THE
FORDE COMMISSION OF INQUIRY
INTO
THE ABUSE OF CHILDREN IN GOVERNMENT
AND
NON-GOVERNMENT INSTITUTIONS
OR
DETENTION CENTRES

SUBMISSION
ON

THE SHREDDING

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18 September 1998

Tabled in the Queensland Legislative Assembly (Thursday 4 March 1999 State *Hansard* p287)

ABBREVIATIONS USED IN THIS SUBMISSION

ACA	Academy of Certified Archivists (of the United States of America)
ASA	Australian Society of Archivists
AWU	Australian Workers Union
CJC	Criminal Justice Commission
DFSAIA	Department of Family Services and Aboriginal and Islander Affairs
DPP	Director of Public Prosecutions
JOYC	John Oxley Youth Detention Centre
MLA	Member of Legislative Assembly
PSME	Public Service Management and Employment
QPOA	Queensland Professional Officers Association, Union of Employees
QPS	Queensland Police Service
QSSU	Queensland State Services Union
QTU	Queensland Teachers' Union
SAA	Society of American Archivists
SPSFQ	State Public Services Federation Queensland, Union of Employees

Content

Introduction

This submission is written in good faith and in the public interest. It is totally documented. It contains compelling evidence of the possible illegal conduct concerning the governance of Queensland and the welfare of children held in care and custody by the Crown.

A bastion of hope and justice

As a universal principle, the Crown/State - the Fountain of Justice - should always be seen as a bastion of hope and justice. It is especially important to maintain the integrity of that bastion for children who may or have suffered abuse at the hands of those with control over their young lives.

In that sense, any effort by the Crown/State (ie Executive Government and/or its agents) to knowingly ignore, destroy evidence of or cover up suspected child abuse of children in its care and control should never be tolerated or excused in any decent caring society governed by the rule of law.

I submit that governments cannot be permitted to destroy evidence of suspected child abuse perpetrated by Crown employees against children in lawful custody or care of the Crown to prevent public exposure and liability as well as possible prosecution of the offenders for whatever reason. Equally, governments cannot be permitted to destroy public records when it knows that they are evidence for pending or impending court proceedings and when done for the express purpose of preventing their use in those proceedings.

If it is also acceptable for Ministers of the Crown who authorised a shredding years earlier to obstruct justice and then many years later to be party to an Executive Government decision to establish this inquiry to investigate those "shredded allegations" of child abuse but not their own earlier action, [See opinion of Mr Robert (Bob) F Greenwood QC[1]] then we have a state of anarchy and derision - where nothing matters except survival by remaining silent in the face of systemic corruption and abuse of office.

Eminent legal advice says that the law does not permit it. I further submit that if we, as a society purportedly governed by the rule of law, allow that conduct to stand just because a cabinet may have done it, then equality before the law and respect for the law in Queensland are dead.

This submission only addresses, in effect, the shredding of the Heiner Inquiry documents. It makes no judgments one way or the other in respect of the possible illegality of

[1] See Attachment Four

suspected child abuse that occurred at JOYC around 1989/1990 because that is for proper authorities to decide upon.

The shredding has many serious facets to it. It represents at its heart a serious *prima facie* criminal cover-up by the Executive Government of Queensland of suspected child abuse by destroying the evidence and, at the same time, an obstruction of justice perpetrated against public servant Mr Peter Coyne, followed by a concerted cover up by the system of those *prima facie* serious offences.

I became a victim of the shredding while acting as Mr Coyne's union advocate. I had a duty to seek lawful access to the Heiner Inquiry documents on his behalf. I lost my career soon after inadvertently learning from a staff member of then Minister for Family Services and Aboriginal and Islander Affairs the Honourable Anne Warner MLA about the Government's secret plans to destroy the documents. I had been assured only days earlier that they were secure with the Office of Crown Law. I objected to the shredding.

For over eight years I have sought to have the truth revealed but systemic corruption in Queensland's "post-Fitzgerald era" has thwarted those efforts and in the process covered up known suspected child abuse. My journey has been dubbed *Shreddergate*.[2] It is also totally documented.

I respectfully submit because of the breadth of systemic corruption involved, any resolution of this affair really requires its own commission of inquiry or appointment of a Special Prosecutor to clean out Queensland's public administration for the public good and the welfare of children in care.

For my part, I cannot and shall not remain silent. I am prepared to give evidence in public under oath.

…….
KEVIN LINDEBERG
18 September 1998

Relevant Terms of Reference to this Submission

It is respectfully submitted that the relevant terms of reference pursuant to the Order in Council - Commissions of Inquiry Order (No1) 1998 -commenced on 13 August 1998 are:

[2] First coined in 1996 by Associate Professor Bruce Grundy then editor of *The Weekend Independent*

3. Under the provisions of the Commissions of Inquiry Act 1950 and all other enabling powers Leneen Forde AC, Jane Thomason and Hans Heilpern are appointed to make full and careful inquiry without undue formality with respect to the following:

A. (i) In relation to any government or non-government institutions or detention centres established or licensed under the State Children Act 1911, Children's Services Act 1965 or the Juvenile Justice Act 1992:

(a) whether any unsafe, improper, or unlawful care or treatment of children has occurred in such institutions or centres; and
(b) whether any breach of any relevant statutory obligation under the above Acts has occurred during the course of care, protection and detention of children in such institutions or centres.

B. In the context of the need to resolve these matters as soon as possible, to:

(i) examine the outcomes of any previous investigations;

C. After such inquiry as the Chairperson deems appropriate, refer to the appropriate authorities any instances where there appears to be sufficient evidence to prosecute for a criminal offence, take disciplinary proceedings, or pursue a charge of official misconduct against any person under any Act in respect of such lack of safety, impropriety or unlawful care or treatment of children.

D. To make any recommendations as may be considered appropriate in relation to:
(i) any systemic factors which contribute to any child abuse or neglect in institutions or detention centres;
(ii) any failure to detect or prevent any child abuse or neglect in institutions or detention centres; and
(iii) necessary changes to current policies, legislation and practices.

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Backdrop to the Establishment of the Forde Commission of Inquiry and Construction of this Submission

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

The responsible Minister to whom Commissioner Leneen Forde AC must eventually present her report with the possible recommendation of criminal charges to be brought against certain as yet unknown person/s is the Honourable Anna Maria Bligh MLA Minister for Families, Youth and Community Care and Minister for Disability Services.[3]

This Commission of Inquiry into child abuse was established by the Beattie Government on 13 August 1998 against the backdrop that during the State election campaign considerable media coverage by *The Courier-Mail* on child abuse and editorial pressure to hold an inquiry into certain incidents of alleged abuse occurred. The journalist responsible for the series of articles was investigative reporter Mr Michael Ware.

The Ware series highlighted fresh revelations of serious suspected abuse inflicted on children while held in lawful custody and protection by the Crown at the John Oxley Youth Detention Centre (JOYC) Wacol in late 1989. He revealed that the Criminal Justice Commission (CJC) had been made aware of the suspected abuse as early as 1994 and as late as October 1997 by a concerned Youth Worker but dismissed him and failed to act.

It was also revealed that the then Department of Family Services and Aboriginal and Islander Affairs (DFSAIA) during the Goss regime was also fully aware of the suspected abuse through documents in its possession dating back to September 1989. The Goss Government failed to act in the children's interests other than to secretly shred the evidence of suspected abuse on 23 March 1990; to immediately remove Centre manager Mr Peter Coyne to other employment upon the termination of the Heiner Inquiry in February 1990; and, years later, to use the information for its own political purposes before the Senate Select Committee on Unresolved Whistleblower Cases[4] in 1995.

The suspected abuses reported in *The Courier-Mail* were the subject of and given in evidence to the aborted Heiner Inquiry[5] established by former National Party Family

[3] See Attachment Two.
[4] Established by the Senate after the Goss Government refused to review the "*Lindeberg allegations*" as unanimously recommended in the report "*In the Public Interest*" of the 1994 Senate Select Committee into Public Interest Whistleblowing chaired by Senator Jocelyn Newman after the all-party committee considered submissions and oral evidence that highlighted the CJC's lack of performance in the matter.
[5] Retired Stipendiary Magistrate Noel Oscar Heiner formerly of the Children's Court.

Services Minister the Honourable Beryce Ann Nelson MLA. The Heiner Inquiry was publicly announced by her on 23 October 1989.

Suspected child abuse

In a statement signed by Ms Nelson on 15 May 1998, witnessed by former Queensland Police Commissioner Noel Newnham, and tabled in State Parliament on Tuesday 25 August 1998, she makes the following relevant statement concerning suspected child abuse matters that as the responsible Minister she expected Mr Heiner to investigate:

> *"that some boys and girls were being forced into sexual activity against their wishes, for the benefit of others; that illicit drugs and prescribed medications were being brought into the Centre, sometimes by staff and sometimes by detainees who had simply walked out and returned apparently without any permission; that some staff were physically and sexually abusing children in their care."*[6]

The Ware series also highlighted related serious legal questions of possible criminality associated with the shredding potentially inculpating all members of the Goss Cabinet of 5 March 1990.[7]

This Commission of Inquiry was also established against the backdrop of in-depth media coverage by Mr Bruce Grundy's[8] *Inside Queensland*[9] and while he was editor of *The Weekend Independent*[10] of this affair he has dubbed: *Shreddergate.* He single-handedly and courageously revealed the long hidden horrific abuses of children at Neerkol and another institute also likely to be the subject of this Inquiry.

The Heiner Inquiry evidence containing evidence of that suspected abuse was shredded on Friday 23 March 1990 by order of the Goss Cabinet of 5 March 1990. It was done for the express purpose of preventing its use in foreshadowed court proceedings. It was also done for the express purpose of reducing the risk of legal action against all the parties involved in the Inquiry, including probable Youth Workers who may have been abusing children albeit under the specific instructions of the then Centre management[11].

It was this management practice that so upset certain staff that it sparked the Heiner Inquiry.[12]

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[6] Nelson Statement tabled in State Parliament on 25 August 1998 during debate on the shredding and motion moved by One Nation MLAs to expel from the Chamber five senior Ministers of the Beattie Cabinet who *prima facie* ordered the shredding on 5 March 1990.

[7] See *The Courier-Mail* Saturday 11 July 1998 p9

[8] Mr Grundy is Associate Professor of Journalism, Department of Journalism University of Queensland.

[9] Mr Grundy's own publication.

[10] The monthly publication of the Department of Journalism University of Queensland

[11] See Document 13 (Submissions and Documents) provided by the Queensland Government in July 1995 to the Senate Select Committee on Unresolved Whistleblower Cases.

[12] ibid. and introductory comment by Dr Glyn Davis, then Director-General Premier Goss' Department and current Director-General of Premier Beattie's Department.

It has been publicly suggested and supported by highly credible legal argument from now High Court Justice Ian Callinan QC[13], other counsel ie Messrs Robert (Bob) F Greenwood QC[14], Morris QC and Howard[15], Peterson and senior university criminal and administrative law lecturers that it was open to conclude that the shredding of those records was a serious criminal offence[16]. It has also been argued that the conduct may have breached the Criminal Justice Act 1989.

Other independent international archives experts have also publicly stated that the act was not in accord with a proper interpretation of the relevant provisions of the Libraries and Archives Act 1988 because highly relevant information held by the Government was withheld from the State Archivist by the Goss Cabinet when seeking and obtaining her "*urgent"* approval to destroy the evidence on Friday 23 February 1990.

The affair remains unresolved. This submission will show that it potentially involves criminality reaching the very highest levels of Queensland's public administration.

It is submitted that the shredding of those public records known:(a) to be required for impending court proceedings; (b) to be the subject of a legally enforceable access statute; and (c) to contain suspected child abuse allegations should gravely concern this Commission of Inquiry.

An affront to common decency

There is a basic immoveable premise to this whole affair that cannot be avoided. Pursuant to the Commission's Terms of Reference 3A(i)(a),(b),C, D(i),(ii) and (iii), it is this: For any public official (elected or appointed) to deliberately shred such public records containing evidence of suspected child abuse against children in the care and control of the Crown in order to reduce the risk of legal action against Crown agents who may have perpetrated the suspected abuse should represent, at the very least, negligence of the highest order. It should also be viewed as conduct contrary to all accepted and known notions of the Crown's duty of care to such children, as well as an affront to common decency and open and accountable government.

Following on from that premises, it is therefore relevant for the Commission to know that five potential senior Ministers[17] of the Beattie Government who established this Inquiry ordered the destruction of those public records on 5 March 1990.

[13] Acted as Lindeberg's senior counsel with junior counsel Roland D Peterson before the Senate Select Committee on Unresolved Whistleblower Cases in 1995 and before the Connolly/Ryan Judicial Review into the Effectiveness of the CJC in July 1997.

[14] Former Special Prosecutor Australian War Crimes Tribunal

[15] See the Morris/Howard Report into the "*Lindeberg allegations*" tabled in State Parliament on 10 October 1996 by Queensland Premier the Honourable Rob Borbidge MLA.

[16] Sections 129, 132and/or 140 of the Criminal Code (Qld).

[17] The Honourable Messrs Terry Mackenroth, Bob Gibbs, David Hammil, Paul Braddy and Dean Wells were members of the first Goss administration and now enjoy senior ministries in the Beattie Government. It is however uncertain whether all the aforesaid Honourable Ministers actually attended the 5 March 1990 Cabinet Meeting until the Attendance Register can be publicly examined. It is currently a privileged document, and access has been refused to solicitors acting for Mr Lindeberg who gave notice in March 1998 that he intended to carry out a private prosecution against all those Ministers when and if he could be certain who sat around the Cabinet table on 5 March 1990.

It is respectfully submitted that it would not be in the public interest or in the interest of truth if this Commission of Inquiry could only investigate and make recommendations on the substance or otherwise of "*shredded JOYC child abuse allegations*" and not concern itself with the far greater offence that such evidence in the possession of the Crown at the time was deliberately destroyed by order of the Goss Cabinet (in the name of the Crown) to obstruct justice and to cover up unacceptable suspected child abuse against children in the care and protection of the Crown.

Relevant Law

International Torture Convention - Article 1:

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

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

The Heiner Inquiry documents containing the evidence of suspected child abuse provided by Youth Workers to Mr Heiner were officially defined as "public records" by the Crown Solicitor in advice to Executive Government on 16 February 1990. It afforded those records full protection under the Libraries and Archives Act 1988 - and other relevant laws[18]. The State Archivist was required by law to impartially and honestly protect them in the public interest from unlawful and unwarranted destruction, including any so-called desirable decision of or direction from Executive Government to destroy them.

The State Archivist had an unequivocal duty to take into account a wider range of public interest considerations and values in the appraisal process than to merely concerning herself with what Executive Government may have wanted done with them.

[18] Eg Criminal Code (Qld), Public Service Management and Employment Act and Regulations 1988.

This apparent failure on the State Archivist's part to take into account the legal, administrative, historical and informational values associated with those records opens up serious questions for this Commission to consider. In this case, public records were shredded containing evidence of child abuse despite the Act's clear legislative ability and authority to cover such contingencies and save them from the shredder.

Libraries and Archives Act 1988 (Qld):

The expression "public records" is defined in section **5(2)** of the Act, which refers to:

"...the documentary, photographic, electronic, mechanical or other records of a public authority and includes -

(a) records brought into existence by a public authority as records for future reference;

(b) a matter or thing kept by a public authority as a record of its activities or consequent upon a function, power or duty to keep records;

(c) public records of one public authority held by another public authority."

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

"A person shall not dispose of public records other than by depositing then with the Queensland State Archives -

(a) unless -

(i) the State Archivist has authorized the disposal; or

(ii) notice in writing of his intention to do so has been given by him or on his behalf to the State Archivist and -

(A) a period of at least 2 months has elapsed since the giving of the notice; and

(B) the State Archivist has not exercised his power under subsection (2) to take possession of the public records or direct that they be deposited with the Queensland State Archives;

and

> (b) unless, in the case of public records to which subsection (4) and (5) apply, the period prescribed therein has expired.

"A person who disposes of public records in contravention of this section commits and offence against this Act and shall be liable to a penalty not exceeding 100 penalty units."

The treatment of the Heiner Inquiry documents (and original complaints) under the circumstances of this affair should have unquestionably enlivened upholders of criminal law. The fact that the content of the documents revealed - *or even may have revealed* - evidence of suspected child abuse only deeply worsens the already compelling case[19] established in respect of obstructing Mr Coyne's legal entitlements and known course of justice.

Heiner knew

What is now firmly established since the intervention and investigation of former Queensland Police Commissioner Noel Newnham in May 1998 on my behalf is that the Crown Youth Workers gave evidence to Mr Heiner in late 1989 and early 1990 about suspected abuse of office and of children, at the invitation of the Crown, in the public interest in work-time on Crown premises. They reported on possible official misconduct or criminal conduct by other JOYC public officials in the performance of their public duty while holding positions of authority over children held in the care and protection of the Crown. That is an immutable fact.

What is abundantly clear is that those records should never have been destroyed by the Crown particularly as they revealed evidence of suspected child abuse being perpetrated by Crown agents against children in the care of the Crown. Moreover, by lawful obligation under the Criminal Justice Act 1989[20], those who took possession of the Heiner Inquiry documents in late January/early February 1990 who undoubtedly possessed such knowledge or suspicions were required to report and hand the evidence to the CJC to investigate. That obligation was deliberately breached by the shredding. That is another immutable fact.

No lawful signal to shred

Equally, when solicitors acting for a potential litigant (ie Mr Coyne) duly and by proper process inform a prospective defendant (in this case the Crown) that court proceedings are about to commence to gain access to public records in the defendant's (Crown's)

[19] See Special Submission by Mr Ian Callinan QC (7 August 1995) to Senate Select Committee on Unresolved Whistleblower Cases; and the Morris/Howard Report tabled in State Parliament on 10 October 1996.
[20] Then Section 2.28 (2) of the Criminal Justice Act 1989 - Referral of matter to section.

possession it is no signal, within the law, to immediately destroy such evidence to prevent its use in those impending proceedings.

Criminal Code (Qld):

Section **129** - destruction of evidence - provides for:

> "Any person who, knowing that any book, document, or other thing of any kind, is or may be required in evidence in a judicial proceeding, wilfully destroys it or renders it illegible or undecipherable or incapable of identification, with intent thereby to prevent it from being used in evidence, is guilty of a misdemeanour, and is liable to imprisonment for 3 years."

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

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

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

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

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

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

Criminal Justice Act 1989:

> Section **31** of the Criminal Justice Act 1989 - Official misconduct - describes same:
>
> "**31.(1)** For the purposes of this Act, official misconduct is -
>
> (a) conduct that is in the general nature of official misconduct prescribed by section 32;
>
> (b) a conspiracy or attempt to engage in conduct referred to in paragraph (a).

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

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

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

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

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

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

(a) where the conduct is engaged in;

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

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

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

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

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

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

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

(c) conduct that involves the misuse by any person of information or material that the person has acquired in or in connection with the discharge of his or her functions or exercise of his or her powers or authority as the holder of an appointment in a unit of public administration, whether the misuse is for the benefit of the person or another person;

and in any such case, constitutes or could constitute -

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

(e) in the case of any other person - a criminal offence.

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

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

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

"(2) It is the duty of each of the following persons to refer to the complaints sections all matters that the person suspects involves, or may involve, official misconduct -

(b) the principal officer (other than the commissioner of police service) in a unit of public administration.

Public Service Management and Employment Act and Regulations 1988:

Public Service Management and Employment Regulation 65 (renumbered 103) provides for:

Access to officer's file:

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

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

Background to and Significance of the Shredding

The Heiner Inquiry documents were legally defined and accepted by those in authority as "public records." They were legally owned and accessible by the public. They were not the sole property of any government of the day to do with as it might wish. They were held in trust. The legal position was that when Mr Heiner received and generated documents during the course of his Inquiry, he was bringing into existence "public records."

It was initially thought however by the Office of Crown Law in advice dated 23 January 1990 to then Acting DFSAIA Director-General Ms Ruth L Matchett that the documents were Mr Heiner's private property and their fate, in that advice, was based on that false premise without fully considering or realising all the legal ramifications of being defined as "public records." Acting on that false base, the Crown Solicitor advised that the documents could be destroyed providing no legal action had commenced.

The documents were not shredded at that time. They continued to exist until 23 March 1990. The parties seeking access to them were *not* informed of this proposed course of action in either January, February or March 1990 so that they could seek immediate injunctive relief to secure the evidence. This deeply flawed advice of 23 January 1990, based on incomplete information, was later conveniently described as the Crown's "final position" and used to justify the shredding on the pretext that members of State Cabinet acted in accordance with Crown Law advice.

It was overtaken by further legal demands on the documents by Mr Coyne and his solicitors and two unions[21] acting on behalf of certain JOYC members. The Department was officially informed by letter and phone on 8, 14 and 15 February 1990 that the Heiner Inquiry documents (and copies of the original complaints) were being sought pursuant to legally enforceable Public Service Management and Employment Regulation 65, and if access was not granted out of court then it would be resolved in court.[22]

[21] Those unions were the Queensland Professional Officers Association and the Queensland Teachers' Union.

[22] Evidence in this regard is unequivocal. Ms Matchett's Executive Officer Mr Trevor Walsh's departmental memorandum of 14 February 1990 faithfully recounts these facts.

Deceptive conduct

The Department acknowledged these legal demands and foreshadowed court proceedings. It informed the prospective litigant (and his solicitors) that Crown Law was *still* considering the matter[23] and once its position was known, Mr Coyne and his solicitors would be told. They (Mr Coyne and his solicitor) were only officially told of the documents' ultimate fate some two months *after* the secret shredding occurred.[24]

The advice of 23 January 1990 was subsequently corrected in further Crown Law advice to the Goss Cabinet on 16 February 1990. It was also recognised that should court proceedings commence and the documents sought for those proceedings, "*Crown privilege*" could not be successfully argued to prevent access to them because they were not brought into existence for Cabinet purposes. Cabinet was told that Mr Heiner was lawfully appointed pursuant to the Public Service Management and Employment Act 1988. It was also told that any threatened defamation action against the Crown Youth Workers who gave evidence to Mr Heiner was likely to fail through qualified privilege.

The Goss Cabinet *unquestionably knew* that it was dealing with evidence required in impending litigation.

On 30 July 1998 during a motion of confidence in his minority Government when the serious ramifications of *Shreddergate* featured prominently in the debate, Queensland Premier the Honourable Peter Beattie MLA tabled relevant Cabinet submissions in an attempt to put the affair finally to rest.[25] Of critical importance, he tabled the Cabinet submission of 5 March 1990 which he had previously, as then Leader of the Opposition, withheld from Messrs Morris QC and Howard during their 1996 investigation into the "*Lindeberg allegations*."

Cabinet knew

It revealed the following state of knowledge of the members of State Cabinet of 5 March 1990 when they ordered the shredding to prevent its use in legal proceedings. Of relevance on Page 2 Cabinet Submission 00160 Decision No 00162 it says:

> "**URGENCY**
>
> *Speedy resolution of the matter will benefit all concerned and avert possible industrial unrest.*

[23] This was highly deceptive conduct on the part of the Crown because the Goss Cabinet ultimately attempted to justify the shredding by saying that it acted on legal advice provided on 23 January 1990 when it was known that it was redundant and overtaken by subsequent legal events and a better view of the law about the true legal status of the documents.

[24] See Morris/Howard report. False information was conveyed on 22 May 1990 by Ms Matchett. It was a highly deceitful letter as the Department still possessed records (ie the original complaints and photocopies of the complaints) at the time.

[25] See State *Hansard* 30 July 1998 p1494.

Representations have been received from a solicitor representing certain staff members at the John Oxley Youth Centre. These representations have sought production of the material referred to in this Submission. However, to date, no formal legal action seeking production of the material has been instigated."

Unquestionably they *knew* that they were dealing with evidence that could *not* be withheld from access once a writ was served, and the discovery/disclosure process commenced. With that state of knowledge members of State Cabinet of 5 March 1990 deliberately destroyed the evidence *before* that occurred knowing it would obstruct Mr Coyne's course of justice. In that process, they covered up suspected abuse of children, and for over eight years have attempted to defend the indefensible by arguing, with the support of "the system," that the shredding was perfectly legal, primarily because a writ wasn't served at the time.

Cabinet Inculpated

In an opinion provided on 21 August 1998, after considering the content of Cabinet Submission 00160 Decision No 00162 together with other relevant facts and the Morris/Howard report, eminent Australian criminal barrister Mr Robert (Bob) F Greenwood QC said the following:

"Furthermore Para 14 (of the Morris/Howard Report) identifies and clarifies that certain individuals are now potentially implicated in the commission of criminal offences of "official misconduct". Messrs Morris QC and Howard consider it is "open to conclude" that criminal offences or "official misconduct" were committed. In other words, from the evidence Morris & Howard have seen, there is a prima facie case of such offences and "official misconduct" having been committed.

In summary, Five Cabinet Ministers of the Goss Cabinet remain in Parliament today, and are Crown Ministers of the Beattie Government. The Cabinet Minutes tabled by Premier Beattie, now tend to support the proposition that these Ministers may have committed criminal offences and "Official misconduct" within the meaning of the Criminal Justice Act."[26]

The Goss Cabinet of 5 March 1990 placed itself beyond the reach of the law, and systemic corruption over a period of eight years has attempted to bolster that indefensible position with unsustainable legal propositions. Flowing out of this shredding affair the critical legal principle regarding the protection of evidence known to be required for pending or impending court proceedings [ie relevant to Section 129 of the Criminal Code (Qld)] has been gravely undermined and placed in extreme jeopardy.

I say that the shredding was not then; it is not now; nor will it ever be a legal act.

[26] See Attachment Four

The Role of the State Archivist

The role of Queensland's State Archivist in this affair is one of critical importance to the proper protection of public records, and one of significant relevance to this Commission where evidence of potential abuse in State institutions may be recorded on other public records and sought for the purpose of establishing the truth or otherwise of unsavoury allegations that may be made at some future time by an aggrieved person.

With great respect, the State Archivist should not be treated as a scapegoat in this affair. Ms McGregor is but one of many public officials who has failed in her public duty to uphold the law. As a statutory officer, she should, however, carry some individual responsibility for the serious events that occurred in early 1990 and afterwards because for years she has allowed through her silence unacceptable gross misrepresentation of her proper role to be publicly fostered and used by the CJC and others to cover up the illegality of the shredding. I contend that she has brought her profession into grave disrepute.

It has so outraged the professional achives community in Australian and around the world that it has turned the shredding into an unresolved *cause celebre* in the archives world.

The State Archivist *knew* about the suspected child abuse

The State Archivist has acknowledged examining the Heiner Inquiry documents on 23 February 1990. She was deceived by the Cabinet's letter of 23 February 1990 into believing that no one wanted them and that they were no longer pertinent to the public record, albeit in the Cabinet's own singular view. In examining them she made the following observation in a personal State Archives report[27] dated 30 May 1990 concerning their content:

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

[27] Lindeberg Exhibit 17 page 2 - *Disposal of Records - John Oxley Youth Centre* - to Senate Select Committee on Unresolved Whistleblower Cases in 1995. It is a memorandum written and signed by Ms McGregor, for her record purposes and obtained under freedom of information, setting out her recollection of what occurred surrounding the shredding up to 30 May 1990.

On 11 April 1990, the Minister for Family Services, Ms Anne Warner, made a public statement indicating that the enquiry had been terminated and the records destroyed.

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

It is important for this Commission to know that for the entire period of this highly controversial affair that has dogged the Queensland and Australian political scene for eight years, the State Archivist *has never once* been interviewed by the CJC or police.

Fresh evidence contained in the recently released Cabinet Submission of 19 February 1990 (No 00117 - Decision 00118)[28] reveals that Cabinet was fully aware that the Heiner Inquiry documents were required and *chose not to tell* the archivist in its letter of 23 February 1990. Of direct relevance it states:

"ISSUES

The fate of the material gathered by Mr Heiner has yet to be determined. This is a mattter of some urgency, as there have been a number of demands requiring access to the material, including requests from Solicitors on behalf of certain staff members."[29]

By her own admission of 30 May 1990, the State Archivist either read or listened to evidence pertaining to the complaints about the style of management at the Centre. The unresolved question is what was so hot in their public interest disclosure that those public records had to be shredded to protect the so-called "whistleblowers" who gave the evidence?

Premier Beattie in his summing up in State Parliament on 30 July 1998 (See State *Hansard* p1493) in the motion of confidence in his minority Government said this:

"…At all times Cabinet acted in complete good faith to protect the whistleblowers involved in this case. This was about protecting the whistleblowers. These whistleblowers were given no legal protection whatsoever by the previous National Party Government in the way in which the inquiry was established…."

[28] See Addendum 1.
[29] Tabled in State Parliament on 30 July 1998 by Queensland Premier the Honourable Peter Beattie MLA.

The witnesses have been categorised as "whistleblowers." In other words it is fair to say they were blowing the whistle on real or suspected official misconduct being carried out by other public officials in the performance of their duties. They were not merely airing industrial grievances between warring parties. This was about public interest disclosures. They were giving evidence (presumably truthful or genuinely held beliefs) of suspected official misconduct or possible criminal behaviour. Having been given the appellation of whistleblowers, it is reasonable to suggest that they were acting honourably in making their public interest disclosures and not in a malicious untruthful manner.

In no way do I wish to pass any personal view on the conduct of JOYC Manager Mr Coyne. That is for others to consider and pass judgement on in due course, however, the emergence of Document 13 cannot be ignored in this affair. It was provided by the Goss Government on 31 July 1995 to the Senate Select Committee on Unresolved Whistleblower Cases. It was signed by Mr Coyne himself. Its content reached the front-page news of *The Courier-Mail* and demonstrated, in its view, possible unacceptable conduct involving the extended handcuffing of JOYC children by his instruction. That conduct, it seems, will be the subject of inquiry by this Commission and may - I stress may - lead to possible charges being recommended against him and others.

The Infamous Document 13

What is very relevant to ponder in my view is that the Queensland Government saw fit, on 31 July 1995, to seek and send that particular memorandum to the Senate Select Committee on Unresolved Whistleblower Cases, and the manner in which "Document 13" was introduced. (The motives of the Goss Government suddenly revealing its existence will be dealt with later in this submission.) The description says:

> *"Document 13 gives Mr Coyne's account of an incident on 26 September when 3 children, 2 girls aged 12 and 16 and a boy aged 14, were handcuffed to the tennis court fence in the secure yard at John Oxley. Two of the children remained handcuffed to the fence overnight. The secure yard is a very large open-air space where the swimming pool, tennis court and other activity areas are located. All detention centres have isolation rooms for the purposes of dealing with disruptive children. Mr Coyne's report illustrates that incidents on 22, 23, 24, and 25 September were the lead up to the incident of 26 September 1989. To protect the identity of the children involved parts of Document 13 have not been released.*
>
> *Two days after the incident, on 28 September, Mr Pettigrew visited JOYC and met with staff at the changeover of shifts, announced an independent investigation and requested that complaints be confirmed in writing. Subsequently nine letters of complaint were provided by the Union to Mr Pettigrew "personally on the understanding that they would not be circulated widely."*[30]

[30] See Volume 1 - Queensland Government - Submissions, Supplementary Submissions and Other Written Material Authorised to be Published - Senate Select Committee on Unresolved Whistleblower Cases.

It is quite clear from other supporting documents and coverage in *The Courier-Mail* that the "whistleblowers" were complaining to Mr Heiner about these specific instructions concerning handcuffing. In talking to the witnesses in May 1998, former Queensland Police Commissioner Newnham confirmed the incident and that Mr Heiner was told about it.

Mr Newnham, an experienced commissioned police officer by any standard, has this to say about such conduct in his 16 May 1998 report at Page 5:

> *"…The use of excessive or unnecessary force against people in lawful custody amounts to criminal assault. In the case of minors such assaults by custodial officers, directly or indirectly, must always be regarded as extremely serious. Suspicion that this was occurring at JOYC, together with other abuses, was clearly one of the factors, arguably the major factor, leading to the establishment of the Inquiry."*[31]

And further on at Page 5 he says:

> *"…There is ample material to show that the Inquiry was set up to confront several issues at JOYC, including maltreatment of children. The maltreatment of children was alleged to Heiner and that evidence must have been within the material destroyed.*
>
> *It is inconceivable that the government elected in late 1989 could have been unaware of those allegations - unless it chose to deliberately keep itself in ignorance - when considering what to do about the Inquiry. Despite the change of minister and director general of the department, the departmental knowledge continued, and at least one very senior officer within the department continued to serve within it before and after the election. That officer was named as being directly involved in the appointment of the Inquiry and defining the reasons for it.*
>
> *Within the department's files (which had to be created in order to set up the Inquiry) there must have been records as to underlying, serious, reasons for obtaining an outsider to conduct the Inquiry. A claim that these files had to be destroyed in order to protect Heiner and his witnesses from litigation simply does not stand up to serious consideration, especially if they had been indemnified by Cabinet…"*[32]

It therefore appears that the so-called defamatory material Ms McGregor and her senior archivist colleague Ms Kate McGuckin saw or read in the Heiner Inquiry material was staff complaining about Mr Coyne's instructions to handcuff children in care for *prima facie* excessive periods of time.

[31] Tabled in State Parliament on Tuesday 25 August 1998
[32] Tabled in State Parliament on Tuesday 25 August 1998.

This opens up very serious questions concerning the appraisal values used by Queensland State Archives when deciding the fate of public records of adolescent youth detention centres throughout Queensland.

Of relevance Section 52 of the Libraries and Archives Act 1988 requires of public authorities to:

> (a) cause complete and accurate records of the activities of the public authority to be made and preserved;
>
> (b) take all reasonable steps to implement recommendations of the State Archivist applicable to the public authority concerning the making and preservation of public records. (underline added).

The CJC took a contradictory view of the role of the archivist in evidence to the Senate Select Committee on Unresolved Whistleblower Cases in 1995. On one hand it argued that the archivist's discretion concerning the fate of public records was "almost unfettered" while on the other hand it argued that her discretion was solely limited to considering the "historical" value of the public records.

That view has been strongly contested by me, but more importantly by professional archivists. The former State Archivist of Victoria, Mr Chris Hurley, now General Manager of New Zealand Archives, publicly rejected the CJC's view in a detailed 30 page analysis dated 15 March 1996. He concluded that it could not be allowed to stand. In his analysis he says the following:

> *"6.13 If the CJC's view goes unchallenged, it helps to lower the benchmark for archival responsibility. If that is allowed to happen, government archivists had better watch out. Aggrieved whistleblowers come from behind. All the forces of established interests are ranged against them. But they keep coming and each case prepares the ground better for the next one. Next time someone is aggrieved in a disposal case the issues will be better defined because of what has happened in the Heiner Case.*
>
> *6.14 The Heiner Case helps define the issues for the next person who is aggrieved by destruction of public records which denies them the opportunity to take their case further. Sooner or later someone in that position is going to make the connection between the wrong they feel when the records needed to make their case are denied them and the compliant archivist who made that possible. When that day comes, archivists better have answers on where their responsibility lies."*

The matter of grave concern to this Inquiry is that according to the CJC's position and logic, our State Archivist can be apprized of evidence of suspected child abuse being

perpetrated against children in detentions centres in public records under an official appraisal process pursuant to the Libraries and Archives Act 1988, and still approve their destruction if she considers it does not represent any "historical" value.

A discretion dangerous to the welfare of children in care

I submit that the CJC view in the Heiner Inquiry shredding case (in which the material was known to be required for court and known to contain evidence of suspected child abuse) is absurd and mightily dangerous to the welfare of children in care in Queensland.

Left unchallenged by this Commission it is the perfect out to cover up suspected child abuse against children in the care and protection of the Crown.

Accordingly, the Heiner shredding affair, given its current acceptance by "the system" as being legal, permits public authorities (ie units of public administration, including Cabinet and youth detention centres) to approach the State Archivist to seek her urgent approval to destroy:

1. Evidence of suspected child abuse against children in the care and protection of the Crown in order to protect the careers of those Crown employees possibly engaging in it, or while in possession of supporting documents showing *prima facie* authorisation of such suspected abuse (ie Document 13);
2. Evidence known to be required in foreshadowed court proceedings;
3. Evidence known to be the subject of a legally enforceable access statute;
4. Evidence before and up to the serving of a writ by a known prospective litigant while knowing that such evidence would be legally accessible during the discovery/disclosure process;
5. Evidence in order to obstruct justice.

The Australian Society of Archivists (ASA) has come out publicly and totally rejected the CJC's findings in this matter. The Academy of Certified Archivists (of the United States) concurred with the ASA's position. The Society of American Archivists (SAA) - the largest archives body in the world - endorsed the archival principles articulated in the ASA's statement, but could not endorse its findings in respect of the Heiner Inquiry document shredding because it occurred outside America.[33]

Messrs Morris QC and Howard said that the Libraries and Archives Act 1988 does not override other legal considerations in respect of preservation of public records (eg Section 129 of the Criminal Code (Qld). Of direct relevance they have this to say at page 97:

> *"The fact that a document is the Government's "own property" certainly affords no defence to a charge under s.132 or s.140 (or, for that matter,*

[33] See pp208-216 Submission and Documents May 1998 71st Report of the Senate Committee of Privileges.

s.129) of the Criminal Code; the gravamen of the offence does not consist in a wrongful interference with another person's property rights (which may constitute, for example, stealing under s.391 of the Criminal Code, or willful destruction of property under s.469 of the Criminal Code), but in the fact that the destruction of property (whether it belongs to the person who destroys it, or to anyone else) may interfere with the due administration of justice.

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

What is critical during the appraisal process is that any State Archivist is fully informed of all known facts relating to and legal demands on the records under examination so that the decision concerning their fate is reached impartially, honestly and in the public interest. Unless that occurs, the archivist's discretion - as suggested in and flowing from the CJC's findings in this affair - under the Libraries and Archives Act 1988 becomes, in reality, more powerful than any court in the land and her discretion could be abused and used for nefarious purposes. That cannot be. It cannot be allowed to stand.

Public records and a free society

Unless a free society can properly protect its public records, it jeopardises our system of open and accountable government and justice. It is one of the reasons why this shredding has enlivened so many archivists and legal practitioners in Australia and around the world.

Recommendation 1:

It is respectfully submitted that State Archivist be called and publicly examined over her role in this affair and be allowed to be cross-examination by other interested parties. If it is found that the CJC's representation of her role, being unquestionably *known* by her and other public officials for years, is not in accord with her proper role pursuant to the Libraries and Archives Act 1988, than the Commissioner may wish to consider making appropriate recommendations pursuant to Terms of Reference 3C and 3D(ii) against her and other public officials with firsthand knowledge of the shredding of public records containing evidence of suspected child abuse.

Recommendation 2:

It is respectfully submitted that the disposal processes used by units of public administration and other bodies when seeking approval from State Archives to destroy public records be reviewed to ensure that an accountable checklist form (requiring signature) incorporating all known information relevant to the value considerations (ie legal, administration, data, informational etc) which are used by archivists when exercising their lawful discretion under the Libraries and Archives Act 1988 in deciding whether to retain or destroy public records.

The Role of the Crown Solicitor and the Office of Crown Law

The role of Mr Kenneth O'Shea, the then Crown Solicitor and certain of his legal officers in this affair warrants the very closest of public scrutiny. There is no question that the Office of Crown Law *knew* that the Heiner Inquiry document and copies of the original complaints were the subject of a legally enforceable access statute and known evidence for impending litigation when members of State Cabinet of 5 March 1990 ordered them destroyed to prevent their use in litigation and to reduce the risk of legal actions against all the parties involved in the Inquiry. That is an immutable fact.

Let Cabinet decide first; the Law can wait

The evidence is that Mr O'Shea and his law officers of the Crown waited for Cabinet to decide the fate of the records instead of ensuring their security for the court - and perhaps other legal purposes touching matters of possible abuse against children in care.[34]

[34] See Crown Law advice to Ms Matchett dated 26 February 1990.

For the purposes of this Inquiry into child abuse, there appears to be compelling evidence that Mr O'Shea and his law officers should have, at the very least, been alive to the possibility that in the contents of the Heiner Inquiry material was evidence of suspected child abuse. Given the way the Queensland Public Service works, and the knowledge held by the Department concerning "questionable" management practices[35] at JOYC in respect of inappropriate handcuffing for long periods of time, it is inconceivable that advice, at some time or other, on such practices was not sought and obtained from the Office of Crown Law.

According to former Family Services Minister the Honourable Beryce Nelson in her statement at page 3 concerning the establishment of the Heiner Inquiry, she had this to say:

> *"…Mr Pettigrew[36] obtained legal advice which I followed, that a ministerial inquiry could be established which would provide ample protection for both witnesses and the person conducting the inquiry. Further, if it became necessary to move to a full inquiry under the Commissions of Inquiry Act, this could be done by way of extension via a cabinet minute without the need to go back and repeat work already done by the initial ministerial inquiry.*
>
> *Overall I was, and remain satisfied that the inquiry I set up did not place either the person running it, or the people who gave evidence to it, at any risk…."*

And at page 4 says:

> *"…The simple fact is that I set up an inquiry to find out the facts about serious allegations about the operations of JOYC and that children detained there were being seriously physically and/or sexually abused. Evidence was obtained and the newly incoming Government ignored that evidence, destroyed it, and closed down the inquiry. The children remained at risk because their needs were ignored to protect the position of the newly elected Labor government.*
>
> *I have information information that Mr Heiner saw my successor, Ms Warner, in early January 1990 and told her that he was discovering evidence of serious malfeasance, and wanted to bring the inquiry under the Commissions of Inquiry Act…"* [37]

In response to legal argument put by my senior counsel now High Court Justice Ian Callinan QC to the Senate Select Committee on Unresolved Whistleblower Cases in

[35] See Document 13 sent by Queensland Government in July 1995 to Unresolved Whistleblower Cases Committee.
[36] Then Director-General of the Department of Family Services. He has since died of cancer.
[37] Tabled in Parliament on Tuesday 25 August 1998

Brisbane on 23 February 1995 regarding the ease by which the Heiner Inquiry could have been retrospectively brought under the Commissions of Inquiry Act 1950, Crown Solicitor Mr O'Shea responded with a detailed defence of his position and had this to say on 21 March 1995 about the "content" of the material:

> *"…Finally, whilst the 37 witnesses who gave their evidence to Mr Heiner (many of whom, as I said, would doubtless have seen themselves as Whistleblowers) would certainly have been protected by such retrospective legislation against Defamation proceedings, it would not have protected Mr Coyne (for whom Mr Lindeberg was acting) and other from the odium of whatever accusations were made against them, and these may have been quite defamatory.*
>
> *In short, Mr Callinan's submission was that the incoming Government should have adopted a course which was in my submission impractical and, in fact, had it been followed could well have led to considerable injustice."* [38]

Former Queensland Police Commissioner Newnham had this to say on 16 May 1998 concerning the so-called need to destroy the evidence to protect the "whistleblowers" from threat of defamation suit:

> *"…Within the department's files (which had to be created in order to set up the Inquiry) there must have been records as to underlying, serious, reasons for obtaining an outsider to conduct the Inquiry. A claim that these files had to be destroyed in order to protect Heiner and his witnesses from litigation simply does not stand up to serious consideration, especially if they had been indemnified by Cabinet.*
>
> *If Heiner was indemnified quickly and simply by Cabinet, as Morris and Howard confirmed, there would seem to be no reason why his witnesses could not be equally treated (if in fact they were not). But in any case (and on this point I naturally defer to the expertise of legal practitioners) an honest report concerning the behaviour of public officials to those in authority in respect of those officials, can surely not be a serious defamation. To hold otherwise would be to put at risk anyone who, for example, complained to a departmental head about an officer's rudeness or ineptitude..."*[39]

The Crown Solicitor failed to mention "Crown liability"[40] in the legal equation. That very protection was, however, given to the so-called "whistleblowers" by Ms Matchett when she met with them at the Centre on 13 February 1990. She told them that the Inquiry had

[38] See Volume 1 Queensland Government - Submissions, Supplementary Submissions and Other Written Material authorised to be published - Senate Select Committee on Unresolved Whistleblower Cases
[39] Tabled in State Parliament on Tuesday 25 August 1998
[40] See Attachment Three

been terminated and that Mr Coyne was to be immediately seconded to special duties away from the Centre. Her speech is recorded:

> *"…I want to remind you all however of the current Government policy regarding the legal liability of Crown employees - which you all are.*
>
> *In short the Crown will accept full responsibility for all claims arising out of a Crown employee's due performance of his/her duties provided these duties have been carried out conscientiously and diligently...*" [41]

What was the odium

What was the odium? Why did the evidence given by these whistleblowers have to be shredded to protect them from defamation proceedings that would not succeed against the whistleblowers, and if costs were awarded, the Crown would pay?

There is now evidence that on 28 September 1989 a Youth Worker specifically asked Mr Pettigrew in writing to include the possible inappropriate use of handcuffing in the Heiner Inquiry. Further evidence exists that advice was sought from the Office of Crown Law by Mr Pettigrew regarding an appropriate legal person to carry out the Inquiry, and upon advice contacted Chief Stipendiary Magistrate Mr Stan Deer CSM which in turn led to retired Stipendiary Magistrate Mr Noel Heiner being approached, recommended, and ultimately appointed. It is therefore quite inconceivable that the Office of Crown Law was unaware and subsequently unmindful that in the content of the Heiner Inquiry documents was evidence of suspected child abuse inflicted on detainees through the *prima facie* excessive use of handcuffing.

Crown Law assisted in destroying suspected child abuse evidence

Under such circumstances, the Office of Crown Law, was actively engaged in ways to destroy evidence of suspected child abuse that by law should have been referred to the CJC or police for proper examination. It is, I submit, unacceptable conduct of the gravest kind.

The real answer to the shredding, it is respectfully submitted, lies in three areas. First, Goss Labor Government, acting in the name of the Crown, was determined to obstruct Mr Coyne from enjoying his known lawful right of access; second, the Crown was determined to obstruct others who had a legitimate interest in the content of the documents, namely the detainees, their parents, guardians or relatives, lawyers and interest groups (eg ATSIC, QAILS[42]); and third, the Crown was determined to reduce the risk of legal action against Crown Youth Workers who were also union members of QSSU and AWU.

[41] See Volume 1 Queensland Government - Submissions, Supplementary Submissions and Other Written Material authorised to be published - Senate Select Committee on Unresolved Whistleblower Cases.
[42] Queensland Aboriginal and Islander Legal Service.

Not a noble mission

The Crown had a undoubted vested interest in the outcome. It was not a noble mission about protecting whistleblowers. In reality it covered up known suspected child abuse of children under the care and protect of the Crown. In all cases, it had no legal right to embark on such a course of action.

Recommendation 3:

I respectfully submit that this alleged conduct is so serious that it cannot be ignored given the central role of the Office of Crown Law plays in the public administration of the State of Queensland. I further submit that pursuant to terms of reference 3C, 3D(ii)and (iii) it is open to conclude that then Crown Solicitor Mr Kenneth Michael O'Shea and Crown Legal Officer Mr Barry J Thomas (and possibly other Crown Legal Officers) displayed negligence and malfeasance of the highest order and should be held legally accountable to the full extent of the law.

Recommendation 4:

I respectfully submit that in light of compelling evidence that pursuant to terms of reference 3C, 3D (ii) and (iii) it is open to conclude that all members of State Cabinet of 5 March 1990, five of whom are currently senior Ministers in the Beattie Government, displayed negligence and malfeasance of the highest order and should be held legally accountable to the full extent of the law.

The Consequences of the Failure to Properly Investigate

The alleged illegality of the shredding of the Heiner Inquiry documents was brought to the attention of the CJC on 14 December 1990 and the Queensland Police Service (QPS) in April 1994 by me. The nature of the complaint was covered by potential serious breaches of the Criminal Code (Qld)[43] and the Criminal Justice Act 1989 which meant that either law enforcement agency had the jurisdiction and duty under relevant legislation to investigate. In both cases they failed to properly investigate the allegations.

[43] Sections 129, 132 and/or 140, and 92 of the Criminal Code (Qld).

Their failure to properly investigate is well documented. Indeed Mr Walter Sofronoff QC for the CJC confirmed to the Senate Committee of Privileges on 16 August 1996 that in respect of relevant available evidence (letters) it had:

> *"…never been seen by the Commission, have never been in the possession of the Commission, are not now in the possession of the Commission and the Commission has been unaware of their existence until their existence was revealed by the contents of your letter under reply."*[44]

Leads ignored in 1991

Mr Sofronoff QC failed to inform the Senate Committee of Privileges that I had provided in early 1991 sufficient evidence and leads for the CJC - and later on the police - where to seek out those incriminating documents that were so easily and quickly found by Messrs Morris QC and Howard in 1996 when they took the trouble to look.

The CJC later confirmed in its July 1997 submission at page 16 to the Connolly/Ryan Judicial Review into the Effectiveness of the CJC that:

> *"...The Commission accepts that, in hindsight, it could have investigated the matter more extensively and could have gained access to documents which may have led it to come to a different conclusion about certain aspects of this whole affair...."*

These admissions by the CJC, after years of declaring that my allegations had been investigated by them to "*the nth degree*" were made against the backdrop of the Morris/Howard report findings, and their view of the CJC's handling of my complaints found at page 215:

> *"...Whilst we are of the view that the events which occurred between January 1990 and February 1991 involve very grave and serious matters, we are even more concerned that those matters have remained successfully covered up for so many years. In what is commonly referred to as the "post-Fitzgerald era", there are many people in our community who feel a measure of confidence that serious misconduct by senior public officials cannot go undetected. Even the Criminal Justice Commission's strongest supporters, like Mr. Clair and Mr. Beattie, must now have cause to reconsider their confidence in the exhaustiveness - to say nothing as to the independence - of the Commission's investigation into this matter."*

Queensland Police Commissioner Jim O'Sullivan was officially informed by registered letter dated 15 September 1994 about the criminality associated with the shredding and acknowledged receipt of same by return letter dated 19 September 1994. He was also informed of the potential unlawful conduct of certain high ranking CJC officers

[44] See Senate Committee of Privileges 57th Report Submissions and Documents.

(including now Stipendiary Magistrate Noel Francis Nunan) who were allegedly assisting in the criminal cover-up.

Suspected child abuse waiting to be discovered

The short point is this: Had those law enforcement agencies ever conducted exhaustive, or even basic, investigations at the time instead of accepting untested misinformation provided in two letters by the then Goss Cabinet Secretary Mr Stuart Tait in April 1991 and Ms Matchett in November 1992 respectively, they would have found compelling evidence of misconduct. At the same time, had they taken the trouble to talk to the so-called JOYC whistleblowers who gave evidence to Mr Heiner to see what they said and whether or not they wanted their evidence shredded to protect them from so-called threatened defamation proceedings, then they would have discovered serious allegations of suspected child abuse. They would have found that at least one key Youth Worker did not want anything shredded.

In evidence[45] tabled in State Parliament on 25 August 1998 it shows that particular Youth Worker in question was so concerned and determined that he pestered the CJC for years afterwards to investigate the alleged child abuse without any success. It wasn't until *The Courier-Mail* featured the alleged abuses in May/June 1998 that the CJC decided to do something that it should and could have discovered from around December 1990 when I complained about the illegal shredding. Justice was delayed for over eight years for the children concerned.

A political smokescreen

In the face of this compelling evidence it is respectfully submitted that the Commission should completely discount Premier Beattie's statement to Parliament on 30 July 1998 that the evidence had to be shredded to protect the whistleblowers because, in reality and legally, it carries no weight or credibility whatsoever.[46] It is purely a "political smokescreen." It is merely, and unacceptably, an attempt to justify the years of inaction on serious incidents of suspected child abuse at JOYC by those in positions of authority who had a duty to act decisively and immediately at the time they were aware of the allegations.

I submit that not only has the CJC's biased and incompetent handling of my allegations allowed matters of suspected child abuse before this Inquiry to go unchecked - and possibly stale - for over eight years but it also assisted in the cover-up of the illegal shredding of the Heiner Inquiry documents (and the illegal payment of $27,190.00[47]).

[45] See the Newnham Report
[46] See State *Hansard* 30 July 1998 p1493
[47] See Morris/Howard Report pp124-142 re breach of Section 204 of the Criminal Code (Qld). Fresh DFSAIA evidence has subsequently emerged in the Clarke memorandum dated 18 January 1991 wherein the payment of monies to which it was known there was no legal entitlement was ellicited from the Department by QPOA officials on threat of taking the "entire saga of JOYC" to the CJC unless monies were paid. One senior official now works for the SPSFQ - the amalgamated public sector union of the QPOA and QSSU.

The police had the same opportunity to uncover the child abuse in 1994, 1995 and 1996 but did nothing. The police merely accepted the CJC/Nunan's findings[48] despite being always challenged by me as biased, flawed, based on incomplete evidence and wrong in law. The CJC/Nunan findings have been subsequently discredited by eminent senior counsel (one of whom is now a Justice of the High Court of Australia), counsel, law lecturers, academics, independent archives experts, the Australian Society of Archivists, and reputable international archives bodies.

As if to worsen the police negligence in this matter pursuant to their obligations under the Police Service Administration Act 1990 to investigate allegations of possible criminality, the CJC finally and in public admitted in 1996 and 1997 that it had *never* examined all the evidence, and if it had done so, it may have reached a different view.

It is submitted that had the police acted in 1994 and after on my allegations, it would have quickly established how superficial the CJC's position was.

Recommendation 5:

Given their respective obligations under the Criminal Justice Act 1989 and Police Service Administration Act 1990 to act, it is submitted that it is open to conclude for the Commissioner that negligence on the part of certain officers of CJC and police, pursuant to term of reference 3D(ii) of the Inquiry, can be established and therefore should be held accountable to the full extent of the law.

The extraordinary decision in June 1996 by Mr Royce Miller QC, Queensland Director of Public Prosecutions, not to pursue the Morris/Howard recommendations denied justice to many people, including the abused children. His advice to the Borbidge Government warrants public examination by this Commission. By the Borbidge Government accepting his seemingly odd advice, despite compelling evidence of *prima facie* serious criminality and official misconduct surrounding the shredding evident "on the papers" and to not establish the open inquiry they (Messrs Morris QC and Howard) recommended, the alleged abuses went unchecked for close on another two years.

In both cases, there is no doubt whatsoever that child abuse matters would have emerged once relevant JOYC/DFSAIA Youth Workers were inevitably called and questioned. One Youth Worker in particular would have been only too pleased to talk about the suspected child abuse.

The inescapable consequence flowing from the "questionable" handling of the shredding in particular by the CJC, QPS and DPP, aside from failing to bring all members of the Goss Cabinet of 5 March 1990 to justice, meant that children held in the care and protection of the Crown at John Oxley Youth Detention Centre who may have suffered the alleged abuse around 1989/90, never received justice either.

[48] Handed down on 20 January 1993 and immediately challenged by Lindeberg.

Recommendation 6:

That the Commission pursuant to its powers under the Commissions of Inquiry Act 1950 seek access the DPP's advice to the Borbidge Government in respect of his considerations concerning the findings of the Morris/Howard report, and that it be made public.

The extraordinary use by the Goss Government of Document 13 for its own political purposes cannot escape comment. It was, I submit, highly calculated in its purpose. Its exposure of *prima facie* incriminating evidence of suspected child abuse was plainly designed to discredit Mr Coyne in the eyes of the public and the Australian Senate. It is submitted that any discrediting of him may have had the desired knock-on effect of discrediting me too, his former union advocate and long-time protagonist against the Goss administration and the system to see the truth revealed in this affair.

The plain fact is that the Goss Government *knew* of the existence of this material. It *knew* of its relationship with the Heiner Inquiry. It did not however act on its contents for the children's sake but only for its own political purposes years later.

Politics before children

The system unquestionably failed the children at risk. Politics got in their way. It failed because of the continuing existence of systemic corruption in Queensland's public administration at high levels. It failed, it is respectfully submitted, because the relevant Queensland law enforcement agencies, other agencies and high ranking public officials could not face the inescapable awesome fact that on 5 March 1990 all members of the Goss Cabinet who sat around the Cabinet table and decided to destroy the Heiner Inquiry documents, may have seriously broken the law and deliberately obstructed justice.

Recommendation 7:

That the Commission pursuant to its powers under the Commissions of Inquiry Act 1950 seek access to all relevant documents associated with seeking and sending of Document 13 to the Senate Select Committee on Unresolved Whistleblower Cases in July 1995 whose contents of suspected child abuse were known since 26 September 1989 but hidden from public view for six years and never acted on by the Goss administration in the interests of justice for those *prima facie* abused children.

Rights under the Rule of Law

It would be far too easy - and grossly unfair - to treat Mr Coyne as a villain in this affair. Certainly I make no judgement in that regard or wish to make any inferences in that direction.

But, whatever the rights and wrongs of his management of JOYC may be, he had rights that had to be respected too. Ultimately, if he wanted to, he had an unequivocal right to his day in court to seek access to those public records without obstruction from the defendant, in this case the State of Queensland. Similar rights of access would have also been applicable to the children suffering the suspected child abuse.

The very worst of villains in our system are entitled to due process and procedural fairness. In a free democratic society like Australia the rule of law demands it, and outlaws such obstruction by making it a serious criminal offence.

Settlement either in court or out of court

Mr Coyne attempted to have his rights upheld. He was prepared to seek justice in a court of law. He, through his solicitors, clearly put the Crown on notice that he wished to enjoy his right of access to certain parts of the Heiner Inquiry documents pertaining to himself, and to the original complaints held by the Crown. He expected it to be resolved outside of court but, if required, he told the Crown that it would be resolved in court.

The notion that by deliberately destroying defamatory evidence makes the defamation itself go away is profoundly misconceived. It only makes the defamation more difficult to prove, hence it would tend to obstruct justice. Witnesses could have been summonsed and asked under oath what they told Mr Heiner, as well as Mr Heiner asked under oath what he was told and read.

In R v Rogerson and Ors (1992) 66 ALJR 500 Mason CJ at p.502 (the highest recent authority) says:

> "*...it is enough that an act has a tendency to deflect or frustrate a prosecution or disciplinary proceedings before a judicial tribunal which the accused contemplates may possibly be implemented...*"

And Brennan and Toohey JJ at p.503 said:

"*A conspiracy to pervert the course of justice may be entered into though no proceedings before a Court or before any other competent judicial authority are pending.*"

A Call-my-bluff act

The shredding was, at one level, a "call-my-bluff" act by a newly elected government. It gambled on Mr Coyne not objecting when he learnt about it. Given that he was known to be ordering *prima facie* excessive use of handcuffing (see Document 13 signed by him and in the department's possession at the time) those in authority may have believed or hoped that he would have been very relieved about the shredding realising that if the evidence ever became public it might be highly prejudicial to his career in particular. They came immediately unstuck. He did object, and so did I - and in this scenario the arrogant high-stakes gamble of the Goss Government completely and negligently forgot about the JOYC children in its care.

In its most altruist view, whatever the "desired outcome" of the Executive Government may have been, and no matter how noble its cause, it could not be lawfully achieved at the expense of Mr Coyne's legal rights. That is unacceptable government by executive decree. This key legal principle was at the very heart of Justice Wilcox's recent ruling on 23 April 1998 in the notorious Maritime Union of Australia dispute with Patrick Stevedores. His Honour Justice Wilcox of Australia's Federal Court said the following relevant words in his ruling:

"Just as it is not unknown in human affairs for a noble objective to be pursued by ignoble means, so it sometimes happens that desirable ends are pursued by unlawful means. If the point is taken before them, courts have to seek to rule on the legality of the means, whatever view individual judges may have about the desirability of the end. This is one aspect of the rule of law, and a societal value, that is at the heart of our system of government."

The facts of this affair however show that the Goss Government, the Office of Crown Law, CJC, and now the Beattie Government's so-called "noble objective" of protecting the whistleblowers, has no substance. Good motives are not even credible or applicable.

The *modus operandi* of the Goss Government throughout was one of deceit and cover-up and not one of openness of purpose or means.

The Role of the Unions - The Unseen Hands

The role of the unions in this affair has never been fully explored before. It can now be done with greater certainty because of the recent release of the relevant Cabinet documents and their contents. This factor, it is respectfully suggested, should be of relevance and considerable concern to the Commission because of the interface and competing interests between industrial and legal rights and obligations of employees/employers in the workplace where the welfare of children is at stake.

What makes the suspected child abuse at JOYC in late 1989/early 1990 different to other possible abuses this Commission may hear, is that it allegedly occurred at a State institution. It was not a private institution generating its own private property.[49]

The preservation of paper work generated at those institutions belongs to the Crown and is supposed to be protected from willful and unlawful destruction by the provisions of the Libraries and Archives Act 1988.

A close examination of the released Cabinet Submissions (ie 12 and 19 February and 5 March 1990) reveals a significant motivating factor on the part of the Goss Government to destroy the Heiner Inquiry documents was that it would allegedly "avert possible industrial unrest."

The unions knew about suspected child abuse

There are a number of critical factors in the submissions, and other events, that give rise to an inescapable conclusion that certain union officials of the QSSU and AWU who wanted the material shredded to "avert possible industrial unrest" were very aware at the time that it contained evidence of suspected child abuse.

For my part (representing the QPOA) I was totally unaware at the time that evidence of suspected child abuse was in the material. It was never mentioned to me by Mr Coyne or any other JOYC/QPOA members. The Queensland Teachers' Union (QTU) never raised that prospect or suspicion in our joint discussions when seeking access to the documents.

In Cabinet submission of 12 February 1990 at page 6 it states the following in respect of the plans to destroy Heiner Inquiry documents at that early stage:

"CONSULTATION

[49] There may well be legal implications on private institutions generating paper work about children who are wards of the State. In that sense, if the carers are contracted agents of the State to care for wards of the State/Crown then the records pertaining to that child may belong to the State and therefore protected pursuant to the provisions of the Libraries and Archives Act 1988 and other relevant pieces of law.

9. Discussions have been held with the Queensland State Service Union and the Queensland Professional Officers' Association, both of which have members affected by the investigation. Neither Union has raised any specific objections to the prosposed course of action."

That is a gross distortion of the facts. On 19 January 1990 I was called to an urgent "off-the record" meeting at Ms Matchett's request. It was a meeting, in reality, of no official standing other than to meet and discuss a problem that would be resolved, insofar as the QPOA was concerned, at another formal meeting after discussing matters with our membership ie Mr Coyne and Ms Dutney at the very least.

Ms Janine Walker, then QSSU Director of Industrial Relations also attended the meeting representing the Youth Workers.[50]

At the meeting Ms Matchett indicated that she had a considerable problem on her hands concerning the Heiner Inquiry and documents generated. She indicated that the Inquiry was to be terminated, and that she had the records in her possession. The documents were presented as having no value and disposal of them was discussed.

No union agreement to shred

Nothing whatsoever was agreed as to allow the aforesaid Cabinet "consultation" comment to be put to Members of State Cabinet of 12 February 1990, and signed off by Minister Warner on 5 February 1990 .

Moreover, Mr Coyne, through his internal sources, learnt of the meeting and called me to a meeting with him and Ms Dutney the following day. The outcome of that meeting was that he wanted access to the original complaints, at the very least, and instructed me to pursue that course of action. I gave him my commitment that there would be no more "off-the record" meetings, and that I would seek access to the material.

I phoned Ms Matchett immediately and informed her that I would not participate in any further "off-the-record" meetings. Following that, the QPOA lodged an official request dated 29 January1990 that access to the original complaints was required by force of law.

At no time did I give her approval, on the QPOA's behalf, to shred the evidence.

Furthermore, on 23 February 1990, I met personally with Ms Matchett (witnessed by DFSAIA Industrial Relations senior official Ms Sue Crook) in her office and formally told her that the QPOA was seeking access to the original complaints and the parts of the Heiner Inquiry transcripts relating to Mr Coyne pursuant to Public Service Management and Employment Regulations 46 and 65.

[50] At that time the vast majority of JOYC Youth Workers were members of the QSSU, while the AWU had a minority. QPOA and QTU members were only the managerial staff and other professional staff.

Acting as a spokesperson for the QPOA and QTU[51], I informed Ms Matchett at the meeting that both unions would join Mr Coyne in his court action if access out of court wasn't granted in order to gain access to the relevant documents. We went on and discussed a possible outcome of the foreshadowed litigation.

That meeting and request for the records was confirmed in writing by the QPOA on 1 March 1990.

In other words, two unions with JOYC members - ie the QPOA and QTU - never, at any stage, wanted the documents destroyed.

The other two unions, the QSSU and AWU representing the Youth Workers obviously did not share that view. It is suggested that any pressure from those unions, overt or behind the scenes, to destroy the Heiner Inquiry documents opens up very serious questions relevant to the considerations of this Inquiry. There can be no doubt that the union officials (in particular Ms Walker of the QSSU) *knew* about the suspected child abuse at the Centre because their close relationship with their respective membership who had successfully agitated to establish the Heiner Inquiry in order to report the unacceptable goings-on at the Centre.

With that state of knowledge it was totally inappropriate for anyone, including union officials like QSSU Industrial Relations Director Ms Walker and possibly others, to agree that the Heiner Inquiry documents be shredded to protect its membership from legal action because it aided in covering up suspected child abuse against children in the care and protection of the Crown.

The removal of Mr Coyne from the management of JOYC may have suited both QSSU and AWU memberships, but it did nothing whatsoever to properly and thoroughly address what had gone on at the Centre before the Inquiry was established.

The Minister must have known

The state of Minister Warner's knowledge about the suspected child abuse going on is relevant. It can be easily confirmed. It is not credible to believe that Youth Workers or their unions or officials did not speak with her when she was Shadow Opposition spokesperson for Family Services in late 1989. Certainly I spoke with her on several occasions about industrial matters going on in Department of Family Services before she took office on 2 December 1989. That is legitimate bread and butter politics in a vibrant democracy, and Ms Warner was an experienced politician with strong connections in the welfare field and unionism.

In *The Queensland Times* of Monday 9 April 1990 (p5) in an article reporting on two JOYC escapees, a spokesperson for Minister Warner said on her behalf:

[51] QTU sent letters dated 27 February and 19 March 1990 seeking lawful access to the documents. In its letter dated 19 March 1990 it told Ms Matchett that "…*Legal measures to gain access to the material may now have to be taken*."

"A spokesperson for Family Services minister Anne Warner said that centre had administrative problems and was overcrowded.

"This place needs a real clean up and it will get it. There have been on going problems of a similar nature since the riot in March last year," he said.

Ms Warner visited the centre yesterday and had called for an urgent report on the centre's problems.

"We've known of the problems at the centre for a long time and when we took over the ministry our first step was to appoint a new manager which we hoped would solve the problems. But problems do still exist," the spokesperson said." (Underline added)

Duty and conflicts of interest

Public sector unions and their officials have a privileged place in our system. They often become privy to confidential or controversial information that others in the community (with a vested interest) are never told about. Elected workplace delegates may find themselves in a major conflict of interest position when public duty and suspected official misconduct or corruption impacts on their work and career prospects as appears to have occurred in this affair. It brings to bear unpleasant choices that may lead to whistleblowing against the system.

By shredding the material as far as the QPOA and QTU were concerned it would have been, and was, industrially and legally provocative - and remains so eight years after the act. In other words the shredding as an option preferred by them would not have averted industrial action as was suggested in the Cabinet submissions.

However, the shredding option was very acceptable to the QSSU in particular, and possibly the AWU. It is therefore axiomatic, that unless that option was adopted, it would be the QSSU - and the AWU - who would have embarked on a course of industrial unrest that so concerned the Government and that threat must have been conveyed to it out of my presence because there were no more joint QSSU/QPOA meetings after 19 January 1990.

The unions divided

The JOYC unions, in effect, divided. The QPOA and QTU wanted the documents preserved, while the QSSU in particular and the AWU wanted them shredded.

Of relevance to this Inquiry is who knowingly assisted in the cover-up of suspected child abuse against children in the care and protect of the Crown. Undoubtedly Ms Walker knew, at all relevant times, that conduct of the sort outlined in the Document 13 (and hidden from public view for 6 years) was being authorised by Mr Coyne and carried out

by either QSSU or AWU JOYC Youth Worker members and would be in the Heiner Inquiry documents.

And to reiterate, that if Ms Walker knew, so too did Minister Warner and Ms Matchett such is the inter-relationship in the world of Labor politics and trade unionism.

Departmental memoranda inculpating the Cabinet

This inter-relationship and the strong possibility of urging by the QSSU to destroy the documents, makes any evidence of communication between Minister Warner and Ms Matchett highly relevant and should be accessed. In a confidential CJC memorandum[52] dated 11 November 1996 to Mr Mark Le Grand CJC Director of the Official Misconduct Division from Chief CJC Complaints Officer Mr Michael Barnes, he says the following at page 4:

> *"While the authors (Messers Morris QC and Howard) refain from making any findings of guilt in relation to Cabinet on the basis that they are unaware of the state of knowledge of these ministers concerned, memoranda from Matchett to Warner strongly suggest that the knowledge which Messrs Morris and Howard deem sufficient to inculpate the departmental officers involved was shared by the politicians who gave the order to shred the Heiner documents*."

Recommendation 8:

I respectfully submit that this Inquiry pursuant to its power under the Commissions of Inquiry Act 1950 seek access from either the CJC or the Department of Families, Youth and Community Care to the memoranda referred to in the CJC highly confidential memorandum of 11 November 1996 and that they be made public.

The Integrity of the Crown and unacceptable union interference

I submit that for any Government to adopt a union strategy which knowingly destroys evidence of suspected child abuse of children held in the care and protection of the Crown in one of its detention centre because of (i) union threats of industrial unrest by the Crown employees who may have perpetrated the abuse (albeit under instructions from management); and (ii) any party political/union affiliation considerations or connections should be rejected and condemned.

[52] Tabled in State Parliament on Tuesday 25 August 1998

Recommendation 9:

It is respectfully submitted that any trade union official who had specific knowledge of the suspected child abuse being perpetrated against children held in the care and protection of the Crown at JOYC in late 1989, and who urged the shredding of the Heiner Inquiry documents known to contain evidence of that suspected child abuse to prevent its public exposure be held accountable to the full extent of the law.

Recommendations

Recommendation 1:

It is respectfully submitted that Queensland's State Archivist be called and publicly examined over her role in this affair and be allowed to be cross-examination by other interested parties. If it is found that the CJC's representation of her role, being unquestionably *known* by her and other public officials for years, is not in accord with her proper role pursuant to the Libraries and Archives Act 1988, than the Commissioner may wish to consider making appropriate recommendations pursuant to Terms of Reference 3C and 3D(ii) against her and other public officials with firsthand knowledge of the shredding of public records containing evidence of suspected child abuse.

Recommendation 2:

It is respectfully submitted that the disposal processes used by units of public administration and other bodies when seeking approval from State Archives to destroy public records be reviewed to ensure that an accountable checklist form (requiring signature) incorporating all known information relevant to the value considerations (ie legal, administration, data, informational etc) which are used by archivists when exercising their lawful discretion under the Libraries and Archives Act 1988 in deciding whether to retain or destroy public records.

Recommendation 3:

I respectfully submit that this alleged conduct is so serious that it cannot be ignored given the central role of the Office of Crown Law plays in the public administration of the State of Queensland. I further submit that pursuant to terms of reference 3C, 3D(ii) and (iii) it is open to conclude that then Crown Solicitor Mr Kenneth O'Shea and Legal Officer Mr Barry J Thomas (and others) displayed negligence and malfeasance of the highest order and should be held legally accountable to the full extent of the law.

Recommendation 4:

I respectfully submit that in light of compelling evidence that pursuant to terms of reference 3C, 3D (ii) and (iii) it is open to conclude that all members of State Cabinet of 5 March 1990, five of whom are currently senior Ministers in the Beattie Government, displayed negligence and malfeasance of the highest order and should be held legally accountable to the full extent of the law.

Recommendation 5:

Given their respective obligations under the Criminal Justice Act 1989 and Police Service Administration Act 1990 to act, it is submitted that it is open for the Commissioner to conclude that negligence on the part of certain officers of CJC and police, pursuant to term of reference 3D(ii), can be established and therefore should be held accountable to the full extent of the law.

Recommendation 6:

That the Commission pursuant to its powers under the Commissions of Inquiry Act 1950 seek access the DPP's advice to the Borbidge Government in respect of his considerations concerning the findings of the Morris/Howard report, and that it be made public.

Recommendation 7:

That the Commission pursuant to its powers under the Commissions of Inquiry Act 1950 seek access to all relevant documents associated with seeking and sending of Document 13 to the Senate Select Committee on Unresolved Whistleblower Cases in July 1995 whose contents of suspected child abuse were known since 26 September 1989 but hidden from public view for six years and never acted on by the Goss administration in the interests of justice for those *prima facie* abused children.

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Attachments

The following public statement by the Australian Society of Archivists went before the Connolly/Ryan Judicial Review into the Effectiveness of the CJC in July 1997 and before the Senate Committee of Privileges in January 1998. It still remains public, unchanged and relevant.

ATTACHMENT ONE:

THE 'HEINER AFFAIR'

A PUBLIC STATEMENT BY THE AUSTRALIAN SOCIETY OF ARCHIVISTS 16 June 1997

BACKGROUND

The public unfolding of the complex sequence of events known as the 'Heiner Affair' has been reported and reviewed in the press (especially *The Weekend Independent*) and in Queensland Government (Morris & Howard 1996) and Senate (Select Committee on Unresolved Whistleblower Cases 1995) reports. It will not be repeated here. The ASA presents this public statement within the full context of the events of the Heiner Affair as they have unfolded since 1989.

THE INTEGRITY OF THE PUBLIC RECORD

The operation of a free and democratic society depends upon the maintenance of the integrity of the public record. Public records are a key source of information about government actions and decisions. They provide essential evidence of the exercise of public trust by public officials. This in turn helps ensure public accountability and protection of the rights of citizens.

In recent years there have been a number of instances of serious disregard for the integrity of public records in Australia. Some examples include those highlighted by 'W.A. Inc.' Royal Commission, the 1994 destruction of Special Branch records in New South Wales and the so-called 'Heiner Affair' in Queensland. This trend is a matter of profound concern to the Australian Society of Archivists (ASA) and should also be of the gravest concern to society as a whole.

Archivists, as impartial and independent professionals, play a vital role in defending the integrity of public records. Cases such as the Heiner Affair highlight the fact that

government archivists need statutory independence such as that afforded the Auditor-General.

The greatest threat to the integrity of the public record is the unwarranted destruction of important documents. The ASA strongly asserts that records should only be destroyed when an archivist reaches a professional decision that the financial costs of preserving and maintaining access to the records are not justified by their estimated ongoing utility, value and significance. In other words, records should only be destroyed when they are no longer required for the purposes of individual, corporate or societal accountability and reference. The process of disposal and destruction of public records should be orderly. It should be guided by established administrative procedures which in turn are based upon internationally recognised archival principles.

THE 'HEINER AFFAIR'

The 'Heiner Affair' has revealed serious shortcomings in the management of public records in Queensland at that time. A number of significant details relating to the case have only come to public attention in recent months, most particularly with the release of a report to the Queensland Government of an investigation into the affair by barristers Anthony Morris QC and Edward Howard. It is the view of the ASA that these revelations have strengthened the case for new archival legislation within that State.

The Morris/Howard report reveals details of the case which are deeply disturbing to the archival profession in Australia. The report reproduces a letter from the Queensland Cabinet Secretary to the Queensland State Archivist dated 23 February 1990, which requested the Archivist's approval for the destruction of the records in question. The ASA notes the conclusions of the Morris/Howard report which state that the disposal authorisation issued by the State Archivist in response to this letter was made in apparent ignorance of the fact that the records were likely to be required for future legal proceedings. This deliberate withholding of vital information necessary for a fully informed disposal decision is inexcusable. The ASA strenuously asserts that archivists should not be treated as 'rubber stamps' by governments wishing to rid themselves of potentially embarrassing records. Records creators and managers must make available to the archivist all pertinent information relating to the ongoing legal/administrative significance of records subject to disposal determinations.

The ASA also wishes to place on record its absolute rejection of the argument which the Queensland Criminal Justice Commission placed before the Senate Select Committee on Unresolved Whistleblower Cases in 1995, to wit that archivists should only consider the historical significance of records when reaching a disposal decision. There are a wide variety of factors which might inform a decision to retain or destroy a particular set of records. These factors include, but are not limited to, the value of the records as evidence of financial affairs and obligations and the value of the records as evidence relating to citizen's rights. Any indication that records are likely to be required in future legal proceedings should, by itself, be sufficient justification to warrant the retention of the records in question.

The Australian Society of Archivists calls upon the Queensland Government to enact legislation which guarantees the future independence of the State Archivist, including protection from political interference, in order to ensure the integrity of the public record in that State.

The ASA has adopted a general position paper on the destruction of records. The position paper, which is available upon request, underpins all of the comments in this statement. For further information please contact Kathryn Dan, President, ASA (ph: (06) 2621607; fax: (06) 2735081).

Adrian Cunningham
National Initiatives and Collaboration Branch
National Library of Australia
ph: 616/2621641
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ATTACHMENT TWO:

On Tuesday evening 25 August 1998 in State Parliament, members of the new One Nation Party moved a motion to expel the five senior members of the Beattie minority Government from the Chamber. Their motion followed confirmation in the content in the unprecedented release of relevant Cabinet Submissions that all members of the Goss Cabinet of 5 March 1990 were fully aware that the Heiner Inquiry documents were required for impending court proceedings at the time they ordered their destruction to prevent their use in those proceedings. One Nation had support for their view of possible criminality involving the five senior Ministers in an opinion from senior counsel confirming the view that all members of the Goss Cabinet of 5 March 1990 may have breached the criminal law and the official misconduct provisions of the Criminal Justice Act 1989.

The One Nation motion was amended by the Opposition's shadow Attorney-General. He called on the Parliament to recommission Messrs Morris QC and Howard to complete their report now that the critical Cabinet Submission of 5 March 1990 had been released by Premier Beattie on 30 July 1998. The amended motion was defeated 45-44, with the Independent Member for Nicklin Mr Peter Wellington MLA voting with the Beattie Government.

The original One Nation motion was then put and defeated 77-11.

In the course of the debate the Honourable the Minister for Families, Youth and Community Care and Minister for Disability Services Ms Anna Bligh MLA delivered a speech.

Of particular relevance is her pointed mention of the Cabinet Register and her determination to ensure that it was never publicly accessed. It is relevant to point out that in March 1998, acting on senior counsel's advice when preparing the grounds to commence a private prosecution against all members of State Cabinet of 5 March 1990 over the shredding, my solicitor specifically sought confirmation from the then Cabinet Secretary to provide the names in the Cabinet Register of all Ministers who attended that meeting. Access was refused.

It should be noted that any continuing refusal of access would make the initiation of criminal prosecution difficult, if not impossible.

Against that background not fully comprehended or known by the general community, and the substance of this submission including the fresh opinion of Mr Greenwood QC inculpating all members of State Cabinet of 5 March 1990, the Honourable Anna Bligh made the following speech.

> "**Hon. A. M. BLIGH** (South Brisbane ALP) (Minister for Families, Youth and Community Care and Minister for Disability Services) (6.46 p.m. 25 August 1998): *The motion before us tonight makes a series of very serious allegations serious allegations against five of my colleagues, serious allegations that do not bring forward one shred of evidence against these colleagues. It is time, as the Deputy Premier said, to call a spade a spade. This has not been debated on the facts; this is nothing more than a complicated, convoluted conspiracy theory a totally mad conspiracy theory. Far be it for me to ruin their grand conspiracy theory with some facts, but I feel I am bound to put them on the record here tonight.*
>
> *".... It seems to me that, if one is going to have a conspiracy theory, one ought to do it properly. If one is going to have a conspiracy theory, one really should have a totally mad one. One should have one that is gloriously mad, one that is grandly, gloriously, barking mad and this one bears all the hallmarks of that. Not only have members opposite come in here and made repugnant and malicious personal slurs on five Ministers, they have made false and disgraceful attacks on current and former officers of my department. We do not mind so much. We have broad shoulders. We take a lot of flak and we will take a lot more. But who else has been dragged into this barking mad conspiracy? Who else is being accused of communism, paedophilia and criminal activity? None other than the Crown law office, the Audit Office, the Office of the Information Commissioner, the Director of Public Prosecutions, the Queensland Police Service, the Criminal Justice Commission and the Federal Senate! I am disappointed here tonight. I had hoped to hear the full extent of this conspiracy.*
>
> *"I was hoping that we would hear tonight of the involvement of the United Nations in this matter; that we would hear tonight about the involvement*

of the Vatican, the Pope and the entire Catholic Church around the world; that we would know tonight at last the truth about the involvement of the ABC in this; about how Bananas in Pyjamas have figured in this, and the role of the Wiggles in this matter. But no! What we have had tonight is further nonsense about documents and documents and documents.

"While we are on the subject of documents, there is a lot of curiosity from One Nation members about the attendance register from Cabinet. I am going to let the One Nation members into a secret. Just so that they never know who is there and who makes these dastardly decisions, at the end of every Labor Cabinet meeting right throughout the Goss years and we have restored the tradition the Premier eats the attendance register. I say to the One Nation members: you will never get it. You can take us to the International Court of Justice and the attendance register will remain in the bowels of former Labor Premiers. It is part of the austerity drive; we do not get lunch."

ATTACHMENT THREE:

A Statement of Policy issued in 1982 and distributed via Public Service Board Circular No. 13/82 deals with Crown acceptance of "legal liability" for actions of Crown employees. It provides, inter alia:-

"It is recognised that many Crown employees have difficulty and delicate duties and functions and that in the diligent carrying out of them they are exposed to claims of damages.

It is not desirable that such employees should be restricted in the carrying out of their duties and functions by any fear that they may have to make payment out of their own pockets in respect of any claims arising out of the due performance of these duties and functions.

The Crown will accept full and sole responsibility for all claims including the cost of defending or settling them, in cases where the Crown employee concerned has diligently and conscientiously endeavoured to carry out his duties."

ATTACHMENT FOUR:

Opinion

On 30 July 1998, Premier Beattie tabled the Goss Cabinet documents relating to the Heiner Issue.

These documents have been considered by me, and I am familiar with the Heiner issue. My overall opinion is that the Goss Cabinet in I990, was aware at the time, that the relevant documents gathered by retired Magistrate Heiner, were required as evidence for Judicial proceedings when Cabinet and the Crown was being threatened by Mr. Coyne and his representatives. Premier Beattie has denied the ALP cabinet knew of this.

Messrs. Morris QC & Howard in their Report to Parliament dated 8 October 1996, advised all Members of Parliament that to obtain these Cabinet Minutes, a public lnquiry would be necessary to gain access to these documents, and to take testimony from members of State Cabinet who participated in the decision to shred these documents on 5 March 1990.

1 would particularly refer to Part C of the Morris & Howard report – RECOMMENDATIONS - under section "Likelihood of Further Evidence Being Brought to Light" - Para, 13 on Page 212.

Furthermore Para. 14 identifies and clarifies that certain individuals are now potentially implicated in the commission of criminal offences or "official misconduct". Messrs. Morris QC & Howard consider it is "open to conclude" that criminal offences or "official misconduct" were committed. In other words, from the evidence Morris & Howard have seen, there is a *prima facie case* of such offences and "official misconduct" having been committed.

In summary, Five Cabinet Ministers of the Goss Cabinet remain in Parliament today, and are Crown Ministers of the Beattie Government. The Cabinet Minutes tabled by Premier Beattie, now tend to support the proposition that these Ministers may have committed criminal offences and "official misconduct" within the meaning of the *Criminal Justice Act.*

R.F.Greenwood QC
SYDNEY - 21 AUGUST 1998

Addendum

ADDENDUM ONE

The fresh revelations contained in Cabinet Submission of 19 February 1990 could hardly be more serious. It demonstrates that all members of State Cabinet from as early as the aforesaid date *knew* they were dealing with documents of undoubted legal value.

It can no longer be credibly said that the Cabinet letter of 23 February 1990 to the State Archivist and subsequent approval to destroy the records on the same day was written in good faith. That process has been constantly used as a shield to charges of illegality associated with the shredding. Any assertion that all members of State Cabinet were unaware of the legal demands on the material in question at the time their letter went to State Archivist has no foundation in fact.

Additionally, at the time of signing off the Cabinet Submission on 13 February 1990, it is incontestable that the Government had in its possession a letter dated 8 February 1990 from Mr Coyne's solicitors seek access to certain parts of the Heiner Inquiry transcripts relating to Mr Coyne (and Ms Dutney), and access to the original complaints pursuant to legally enforceable Public Service Management and Employment Regulation 65. The Government also had in its possession a letter dated 29 January 1990 from the QPOA seeking access to the original complaints (copies of which were in the Heiner Inquiry documents) on behalf of Mr Coyne (and Ms Dutney).

The following day 14 February 1990 - when unquestionably the Cabinet Minute would still be in the Department's possession - Mr Coyne's solicitors phoned DFSAIA Acting Director-General Ms Matchett's Executive Officer Mr Trevor Walsh and served notice on the Crown that it was fully committed to court action unless access was granted out of court pursuant to his rights under Public Service Management and Employment Regulation 65. Mr Walsh faithfully recorded the phone conversation in a memorandum dated 14 February 1990 which Ms Matchett later read and initialed. In his key position, he also had firsthand knowledge of all DFSAIA Cabinet submissions.

The phone conversation was confirmed in writing by Mr Coyne's solicitors on the following day 15 February 1990.

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