Misconduct Commission; (2) Queensland Government; (3) Office of the Director of Public Prosecutions, Queensland; (4) Queensland Audit Office; (5) Queensland Police Service; (6) Federal House of Representatives; (7) Office of the Leader of the Queensland Opposition; and (8) Mr. Kevin Lindeberg and others.

9. Other material that is relevant, the reason for its relevance and where now located (if known):

- (a) **Memorandum from DFSAIA officer Mr. Ian Peers to DFSAIA acting Director General Ms Ruth Lewin Matchett** [undated] written sometime between 9 December 1989 and 23 January 1990 setting out various ways in which the Heiner Inquiry and its Report might be treated. Relevantly, [on page 2] the **Peers Memorandum provides evidence of their state of knowledge concerning of the nature of the potential seriousness of the issues which Mr. Heiner was required to investigate, which may potentially warrant police involvement.** *Inter alia* it states [Quote]: "If it is a written report then there will be three choices: (1) not to release the report; (2) release the report but disclaim its findings; or (3) release the report unconditionally. If it is not released, **there will be allegations of a cover-up and intrigue about its contents will continue into the future.** If it is released and potentially harmful to individuals, the Department will probably face legal action as well as loss of senior staff at the Centre. It is

suggested, therefore, that Mr. Heiner should be requested to present his report in three parts. Part A should be a written document able to be released publicly. It should do no more than answer issues in line with the Terms of Reference, for example: (a) **Is there any evidence which should warrant a police investigation?** (b) **Is there evidence upon which disciplinary action by this Department might be based?** As a result of the Inquiry, are there any procedural guidelines that he would recommend? **As a result of the Inquiry, did he form any opinions about the design or adequacy of the building? If he wishes then to list any "evidence" upon which police investigations or disciplinary action should be based, this could be included in a confident Part B report to the Director-General.** There could be reference to such a confidential report in the Part A documents but it should protect any individuals involved." Held by: (1) Mr. Kevin Lindeberg [obtained under FOI application]; (2) Queensland Government; and (3) Crime and Misconduct Commission. [Underlining and bold added].

- (b) **The Sun-Herald 25 July 1993 (p26) – "Nats call for Coyne Inquiry" – journalist Mr. Chris Griffith** *inter alia* reports on (a) the "confidentiality/gagging" clauses of the **12 February 1991 Deed of Settlement** which stated that Mr. Peter William Coyne would "...forebear to take any action in any form whatsoever which may have jurisdiction in respect of any of such issues and events"; (b) a spokesperson for the Department of Employment, Vocational Education, Training and Industrial Relations confirming that (i) "...senior public servants at that time were normally entitled only to time off in lieu, not to payment, for overtime and extra travelling time"; (ii) ..."Time off in lieu was forfeited on termination and not paid out"; (c) Queensland Auditor-General Mr. Barrie Rollason confirmed that "...at the time Ms Warner could make a special payment to Coyne – but only after approval by the Governor-in-Council"; and (d) DFSAIA Minister the Hon Anne Marie Warner's statement to the Queensland Legislative Assembly that (i) neither she nor DFSAIA Acting Director-General Ms. Ruth Lewin Matchett were aware of the contents of the inquiry documents at the time Mr. Peter William Coyne was moved; (ii) disposal of the material reduced the risk of legal action against the parties involved such as the youth workers employed for caring for children. Held by: (1) **The Sun-Herald** archives; (2)

Queensland Legislative Assembly; (3) Crime and Misconduct Commission; and (4) Mr. Kevin Lindeberg;

- (c) ***The Courier-Mail of Thursday 1 September 1994 "Cabinet corrupt: senator" by journalist Mr. Sid Maher*** *inter alia* reports on (a) Queensland Senator Warwick Parer claiming that the [Goss] Queensland Cabinet's decision to shred documents to reduce the risk of being sued was illegal and showed "...*core administrative and political corruption*"; (b) the CJC investigation having been carried out by Mr. Noel Francis Nunan, former **Caxton Street Legal Service** lawyer and colleague of Premier Wayne Goss, and his [Nunan's] subsequent appointment by the Goss Queensland Government as a magistrate in July 1994; and (c) whether or not the Crown Solicitor had advised the Cabinet to shred public records to reduce the risk of legal action because (i) "...*if he did, then he advised the Goss cabinet on how to commit a prima facie offence of obstructing justice*"; and/or (ii) "...*if he did not, he must be forced publicly to say so because he is an officer of the court and a public official and the Goss Government is attempting to cover up its own offence behind a smokescreen of non-existent Crown law advice.*" Held by: (1) Queensland Newspapers Limited archives; (2) Crime and Misconduct Commission; (3) Queensland Legislative Assembly; and (4) Mr. Kevin Lindeberg.
- (d) ***The Courier-Mail of 8 September 1994 "No legal action at Shredding time: Warner"*** *inter alia* then DFSAIA Minister the Hon Anne Marie Warner, admits, outside Parliament, that the Queensland Government was aware of letters from solicitors placing the Queensland Government on notice, but that "...*We are saying those letters did not constitute the commencement of legal proceedings. We sought advice about that.*" She confirmed that Mr. Peter William Coyne's solicitor letter of 15 February 1990 stating "(*an*) *intention to commence court proceedings*" was received on 19 February 1990. Held by: (1) Queensland Newspapers Limited archives; (2) Federal House of Representatives; (3) Australian Senate; (4) Queensland Government; and (5) Mr. Kevin Lindeberg.
- (e) ***The Weekend Bulletin 10-11 September 1994 (p11) - "The Loneliness of a long-distance Whistleblower"*** *inter alia* reports on the toll of Mr. Kevin Lindeberg's struggle for justice which he says is driven by two factors (a) "...*the issues involved in the*

shredding of those documents are of such importance to the delivery of good government in Queensland and the legal system in this State that they cannot be put aside.”; and (b) “...I have an obligation to my children, if to nobody else, to pursue this matter to the end. I fervently believe that. I couldn’t live with myself if I dropped the thing and in years to come, my kids came to me and asked why I didn’t hang in there a bit longer to see the thing thorough.” Held by: (1) Queensland Newspapers Limited archives; (2) Queensland Legislative Assembly; (3) Crime and Misconduct Commission; and (4) Mr. Kevin Lindeberg.

- (f) ***The Weekend Independent of 14 October 1994 (p2) – “Shredding inquiry sought” by student journalist Ms. Paula Doneman*** *inter alia* the article recounts the basic facts behind the shredding including a speech in the Australian Senate by Queensland Democrats Senator John Woodley. Mr. Kevin Lindeberg reaffirms a meeting with DFSAIA Acting Director General Ms. Ruth Lewin Matchett on 23 February 1990 saying (i) *“...I told her officially that the unions would be financially supporting Mr. Coyne in his legal action, and we actually discussed the litigation and its possible outcome.”* ; (ii) *“..There was a witness to the meeting. I was assured that the material was safe with Crown Law, and that she was still waiting for the Crown Solicitor’s advice on the matter.”* ; and (iii) regarding the cover-up, *“...This has not been a picnic but the predicament facing anyone who touched the Peter Coyne case and the shredding is of their own making, not mine. They are all authors of their own predicament.”* Held by: (1) University of Queensland’s School of Journalism and Communications; (2) Queensland Legislative Assembly; (3) Crime and Misconduct Commission; and (4) Mr. Kevin Lindeberg.
- (g) ***The Courier Mail [Wednesday] 13 May 1998 “Paedophile claims scrutinised again” by journalist Mr. John Lehmann.*** The article *inter alia* states that: (1) the Queensland Crime Commission [QCC] is set to launch a fresh investigation into paedophilia allegations surrounding former CJC officer, Director of Crime Prevention, Mr. Robert Hailstone; (2) DPP Mr. Royce Miller QC had requested that Queensland Police Commissioner James O’Sullivan refer the Hailstone file to the QCC; and (3) QCC Commissioner Carmody signalled that the QCC would investigate the allegations, and said *“...The Crime Commission does have a standing reference to investigate criminal paedophilia and it will fulfil its statutory functions appropriately.”*

- (h) ***The Courier-Mail* article by journalist Mr. Michael Ware “Shreds of Evidence”** confirming that the Heiner affair has never been properly investigated and if anyone were to suggest otherwise then he ought to be laughed at. Held by: (a) Queensland Newspapers Limited archives; (b) Queensland legislative Assembly; and (c) Mr. Kevin Lindeberg;
- (i) ***The Courier-Mail* articles on 3 and 8 November 2001 by journalist Mr. Bruce Grundy revealing the alleged pack rape of a female minor held in the care and custody of the State at the JOYC, and that evidence of the incident came before the Heiner Inquiry. This article provided credible information concerning the crime of “criminal paedophilia” of which the Queensland Crime Commission had a standing reference under the **Crime Commission Act 1997** to proactively investigate, but which it failed to do so upon its publication.** Held by: (1) Queensland Newspapers Limited archives; (2) Crime and Misconduct Commission; (3) Federal House of Representatives; (4) Australian Senate; and (5) Mr. Kevin Lindeberg;
- (j) ***The Courier-Mail* 23 September 2003 “Jail for family mystery killing” (p6) by journalist Tony Keim.** *Inter alia* the article leads by stating: : “A puzzling decade-old Brisbane murder was solved when a man walked into a police station and confessed to the 1990 shooting of his cousin, a court was told yesterday. Prosecutor Brad Farr said Brendan Ryan Turbane, 29, was not interviewed by the police over the shooting death of Leonard James McAvoy, 25, despite also having been shot. Mr. Farr said Turbane would probably have never been suspected of the shooting had he not gone to police in January last year to reveal McAvoy did not die in a random drive-by shooting.” The article goes on: “Turbane was due to stand trial yesterday on a charge of murder, but the Crown agreed not to proceed after he indicated he would plead guilty to the lesser charge. The court was told officers at Dutton Park police station were stunned on January 1 last year, when Turbane walked into and confessed to killing McAvoy. Mr. Farr said Turbane had gone to police after his mother called him a murderer and because of his inability to cope with the responsibility of his cousin’s death.” The article said further: “Mr Farr said later that night Turbane, then aged 16 and affected by alcohol and drugs, shot his cousin in the chest at close range. He said Turbane dropped the double-barrel shot-gun by reflex and that a second shot discharged and lodged in his own leg. The Court was told police initially believed Turbane,

who sustained serious injuries to his leg, also had been a victim. However, Mr. Farr said Turbane was left stunned when police did not interview him about the shooting and amazed when not quizzed about it by his family."

Held by: (1) Queensland Newspapers Limited archives; (2) Queensland Police Service; (3) Queensland University School of Journalism and Communication's newspaper ***The Independent Monthly***; and (4) Mr. Kevin Lindeberg.

- (k) **Queensland State Archives Disposal Authority Form (QSA-TS-026)** *inter alia* setting out the scope of disposal authority under section 61 of the **Libraries and Archives Act 1988** [previously numbered section 55 before 1997] by which public records may be lawfully authorised for disposal. It relevantly states that: Public records **must not be disposed of** if they are required: (i) for any civil or criminal court action which involves or may involve the State of Queensland or any agency of the State; or (ii) because the public records may be obtained by a party to litigation under the relevant **Rules of Court**, whether or not the State is a party to that litigation; or (iii) pursuant to the **Evidence Act 1977**; or (iv) for any other purpose required by law. Held by: (1) Queensland Government; (2) Queensland State Archives; and (3) Mr. Kevin Lindeberg.
- (l) **The unexpurgated Freemantle Memorandum dated on or about 2 June 1988 being an item of evidence in the DFSAIA/DFS files on 24 May 1988 Sexual Assault Incident at the Lower Portals [Harding, Annette Louise/John Oxley File/Admin File 1904/ aged 14 years and 4 months]:** The **unexpurgated Freemantle Memorandum** was accessed by solicitors Family Law Doyle, Keyworth and Harris on 4 July 2007 acting on behalf of their client Ms. Annette Harding pursuant to freedom of information application [FOI/01/06: See Department of Communities FOI officer Ms. Karmen Herriman]. The document was released by the authorization of its owner, Ms Harding. The document reveals the previously blanked out passages in the Freemantle Memorandum referred to in the Audit. Relevantly, the freshly released passages by the Queensland Government in the **unexpurgated Freemantle Memorandum** concerns a conversation between Youth Worker Mr. Mark J Freemantle and Mr. Brendan Turbane (resident of Blaxland Wing) and consequent actions, state *inter alia*: [a] [Quote] *"Another two boys, namely [Blank] along with the previously named*

boys were all fondling and caressing Annette, all over her body. [Blank] told me that Annette was inviting them to do what they wanted." [b] [Quote] "[Blank] said that the boys took off their jumpers and laid them down so Annette could lay on the ground and not hurt her back." [c] [Quote] "After this, [Blank] tells me, [Blank] had sexual intercourse with Annette Harding. While this was happening, [Blank] said [Blank] and [Blank] were both watching this and masturbating." [d] [Quote] Later in the day, [Blank] informed me that not only did [Blank] have sex with Annette, but [Blank] did as well. I asked [Blank] whether he did or didn't and he told me that he did have sex with Annette as well." [e] [Quote] "So the story goes, both [Blank] took turns at having sex with Annette while the other three boys watched and masturbated." [f] [Quote] "At this stage, I asked [Blank] "Well, where were the staff while all this was going on?" [Blank] replied, "They were all down the bottom of the hill talking." [g] [Quote] "[Blank] said that one staff member, namely Jeff Manitzky, had come up to where the young people were and had seen [Blank] masturbating and said "Cut that out." [Blank] ran off into the bush and then returned shortly." [h] [Quote] "I asked [Blank] whether either he or [Blank] had ejaculated into Annette. [Blank] went off into the bush and fertilized the trees. [Blank] said he did the same (meaning they had both masturbated instead of ejaculating during sex)." [i] [Quote] "[Blank] also informed me that Annette had gone crying to the staff after this incident and he had overheard the staff saying how distressed they were feeling for Annette and her situation." [j] [Quote] "The boys discussed this situation together and they assumed that the teachers had already sided with Annette so because they didn't want to get into trouble for something they didn't really see as really being wrong, they would try and abscond." Held by: (1) Queensland Government; (2) Crime and Misconduct Commission; (3) Queensland Police Service; (4) Solicitors Family Law Doyle, Keyworth and Harris ; (5) Mr Bruce Grundy, and (6) Mr. Kevin Lindeberg.

- (m) **The unexpurgated letter dated 27 May 1988 from Mr Peter William Coyne to DFS Deputy Director-General, Mr George E Nix being an item of evidence in the DFSAIA/DFS files on 24 May 1988 Sexual Assault Incident at the Lower Portals [Harding, Annette Louise/John Oxley File/Admin File 1904/ aged 14 years and 4 months]:** The **unexpurgated Coyne/Nix letter** was accessed by solicitors Family Law

Doyle, Keyworth and Harris on 4 July 2007 acting on behalf of their client Ms. Annette Harding pursuant to freedom of information application [FOI/01/06: See Department of Communities FOI officer Ms. Karmen Herriman]. The letter was released by the authorization of its owner, Ms Harding. The letter reveals the previously blanked out passages in the referred to in the Audit. Relevantly, the freshly released passages state *inter alia*: [a] [Quote] “[Blank] indicated he masturbated while watching [Blank] and [Blank] have sexual intercourse with Annette Harding. He indicated [Blank] were near by but did not engage in sexual intercourse. He also stated Annette was a willing participant in these activities.” [b] [Quote] “[Blank] indicated he initiated having sexual intercourse with Annette as well as having sexual intercourse with Annette. He said [Blank] had sexual intercourse with Annette. He said all the other boys were watching and masturbating. He stated that Annette was a willing participant.” [c] [Quote] “[Blank] indicated he was standing near by when [Blank] and [Blank] had sexual intercourse with Annette. He said he was not involved in any way.” [d][Quote] “[Blank] indicated that [Blank] had sexual intercourse with Annette. He said he only kissed Annette. He also said Annette participated willingly. [Blank] stated clearly that both he and [Blank] had sexual intercourse with Annette while [Blank] watched and masturbated. He stated Annette was a willing participant.” Held by: (1) Queensland Government; (2) Crime and Misconduct Commission; (3) Queensland Police Service; (4) Solicitors Family Law Doyle, Keyworth and Harris (5) Mr. Bruce Grundy, and (6) Mr. Kevin Lindeberg.

10. Relevant Case Law:

Section 129 of the *Criminal Code*:

R v Ensbey; ex parte A-G (Qld) [2004] QCA 335; ***R v Rogerson and Ors*** (1992) 66 ALJR 500; ***R v Selvage and Anor*** [1982] 1 All ER 96; ***R v Vreones*** [1891] 1 QB 360; ***R v Sharp*** (11) (1938) 1 All ER 48; ***The Queen v Murphy*** (1985) 158 C.L.R. 596

Use of “Includes” in definition equates to enlargement

Cohns Industries Pty Ltd v Deputy Federal Commission of Taxation (1979) 24 ALR 658; ***Dilworth v Commissioner of Stamps*** [1899] A.C. 99; ***YZ Finance Co Pty Ltd v. Cummings*** 109 CLR 395
Duty on Crown Law Legal Officers:
Alfred Crompton Amusement Machines v Customs & Excise [1972] 2 QB 192

Mischief revealed of secret files being held on public servants and remedied by Public Service Management and Employment Regulation 65
Wixted v State of Queensland QSC 679 of 1982

Contracts prejudicial to the administration of justice

A v Hayden (1984) 156 CLR 532.

Official corruption

Herscu v The Queen [1991] HCA 40; (1991) 173 CLR 276 F.C. 91/033 (21 October 1991)

Improper warehousing of documents to avoid disclosure/discovery

British American Tobacco Australia Services Limited v Cowell (as representing the estate of Rolah Ann McCabe, deceased) [2002] VSCA 197

Contracts to defraud the revenue

Miller v Karlinski (1945) 62 TLR 85; ***Effie Holdings Properties Pty Ltd v 3A International Pty Ltd*** (1984) ANZ Conv R 503;

Contracts tending to corrupt public officials

Wilkinson v Osborne (1915) 21 CLR 89; ***Horne v Barber*** (1920) 27 CLR 494;
Wood v Little (1921) 29 CLR 564

Contracts involving Oppression or undue influence

Williams v Bayley (1866) LR 1 HL 200

Obstruction of justice before judicial proceedings commence:

R v Rogerson and Ors (1992) 66 ALJR 500; ***R v Selvage and Anor*** [1982] 1 All ER 96; ***R v Vreones*** [1891] 1 QB 360; ***R v Sharp*** (11) (1938) 1 All ER 48; ***Reg v Spezzano*** (1977) 76 DLR (3d), at p163; ***Goodman v Mayor of Melbourne*** (1861)

1 W. & W. (L) 4; **R v Taylor** (1863) 2 W. & W. (L) 23; **South Australian Banking Co. v Horner** (1968) 2 S.A.L.R. 263; **Morton v Union Steamship Co. of New Zealand Ltd** (1951) 83 C.L.R. 402; **R v Bailey** (1956) N.I. 15 at p16; **Food v Whiddett** (1985) 6 F.C.R. 475; **The Queen v Murphy** (1985) 158 C.L.R. 596; **British American Tobacco Australia Services Limited v Cowell** (as representing the estate of Rolah Ann McCabe, deceased) [2002] VSCA 197; **Arthur Andersen LLP v United States** in 544 US 2005;

Ignorance of the Law/Mistake of Law/Mistake of Fact:

Ostrowski v Palmer [2004] HCA 30 (16 June 2004); **Blackpool Corporation v Locker** [1948] 1 KB 349 at 361; **He Kaw Teh v The Queen** (1985) 157 CLR 523 at 572; **Thomas v The King** (1937) 59 CLR 279 at 305-306; **Von Lieven v Stewart** (1990) 21 NSWLR 52;

Acting on erroneous advice is no excuse:

Olsen v The Grain Sorghum Marketing Board; Ex parte Olsen [1962] Qd R 580, **Loch v Hunter; Ex parte Loch** Unreported, Full Court of the Supreme Court of Queensland, 1 May 1957, Stanley, Mack and O'Hagan JJ; **Cambridgeshire and Isle of Ely County Council v Rust** [1972] 2 QB 426; and **Power v Huffa** (1976) 14 SASR 337;

The Indictment Schedule subordinate to the Criminal Code:

R v His Honour Judge Morley and Mellifont [1990]1 Qd R 54

Cabinet/Crown Privilege/Parliamentary Privilege justiciable:

Sankey v. Whitlam (1978) 142 CLR 1; **Egan v Willis** [1998] HCA 71 (19 November 1998); **Hamilton v Al Fayed** [2000] 2 WLR 609 at 615;

Exemption to claim of legal professional privilege

R V Cox & Railton (1884) 14 QBD 153; **AWB Limited v Honourable Terence Rhoderic Hudson Cole** (No 5) [2006] FCA 1234; **Grant v Downs** (1976) 135 CLR 674; **Waterford v Commonwealth** (1987) 163 CLR 54; **Attorney-General (NT) v Kearney** (1985) 158 CLR 500; **O'Rourke v Darbishire** [1920] AC 581; **Attorney-General (NT) v Maurice** (1986) 161 CLR 475; **Goldberg v Ng** (1995) 185 CLR 83

Legal professional privilege – sole and dominant purpose tests

Grant v Downs (1976) 135 CLR 674; ***Esso Australia Resources Limited v Federal Commissioner of Taxation*** (1999) 201 CLR 49.

Legal Right to Discovery:

Davies v Eli Lilly & Co. [1987] 1 All ER 801; ***Huddart, Parker & Co Pty Ltd v Moorehead*** (1909) 8 CLR 330, 357;

Executive Government not above the Law:

F.A.I. Ltd v Winneke (1982) 151 CLR 342; ***Nicholas v The Queen*** [1998] HCA 9; ***A v. Hayden*** (1984), 156 CLR 532; ***Ridgeway v The Queen*** (1995) 184 CLR 19; ***Olmstead v United States***, 277 U.S. 438, 475 (1928).

Upholding the rule of law/Maintaining confidence in government/Doctrine of the separation of powers:

Ebner v The Official Trustee in Bankruptcy; Clenae Pty Ltd v ANZ Banking Group [2000] HCA 63 (7 December 2000); ***Patrick Stevedores Operations No. 2 Pty Ltd & Ors v Maritime Union of Australia & Ors*** [1998] 397 FCA; ***Walker v New South Wales*** (1994) 182 CLR 45, 49-50; ***Gouriet v Union of Post Office Workers and others*** [1977] 1 All ER 696; ***Attorney General (on the relation of McWhirter) v Independent Broadcasting Authority*** [1973] 1 All ER 689, [1973] QB 629 at 649; ***Attorney General v Great Eastern Railway Co*** (1879) 11 Ch D 449; ***Sebel Product Ltd v Commissioner of Customs and Excise*** (1949) Ch 409; ***Olmstead v United States***, 277 U.S. 438, 475 (1928).

Arbitrary acts – Without reasonable cause:

Quinion vs Home [1906] 1 Ch.593, per Farwell J at pp603-04; ***Mills vs Cannon Brewery Co*** [1920] 2 Ch 38, per Lawrence J at p45

Real and/or Apprehended Bias:

Metropolitan Properties Co. (F.G.C.) Ltd. v Lannon (1969) 1 QB 577 at p599; ***Livesey v New South Wales Bar Association*** [1983] 151 CLR 288 at 294-294; ***Vakauta v Kelly*** (1989) 167 CLR 568 F.C. 89/040; ***Reg. v. Watson; Ex parte Armstrong*** (1976) 136 CLR 248, at pp 258-263;

Protagonist at law:

R v Australian Broadcasting Tribunal; Ex parte Hardiman (1980) 144 CLR 13;

Abuse of process

Walton v Gardiner (1993) 177 C.L.R. 378

COUNT 58

Section 87 of the *Criminal Code* – Official Corruption in regard to the Conduct of certain officials of the Queensland Crime Commission in respect of their handling of the allegations by one Kevin Lindeberg and related matters at certain material times.

That on divers dates between the thirteenth day of December 2001 and the thirty-first day of December 2001, at Brisbane in the State of Queensland, one **John Callanan**, to the extent of his involvement, being a holder of office in the Queensland Crime Commission, pursuant to the ***Crime Commission Act 1997*** at material times, did corruptly confer an advantage on another in respect the handling of allegations by one **Kevin Lindeberg** by failing to act honestly, impartially and in the public interest. That is, one **John Callanan**:

- (1) following the lodgement of a complaint by Mr. Kevin Lindeberg on 13 December 2001 with Commissioner Carmody, did fail to establish a QCC file and to investigate, pursuant to a standing reference under section 47(6) of the ***Crime Commission Act 1997***, an incident of criminal paedophilia concerning the alleged sexual assault of a 14 years and 4 months old female inmate of the John Oxley Youth Detention Centre at the Lower Portals, Mt. Barney during a supervised bush outing on or about 24 May 1988.

SUMMARY OF COUNT 58

58.1 The summary of Count 57 concerning Crime Commissioner Timothy [Tim] Carmody SC may be replicated for Count 58. Both Crime Commissioner Carmody and the accused, **Assistant Crime Commissioner John Callanan**, were equally aware of the relevant facts at one and the same time.