



## SPARK AND CANNON

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THE HONOURABLE TIMOTHY FRANCIS CARMODY SC, Commissioner

MS K McMILLAN SC, Counsel Assisting  
MR M COPLEY SC, Counsel Assisting

IN THE MATTER OF THE COMMISSIONS INQUIRY ACT 1950  
COMMISSIONS OF INQUIRY ORDER (No. 1) 2012  
QUEENSLAND CHILD PROTECTION COMMISSION OF INQUIRY

BRISBANE

..DATE 11/02/2013

Continued from 1/02/13

DAY 21

**WARNING:** The publication of information or details likely to lead to the identification of persons in some proceedings is a criminal offence. This is so particularly in relation to the identification of children who are involved in criminal proceedings or proceedings for their protection under the *Child Protection Act 1999*, and complaints in criminal sexual offences, but is not limited to those categories. You may wish to seek legal advice before giving others access to the details of any person named in these proceedings.

THE COMMISSION RESUMED AT 10.08 AM

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COMMISSIONER: Good morning, everyone.

MR COPLEY: Mr Commissioner, I appear this morning. You raised a question when we were last conducting hearings connected with paragraph 3(e) of the order in counsel about what legal qualifications, if any, Mr Heiner, the magistrate, had. Because obviously you were aware that back in those days it wasn't considered a prerequisite for appointment as a magistrate for a magistrate to have legal qualifications.

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COMMISSIONER: Yes.

MR COPLEY: And in fact many of them did not. Mr Heiner did and the document - well, there's a document that he prepared which asserts that he did and the commission of course has no reason to doubt the authenticity of the document because it's a form that he filled out when applying for an advertised position, namely the position of senior stipendiary magistrate at Brisbane, which closed on 21 March 1983. You'll see at the foot of page 1 of the document what his legal qualifications were.

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COMMISSIONER: Okay. Thanks Mr Copley.

MR COPLEY: I hand up that and ask that it be tendered.

COMMISSIONER: The application form will be submitted and marked exhibit 307. Thank you.

ADMITTED AND MARKED: "EXHIBIT 307"

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MR COPLEY: When I said it shows his qualifications, it's to be implied that he perhaps was admitted pursuant to the Solicitors Board course, because it doesn't speak of a university qualification, it just tells us that he was admitted as a solicitor of the Supreme Court in 1965. So we'll proceed on the basis that he obtained that going via the Solicitors Board examinations

COMMISSIONER: Sure.

MR COPLEY: The next document I tender is one that Inspector Breuer prepared. From police records Inspector Breuer went back to ascertain the age of Ms Harding when she entered John Oxley, the age she was at the date of the incident at the Lower Portals, also the age that she left John Oxley. And then in relation to each of the four boys who have not been named but who are - - -

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COMMISSIONER: Mentioned.

11/2/13

COPLEY, MR

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MR COPLEY: - - - allegedly involved in this, he's  
ascertained how old each of the two boys were who were  
alleged to have had carnal knowledge of the child and he's  
ascertained the ages of the two boys who allegedly stood by  
and watched or observed the other two. And simply for the  
sake of convenience but without warranting that in law any  
of this would be provable, the two who had the carnal  
knowledge are called principal offenders 7A and 7A and the  
spectators and 7C and 7C, which of course as you know is a  
reference to the parties provision of the Criminal Code.

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COMMISSIONER: Yes, thank you.

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MR COPLEY: So I tender that document. I've provided a  
copy to Mr Harris, but I didn't have enough for everybody  
else so there isn't - - -

MR HANGER: Do you mind reading those out, then?

COMMISSIONER: Yes, not at all. I'll admit it and mark it  
exhibit 308 and I'll read it out and then I'll show you,  
Mr Hanger, if you like.

ADMITTED AND MARKED: "EXHIBIT 308"

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COMMISSIONER: The alleged victim when she entered the  
centre in 1988 was 14 years and 17 days; on 24 May when the  
incident is said to have occurred she was 14 years and  
three months; and when she left the centre in August 1988,  
after having been there for six months, she was 14 years  
and six months. So she was just over 14 when she came in,  
14 and a half when she left, and 14.3 when the incident  
occurred.

The suspected offenders - the 7A principals were  
respectively 14 years and seven months and 14 years and  
eight months at the time of the incident. So one was four  
and the other one was five months older than the child  
herself. The spectators were 14 years and four months, one  
month older than the victim, and 14 years and six months,  
so three months older.

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MR HANGER: Thank you. I don't need to see it.

COMMISSIONER: Thank you.

MR COPLEY: Mr Commissioner, I call Derman Lloyd Roughead.

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**ROUGHEAD, DERMAN LLOYD** sworn:

ASSOCIATE: For recording purposes please state your full  
name and occupation?---Derman Lloyd Roughead; retired.

COMMISSIONER: Good morning, Mr Roughead. Yes, Mr Copley.

11/2/13

ROUGHEAD, D.L. XN

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MR COPLEY: Mr Commissioner, could Mr Roughead see his statement, please? 1

COMMISSIONER: Certainly.

MR COPLEY: Mr Roughead, would you look at that document, please, just to confirm that that's a statement that you provided to the police on 1 February 2013?---Yes, it is.

I tender that statement.

COMMISSIONER: Mr Roughead's statement will be exhibit 309. 10

ADMITTED AND MARKED: "EXHIBIT 309"

COMMISSIONER: And can it be published, Mr Copley?

MR COPLEY: Yes, it can be.

COMMISSIONER: I direct its publication.

MR COPLEY: If it can just be returned to him now in case he needs it. He's got a copy anyway?---I've got a copy. 20

Thank you. Mr Roughead, the subject matter of the statement concerns the reasons why you were sent to see a gentleman that you believe to be Mr Heiner, your collection of a box for Mr Heiner, and your return of that box to someone called Trevor Walsh?---That's correct.

Yes. Your statement is an exhibit, so it's evidence, it speaks for itself. The only question that I wanted to ask you was the box that you collected from the man you believe to be Mr Heiner was a box where he signed across the seals. You confirm that?---Yes. 30

Yes. After you got it into your possession did you open it and look inside it before you gave it to Mr Walsh?---No, I did not.

Okay. After giving it to Mr Walsh did you ever see it again?---I never saw the box again, no.

Okay. No further questions, thank you.

COMMISSIONER: Mr Hanger? 40

MR HANGER: No questions.

MR HARRIS: No questions, Commissioner.

MR BOSSCHER: Nothing, thank you.

COMMISSIONER: Mr Roughead, you got off lightly today? 1  
---Thank you.

Sorry to bring you in here all this way for that?---Okay.

There will be other witnesses who will be pleased that they  
spend such little time in the box. Yes, Mr Copley?

MR COPLEY: May the witness be excused?

COMMISSIONER: Yes. Mr Roughead, you're excused from the 10  
requirements of your summons with thanks?---Thank you.

WITNESS WITHDREW

MR COPLEY: Mr Commissioner, I call Catherine Mary  
McGuckin.

**McGUCKIN, CATHERINE MARY** affirmed:

ASSOCIATE: For recording purposes please state your full  
name and occupation?---Catherine Mary McGuckin, research  
director at Parliament House. 20

COMMISSIONER: Good morning, Ms McGuckin, welcome?  
---Good morning.

Yes, Mr Copley?

MR COPLEY: Can Ms McGuckin be shown her statement?  
Ms McGuckin, can you look through that document and confirm  
that it's a statement that you provided on 5 February 2013?  
---Yes, it is.

I tender that statement. 30

COMMISSIONER: Ms McGuckin's statement will be  
exhibit 310.

ADMITTED AND MARKED: "EXHIBIT 310"

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11/2/13

ROUGHEAD, D.L. XN  
McGUCKIN, C.M. XN

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COMMISSIONER: Can I direct publication? 1

MR COPLEY: Thank you. It can be published, yes.

COMMISSIONER: I direct its publication. Yes, Mr Copley?

MR COPLEY: Thank you. Ms McGuckin, in your statement you inform us that in 1990 you were called to the office of Ms McGregor where you were to assist her to explore the contents of a box?---Yes.

Yes, thank you. In the statement at paragraph 6 you describe that it contained old style standard size cassette tapes and transcripts?---That's correct. 10

Do you mean by "old style" cassette tapes something that was equivalent to a C45 or a C60 or a C90 tape?---I can't tell you the technical thing but it was the rectangular tapes that you put in to listen to music.

With two holes?---Two holes, yes.

Okay, and you said that there transcripts?---That's correct. 20

Did you listen to the tapes?---No, we didn't.

Did you scan, peruse, read, flick through any of the transcripts?---Yes.

Were you able to ascertain from your point of view what the transcripts seemed to be concerned with?---Yes.

All right, and can you tell us from what you could see what the transcripts concerned?---Yes, sure. I only looked through about half of them. 30

Yes?---Lee and I split them up. Basically they were interviews with staff at the John Oxley Detention Centre. They were mainly about the relationship between the staff and the management and there was a lot of complaints about things that were happening at the centre in terms of staff management relationships.

You said you only looked at about half of them. Are you able to tell us how many constitutes half, from your memory?---Not really; probably eight to 10. 40

Were you able to determine from looking at the transcript who the questioner was who was asking questions?---I remember it as being Mr Heiner but I wasn't taking a lot of notice of who was asking the questions.

Did you see in the box any documents handwritten or typed from any people that represented in the documents that they were from the John Oxley Youth Centre?---Not that I recall.

11/2/13

McGUCKIN, C.M. XN

Did you see anything in the documents from your looking at them that concerned or was connected with sexual goings-on or sexual contact with children at the centre?---No. 1

Were you looking for anything of that nature when you scanned through the documents?---We were looking at them generally to see whether they had any historical - well, I was looking from the historical point of view in terms of whether they had any value to be kept historically. So I wasn't - I was looking at the content but not specifically looking, obviously, for child abuse or anything like that - but it would have stood out, I'm sure. 10

What criteria were you applying to determine whether or not they were of historic value to you?---Well, yes, I worked in the research area of the State Archives. (1) they would have had to have been able to be released to the public, so fundamentally there was an issue there, because my understanding was that they would never have been able to be released in terms of the way in which they had been taken.

Yes?---Because my understanding was that the inquiry had been constituted in a way that meant that those documents would be protected. 20

Where did you derive that understanding from?---From Lee McGregor.

Did she tell you where she in turn had derived that understanding from?---When we had a discussion at the beginning she told me that she had - that there had been Crown Law advice received.

Did she wave up - or hold up and say, "Crown Law gave us this advice," or, "Crown Law gave us the advice on the table here"?---Not that I remember. 30

So anyway, the position as far as you were concerned was that applying the criteria that archivists applied to these documents they were of no interest to the archives? ---That's correct.

We've heard evidence that Ms McGregor signed the letter and also advised that the way was clear as far as she was concerned for the documents to be destroyed?---Yes, I understand she did. 40

Was that a view that she formed - that she communicated to you that she was going to tell people that or is that just something you know from subsequent developments?---No, we had a discussion after going through the documents.

COMMISSIONER: Ms McGuckin, you can sit back in the chair, if you like?---Thank you.

11/2/13

McGUCKIN, C.M. XN

11022013 02 /RMO(BRIS) (Carmody CMR)

That microphone is pretty sensitive?---Okay.

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It doesn't amplify you; it just records.

MR COPLEY: That's right?---Okay.

So after she said to you, "Well, I'll tell them they can be destroyed," is it the case that quite some time went by before you were next involved with those documents?  
---That's correct.

According to paragraph 11 of your statement, your next involvement with the documents occurred when a man called Ken Littleboy telephoned you from the cabinet office?  
---That's my memory, yes.

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Is that the first time you'd ever had any dealings with that man?---Yes.

You'd never met him before?---Not that I know of, no.

You say that he advised you that cabinet was ready for you or "us" to destroy the documents?---That's correct.

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What did you say to that?---I said that that wasn't the normal practice, for the State Archives to actually do the destruction, that normally if the records were in the possession of the department or whoever they would do the destruction themselves.

What did he say to that?---I can't remember specifically but I have a memory that he wanted to make sure that the documents that Lee and I had gone through and that the permission had been given to destroy were the documents that were destroyed.

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Where were those documents when he made this phone call to you? Were they still in possession of archives?---No.

So did you see them again?---Yes.

Where did you see them again?---In the cabinet office. I saw the box in the cabinet office.

Was the box open or closed when you saw it?---I can't recall.

Where was the cabinet office situated?---In the executive building.

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What floor?---I know it's now the 13th floor but I couldn't tell you whether it was then.

How did you get from archives to the cabinet office?---Ken came and picked me up.

11/2/13

McGUCKIN, C.M. XN

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Was it a usual thing or a routine thing for people from archives to attend a government office to supervise or participate in destruction of documents?--No. 1

Had you ever done it before?---No.

Did you ask Ms McGregor about why you had to go and do it? ---My understanding is that Lee wasn't there - Ms McGregor wasn't there.

Yes?---But I couldn't tell you the conversations that went on. 10

So how was it that you came to be in the cabinet office where this box was?---My memory is that I was acting in Lee's job at the time.

Well, were you invited to come in or were you directed, told, "You're to come in here"?---No, I wasn't directed.

You weren't directed. So were you simply invited to come in?---Well, as I said, Ken said that they were ready to destroy them and my memory is that he wanted to make sure that the documents that were destroyed were the same ones that Lee and I had gone through. 20

Yes?---So he gave a reasonable argument and I accepted that.

So you didn't regard it as a direction but rather as a request for assistance, did you?---Yes, to ensure that the right documents were destroyed.

How did you get into the premier's department building? ---Ken must have let me in - he came and picked me up and I - - - 30

He came and picked you up?--- - - - think we parked in underneath in the carpark and came up through the lifts.

All right. So he drove all the way out to archives to get you to bring you back in and he parked under the building and brought you up in the lift?---Yes.

Then when you saw the box you don't remember whether it was sealed or unsealed?---No.

Did you ever get to look inside it?---At the cabinet office? 40

Yes?---Not that I remember.

Well, did you ever get to look inside it anywhere?---Yes.

Where?---In the family services building.

11022013 02 /RMO(BRIS) (Carmody CMR)

How did the box get from cabinet office to family services building?---Ken carried it across for me. 1

Okay, and did you walk alongside him?---I did.

Did you notice as you walked along George Street whether the box was open or not?---I honestly can't recall.

When you got to the family services building was that the building on the corner of George and Elizabeth Streets, was it?---Yes, that old building. 10

An old sandstone building?---Yes.

Where did you go there?---Ken took me up in the lift; I don't know what floor it was, and introduced me to Trevor Walsh.

Had you ever met him before?---No. 20

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11/2/13

McGUCKIN, C.M.. XN

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Okay; and then what happened after you were introduced to Trevor Walsh?---We went into a room to destroy the documents. 1

And Mr Littleboy would have stayed around because he was anxious to know whether the documents that were to be destroyed were the ones you had already looked at?---I've got no idea whether he was anxious or not.

Okay, but he must have stayed around, mustn't he, to make sure that you could confirm the documents were the same before they were destroyed?---My memory is he gave me a lift back so, yes, he must have stayed around. 10

Well, did you look in the box to see if they were the same? ---Before I destroyed them, yes, I did.

And did you go outside and tell Mr Littleboy, "Hey, Ken, to allay any concern these documents are the same ones I saw out at archives"?---No, it was understood that I would go out and say if they weren't.

How was it understood?---I don't know. I would've said if they weren't the same documents. 20

Do you have a memory of saying, "Hey, Ken, if they're not the same documents, I'll just whip outside and let you know"?---No, I have no memory of that because I didn't say that.

COMMISSIONER: Did you assume they were?---I assumed that - - -

You had no reason to believe they weren't?---No.

MR COPLEY: But you had no reason to believe anything, did you?---No. 30

Well, did you recognise the box in the cabinet office as the one you had seen at archives?---It looked a similar box, yes.

What was distinctive about it?---It was a long time ago. I really honestly can't remember.

No, but I'm just trying to understand why you were asked to help, you see, by - because the cabinet office was so concerned to make sure that they didn't destroy the wrong documents, you were asked to come in to make sure they were destroying the right things. I'm trying to understand how it is that you then communicated to Mr Littleboy that the things to be destroyed were the correct ones and not something else?---Trevor and I went into the room and I started going through the box to shred the documents and they were obviously the same documents so - - - 40

But you didn't go out to tell Mr Littleboy that before you destroyed them?--Not that remember, no. 1

And do you remember him waiting around?--I don't remember him waiting around and I don't honestly remember him giving me a lift back except we didn't have a Queensland state archives and I imagine that he gave me a lift back.

But you can't remember now one way or the other?--No, sorry.

Okay?--I'm sure he wouldn't have left me to get a bus. That's all I can remember. 10

You're sure he wouldn't have expected you to get a bus. You were the person who actually destroyed all of these objects, were you, or only some of them?--Trevor and I - my memory is that Trevor and I both shredded the documents.

So presumably that means that you put pieces of paper into a shredding machine?--And the tapes. We had to - I had to get the tapes out of the little tape boxes and that was difficult so I think Trevor went and asked somebody to get an implement so I could open them up, cut the tapes up and put them through the shredder as well. 20

So Trevor assisted you to destroy the tapes by obtaining an implement that would allow you to open them up and get the tape material out of the box?--Yes.

Right; and was there anything additional in the box or different to the contents that you had seen when you looked at them are archives?--Not that I'm aware of.

Did you have any sense of unease about your involvement in the destruction of this box at the time you were destroyed it?--No, I didn't. 30

You said in paragraph 12 though, "It was not a typical practice to destroy documents ourselves and the fact that Lee was not present I wrote a file note about the event"? --That's correct.

Why did you make a file note about the event?--Because it was unusual for us to be asked to actually do the destruction and because Lee wasn't there.

Right. Did you ask this fellow Trevor Walsh why it was that you had to be there to do the destruction?--Well, as I said before, I already understood why I was there. 40

Yes, because Ken Littleboy told you something, but did you just for the sake of prudence ask Mr Walsh what his understanding of your role there was?--No, I don't remember that. I may have but I don't remember.

Could you look at exhibit 189, please? Is that the file note that you made for Ms McGregor?---It's a file note that I made for state archives, yes. 1

Sorry, first of all, it's a copy of a file note you made for whom?---The files at state archives.

Okay. No further questions, thank you.

COMMISSIONER: Thank you. Mr Hanger?

MR HANGER: No questions. 10

COMMISSIONER: Mr Harris?

MR HARRIS: No questions, commissioner.

MR BOSSCHER: Thank you. I have some.

COMMISSIONER: Okay, thanks, Mr Bosscher.

MR BOSSCHER: I understand from your statement, Ms McGuckin, that the decision as to whether or not documents should be retained or record disposed of wasn't your normal function at the archive office?---That's correct. 20

There was somebody who - an Ann Burgin that would be the more appropriate person to consider disposal of documentation?---I wouldn't say more appropriate, but that was her normal position.

That was the role that she fulfilled?---Yes.

Could I just ask you to look at paragraph 13 for me? About halfway down that paragraph you say this, "This decision would depend on issues such as it being needed for legal or historical reasons or the like"?---Yes. 30

That's one of the things that needs to be considered in relation to the destruction of documents?---That's correct.

If they're required for legal proceedings, then, of course, they shouldn't be destroyed?---That's correct.

But in relation to this particular matter, you had been told by your boss that that had already been considered by Crown Law and there was no legal impediment?---That's correct. 40

You also say in your statement that when you considered the documents with Lee, you did not listen to any of the cassette tapes?---That's correct.

11/2/13

McGUCKIN, C.M. XN  
McGUCKIN, C.M. XXN

And you also state that the cassette tapes and the transcripts appeared to match the tapes?---Yes, that was my understanding. 1

What do you mean by that?---That the transcripts were actually transcripts of the tapes.

What gave you that understanding?---I can only recall that the tapes had a description on them of an interview and that the transcripts were of similar interviews or the same - - - 10

So did you or Lee go through and cross-reference those and make sure that there was a transcript for every tape, et cetera?---I can't recall.

And you would accept, wouldn't you, without listening to the tape you couldn't tell whether the transcript was an accurate reflection of it?---I would agree, yes.

You have indicated you hadn't met Mr Littleboy previously? ---That's correct.

Had you ever been up to the cabinet office previously? ---No. 20

When you fulfilled your role at state archives, did that ever happen again?---No.

Do you recall any other requests directly from cabinet office to destroy documents when you were at state archives?---No.

Do you recall any other time when you were at state archives going off site to assist in the destruction of some documents?---Not me because it wasn't my normal job, but Lee had to, yes. 30

COMMISSIONER: Sorry to interrupt.

Did you ever say to anyone, "How come I'm doing it and Lee isn't"?---My memory is that Lee was on leave and I was actually acting in her job.

Did you ever ask anyone, "How come it has to be done while Lee's on leave and I'm acting in her job? Why don't we wait till she comes back"?---It wasn't a big deal; like, the permission to destroy the documents had been given a full month before. I didn't see it as something that would need to wait until Lee got back. 40

Did you see it as routine?---Not me going to destroy the documents, no, but it is routine for documents to be destroyed after the permission has been given.

But given that permission had been given and Lee wasn't there, did you see it as a routine event?---The destruction of documents, yes; me destroying them, no.

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But you were only destroying them because no-one else was there, or Lee wasn't there?---Lee wasn't there, and she and I were the only two that had been through the box, yes.

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Okay. So you didn't see anything significant or sinister in you begin the one to supervise the destruction rather than Lee?---No, not at all.

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MR BOSSCHER: Following on from what the Commissioner asked you, it wasn't routine, though, was it, for the state archive to destroy documents simply to give approval for their destruction?---That's correct.

And in the normal course of events approval is given and then it's the responsibility of the relevant department? ---That's correct.

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So it wasn't routine for you or Lee or anybody to go off site and supervise the destruction of a series of documents, was it?---No, that's correct.

When you arrived at the Premier's office the documents were present. Was there any reason they weren't destroyed there, that you recall?---No. My understanding was that the department that owned the documents as such was the Family Services Department and that's why we were taking them over there.

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You also indicated that you received the request from Mr Littleboy and you acceded to the request to go and assist?---Yes.

A request from the cabinet office, though, is somewhat more than a request, and being a public servant you would have felt duty-bound to go and do what you were being asked to do?---I was given a reasonable argument for why I should do it.

Had you ever met Mr Trevor Walsh before?---No.

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Have you ever spoken to him before?---No.

Thank you, Commissioner.

COMMISSIONER: Thank you. Did you know what Mr Walsh's position in the department he was from was?---He may have said when I met him, but I don't remember it, no.

Do you remember whether you were told that he was a very senior person in that department?---Not that I remember.

Were you told why you were going down to the department to do the destruction as opposed to anywhere else?---I may have been, but I don't remember. And as I said, my understanding was that they technically owned the documents and that's why we were going there. They were the ones who were given permission to destroy the documents.

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Righto. So just - sorry, Mr Copley - just talk to me about ownership for the moment?---Yes, it's probably not the correct word. 1

No, it might not be strictly correct, but it helps to conceptualise who was responsible for the documents. When does the archives take ownership and therefore responsible for documents normally?---Only if they're transferred into the custody of state archives.

These had been, hadn't they?---No, they'd come over for an assessment as to whether they could be destroyed or not. 10

I see. So from your point of view and the state archivist's point of view these documents had not been taken possession of?---That's correct.

And they remained the property of whoever gave them to you? ---Family Services, yes.

I see. Okay. Good, thank you. Yes, Mr Copley?

MR COPLEY: And you didn't have a copy of them out at archives, did you?---No. 20

So I suggest to you you must have felt uneasy about the destruction of these documents or uneasy about the fact that you'd been inveigled into the process of destruction, and that's why you wrote the memorandum which is exhibit 189?---The second part, I think. Not uneasy about the destruction because all the proper authorities had been given.

Yes?---And only in terms of, yes, the fact that I had been asked to go and destroy them. 30

You didn't feel comfortable about that, did you?---I didn't feel uncomfortable about it at all.

You felt uneasy about it then, didn't you?---No, I didn't.

That's why you wrote document, didn't you, exhibit 189? ---No.

You just told me that?---No, I said it was because it was unusual. I didn't feel uneasy.

Didn't you?---I hadn't - honestly didn't give it a second thought after I wrote - - - 40

That can't be correct because the next day you gave it however many seconds of thought it took to compose the memorandum, exhibit 189?---I think I did it on the same day when I came back.

11/2/13

McGUCKIN, C.M. XXN  
McGUCKIN, C.M. REXN

Okay?---And as you'll note, it's a very short memorandum and I just put it on file. 1

COMMISSIONER: What was the purpose of it?---It was just because Lee wasn't there and it was a very small place, state archives, and Lee was the manager and I just put it down in a note. And I'm sure I would have mentioned it to her.

Why? Why did you put it down in a note?---Because as I said, it was unusual for me. 10

Unusual. So why did something being unusual make it noteworthy? Why did the unusualness itself make it noteworthy? Because it was unusual. I know, we'll keep going round in circles?---Yes. Because it wasn't the normal practice I came back and put a file note on.

See, I don't - - -?---I probably would have put a file note on if I'd destroyed kilometres of records at state archives too - - -

Sorry, what was - - -?--- - - - but it wasn't my job. 20

- - - not normal about it?---That normally the department that owns the records is given an authority to destroy them.

Yes?---And that department then destroys them. At state archives we didn't usually see them again.

So it wasn't the fact that it was you rather than - - -? ---Lee.

- - - Lee - - -?---No. 30

- - - so much as the fact that - - - ?---That state archives had been asked, yes.

- - - you were getting involved in the destruction?---Yes.

Why didn't you, as acting archivist, say, "No, we don't do that. It's not our job"?---I did. I did say that.

Yes. And - - - ?---And then as I said, I was given a valid reason, what I considered as a reasonable person was a valid reason for me to identify the records. 40

But just looking at the rationality of that, you thought you were being asked to verify that the records that were destroyed were the same records in respect of which authority to destroy had been given?---Except for that word "verify".

Yes?---I understood that I was to destroy the same records that the state archivist had given permission to be destroyed. 1

MR COPLEY: But didn't you say to them, "Look, I can verify they're the same, but we don't do destruction. We're the archives. We don't do that"?---It's not that we don't do it. On occasions - it wasn't - look, honestly, it wasn't my area, but I do remember that at certain stages there would be trucks that would come and - you know, shredding trucks, and state archives would organise destruction of records. What I'm saying is unusual is for me to go to a department where the records were in the custody still of a department and assist in their destruction. 10

COMMISSIONER: It must have also been a bit unusual for so much significance to be attached to the documents to be destroyed corresponding with the authority - the identity of the documents authorised for destruction?---What was - sorry, what did you way at the beginning?

There was obviously some significance placed by the department on the authorised destruction and the documents to actually be destroyed being the same?---Yes. It's illegal to destroy documents that don't have the permission. 20

I know. I know. And you always give permission for public documents that aren't needed to be destroyed. That's a routine thing?---Yes.

And even though it's illegal on those occasions, nobody says, "Look, we want you to make absolutely sure that they're one and the same." They did here?---They did, yes. 30

So did you ever interrogate them about why it was so important that they be exactly the same, apart from the legal obligation - which exists everywhere, all the time - not to destroy stuff that's not authorised?---I didn't see that as my role, to interrogate anybody.

I used that word. I didn't mean - - - ?---Yes.

But ask them?---It wasn't my role. I mean, it was quite straightforward from the way I saw it. There was documents that had been given permission to be destroyed and I was asked to go and - - - 40

MR COPLEY: It was really unusual, wasn't it, to be picked up - a man from cabinet rings and says, "I'm coming out to collect you," for him to come and collect you in a car, take you into the cabinet building, take you upstairs, him to pick up the box, and then him to have you walk with him down to another government department, for you to then

shred them at another government department and not at cabinet. That was all unusual, wasn't it?---Yes, I've said before it was unusual. 1

And it made you uneasy, didn't it?---It didn't make me uneasy. Why - - -

And that's why you compiled the note the next day to squarely - - - ?---I think it was on the same day.

Well, whenever?---Yes. 10

You compiled a note to squarely record for posterity that everything you'd done had been done at the behest of Littleboy from cabinet?---No. No, that was not the purpose of the file note.

COMMISSIONER: Just coming back to me question and just leaving aside what your role was?---Yes.

Just the sheer inconvenience of you - Lee was on holidays and here you were trotting off to a department to destroy something that every other department generally speaking does themselves. Just being put out to that extent?---I'm a public servant, I do my job and - - - 20

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But that wasn't your job, you've just told us?---Well, I thought that the reason that I was given was a valid reason, was to ensure that the documents that Lee and I and only Lee and I had gone through, to my knowledge, to give the disposal authority were the same records that were disposed of.

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Okay, I understand that, and your note, exhibit 189, was meant to - - -?---Just give a brief description of what had happened.

And confirm that what had been destroyed were the ones that had been authorised?---I don't think I even put that. I think - I probably did put it in the note, sorry. I'd have to have another look.

10

Right, but - - -?---Yes, I did confirm that in the note.

Yes, and I'm just going to ask one more question?---Yes, sure.

Is what you did on that day before destruction ensure that they were the same documents?---Sorry, can you ask that - - -

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Did you ensure, actually ensure, that the documents that had been authorised for destruction were the same as those actually destroyed?---The documents in the box were the same - the box had the same contents, from my memory, as the contents of the box that Lee and I went through, yes.

I'll tell you why I'm interested in this, is because it seems to me that what you actually did wasn't really what you were being asked to do, and that is to ensure that they were exactly the same. I thought you said you - - -?---No, what I - - -

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- - - operated on the basis of the assumption that they were the same. Well, if you did that the department could just as easily have done that on their own, couldn't they? ---They could have, except that they weren't with Lee and I when we went through the box.

Okay, but what did you value add to the process of destruction? How did you by being there give the department any comfort at all that what they were destroying is what they had been authorised to destroy?---I suppose I wasn't giving the comfort to the department, I was giving it from the State Archives point of view, that we had given authority to dispose of records and that they were the records that were disposed of.

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Except that State Archives weren't the ones who asked you to play that role, the department, the families department, was the one who asked you to confirm.

MR COPLEY: No, it was the cabinet man.

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COMMISSIONER: The cabinet man, not even the department. So you weren't motivated by protecting State Archives, you were motivated by a request from the cabinet man?---To go and destroy them? Motivated? I saw it as part of my job. Even though it's unusual, I saw it as part of my job.

I know?---Yes.

You keep saying that, but what I keep saying back to you is that the job you say you were asked to do isn't the job you actually did?---I did, because you'll see in my statement that I say, "I collected the records of inquiry by Mr N.J. Heiner that Lee McGregor and myself had inspected on 23 February."

10

But that was an assumption on your part. You didn't check that they were, did you?---I did. As I destroyed them I saw them again. They were the same documents. You know, you get a transcript out and have to actually pull it apart to put it through a shredder.

Yes?---Yes. I was very confident that the documents I was destroying were the same documents that Lee and I had gone through.

20

Okay?---It was only a month before we'd given the authority, so it wasn't that long before.

Did you do a check? Like, the way I would check would be say, okay, I'd do an inventory of what I'd checked at point A and then I'd do an inventory of what I was destroying at point B and I'd cross-check to see that nothing was in list 1 that wasn't in list 2 and nothing was in list 2 that wasn't in list 1; that is, that the list of documents were the same?---I didn't have a list to start with.

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But you could have made one when you were first checking with Lee?---We could have, but it wasn't normal practice to do that.

Well, there's a lot of non-normal practice about this, I think. So you didn't do it in the first place because you never thought you'd be asked to confirm that what was to be later destroyed were what you were looking at. Is that right?---Yes, and I suppose it's something to do with the Libraries and Archives Act, is that the state archivist gives permission for records to be destroyed and there's nobody who double-checks that the actual records that are destroyed are the ones.

40

But as you told me, it's illegal to destroy something that's not authorised?---That's correct.

So nobody takes a lot of care - - -?---That's what I'm saying. There's obviously an administrative thing there that may need to be looked at, but it was not unusual for that. I mean - - -

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Except here no-one was leaving it to chance. They were getting you involved in the process?---They did, yes.

That's what was unusual about it?---That's correct.

Got it.

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MR COPLEY: See, your final note here, exhibit 189, identifies who collected you, where he was from, where he collected you from and even the time at which you were collected?---That's correct.

What's the significance of the time?---I don't know.

It only has significance if you were - if you felt uneasy about the fact that you were inveigled into this, doesn't it?---Why would the time make a difference? I don't understand.

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Exactly. Why do you record the time in the file note?

COMMISSIONER: If it's got no significance to you?---What significance could the time have? I don't understand. I don't understand why I put the time in. It's a file note and I put the time in, but I don't see why if I'd done it at 10.30 in the morning or 2.30 in the afternoon could make any difference.

It doesn't.

MR COPLEY: So why is it in there?---I wrote it 23 years ago. I really couldn't tell you.

30

You see, I suggest to you that the making of the file note in the detail that it's made betrays an uneasiness on your part about the role that you were - you don't like the word "directed" to perform so we'll use your word, invited to perform?---And I say again that I wasn't uneasy but it was unusual so I felt a need to document it.

Right, and so what file would this file note be attached to given that there were no copies of these documents out at archives to attach it do?

40

COMMISSIONER: That would go in the unusual file, not on the uneasy file, Mr Copley?---There was - I don't honestly remember what file it went on, but there was obviously a file about - that would have had the authority to destroy. State Archives keeps a record of those things.

MR COPLEY: Okay, so in this letter, "I took possession of the records and myself and Trevor Walsh from the department destroyed them"?---That's correct. 1

That's what it says, doesn't it?---That's true.

Have a look at exhibit 190?---I note also that Lee has initialled the file note.

Good. Have a look at exhibit 190?---Yes.

See there in the first paragraph, "It is confirmed that on Friday, 23 March 1990, Ms McGuckin" et cetera, "destroyed the relevant material in my presence"?---Yes. 10

He's dropped you right in it for destruction there, hasn't he?

MR HANGER: That's an inflammatory comment. It's a silly comment, with respect.

MR COPLEY: He's dropped you right in it as the destructor, hasn't he? 20

MR HANGER: And I said it's a silly comment.

MR COPLEY: Well, you can rule on that, Mr Commissioner.

COMMISSIONER: I think it's a question, Mr Hanger, rather than a comment. Would you rephrase your question, please, Mister - - -

MR COPLEY: He has squarely in this memorandum or notation laid sole responsibility for destruction of all of the records at your feet, hasn't he?---I'd just like to say one more time that the decision to destroy - - - 30

I'm not talking about the decision, I'm talking about the act of destruction?---Yes, he says that I destroyed them.

That's right. So to that extent his memo conflicts with your memo to Ms McGregor?---That's correct.

Which is correct?---My memory is my memo.

That you both jointly participated in the acts necessary to physically destroy the objects?---Yes. 40

Having looked at exhibit 190 I'll just make the suggestion to you again that you were uneasy about the fact that you actually had to participate in the acts involved in destroying the documents. That's why you wrote exhibit 189?---I'll just say again that I wrote it because it was an unusual situation. It was unusual for me to be asked to go in there and do it. I had no reason to be uneasy about it.

11/2/13

McGUCKIN, C.M. REXN



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No further questions.

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COMMISSIONER: Thank you. Mr Hanger?

MR HANGER: I have no questions?

COMMISSIONER: Mr Harris?

MR HARRIS: Nothing.

COMMISSIONER: Ms McGuckin, thanks very much?---Thank you.

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Sorry that you got such a grilling but these are important issues?---No problem.

The significance of the witness doesn't always appear as significant to you as it does to us?---No problem.

So you are formally excused from your summons, thank you.

WITNESS WITHDREW

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11/2/13

McGUCKIN, C.M. REXN

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COMMISSIONER: Yes, Mr Copley?

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MR COPLEY: I'm just waiting to see which witness is next available before I call that person.

COMMISSIONER: Sure.

MR COPLEY: I call Kenneth Peter Littleboy.

**LITTLEBOY, KENNETH PETER** affirmed:

ASSOCIATE: For recording purposes please state your full name and your occupation?--Kenneth Peter Littleboy, retired.

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Please be seated.

COMMISSIONER: Good morning, Mr Littleboy, welcome?  
---Thank you.

MR COPLEY: Could the witness have a look at his statement, please? Would you just look through that document to confirm that that's a statement that you gave to the police and signed on 8 February 2013?--Yes.

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Now, is everything in there accurate or do you wish to change something?--No, there's a couple of things I wanted to change.

All right. Direct our attention to them, please?--I think it's paragraph 8 where I say, "So cabinet sought advice from, I believe, the attorney-general." It wouldn't have been the attorney-general. He's the minister. It would have been Crown Law.

So we should strike out the words "attorney-general" and substitute the words "Crown Law" there?--Crown Law, yes, and in paragraph 12 the same thing. I said "attorney-general". The first sentence in paragraph 12 would've been "Crown Law".

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COMMISSIONER: Are you correcting something you have previously said before or something that you have never said and wouldn't have said?--Something that I said at the statement.

But now on reflection - - -?--Yes, definitely wrong. We always wrote to Crown Law or rang Crown Law.

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Sure; I see?--Never the attorney-general.

All right, thank you.

MR COPLEY: Okay. So apart from that the statement is - you're happy with that statement?--Yes.

11/2/13

LITTLEBOY, K.P. XN

I tender that statement, Mr Commissioner.

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COMMISSIONER: Mr Littleboy's statement will be exhibit 311.

ADMITTED AND MARKED: "EXHIBIT 31"

COMMISSIONER: May it be published, Mr Copley?

MR COPLEY: Yes, thank you.

COMMISSIONER: I direct its publication.

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MR COPLEY: Now, it can be returned to Mr Littleboy if he doesn't have a copy.

Now, according to paragraph 1, you were the principal cabinet officer for the Goss government in the cabinet secretariat from 1989 to 1995?---I believe I was the acting. Everyone seemed to be acting.

It says here "the principal"?---Yes, acting principal cabinet.

20

Acting principal?---I think everyone at that stage was acting.

What, from 1989 to 1995?---No; no; no, just at that time. I think Stuart Tait was acting secretary of cabinet and I think some of the DG's were acting.

So the first line is, "I was the principal cabinet officer of the cabinet secretariat for the Goss government from 1989 to 1995." At any time between 1989 and 1995 did you become the principal cabinet officer?---Yes.

30

When?---I'm not sure when but it would've been early days of 1990.

When did you join this cabinet office? Was it literally in 1989?---I think so, yes.

Okay, and when you joined were you initially the acting principal cabinet officer?---Yes.

So who was above you in this cabinet secretariat?---It would've been Stuart Tait as secretary of cabinet.

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All right. So you were the second in charge?---Yes.

And you remained second in charge all the way through to 1995?---For about five years, yes.

So you were a pretty important fellow in the workings of cabinet?---I wouldn't - well, I think I thought I was then, but I was a public service. I'd been a public servant for

11/2/13

LITTLEBOY, K.P. XN

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40-odd years and thought I was a moderately bureaucrat at that stage. 1

In January 1990, to whom did Mr Tait report?---Well, I said the DG in my statement and he would've being a public servant, but I've also said in my statement - and we believed then - that the cabinet process belonged to ministers, not to the bureaucrats. Does that answer your question?

Not really?---He had interacted with the premier a lot as the chair of cabinet. He was the secretary of cabinet, but I believe the DG is the one that appointed him so he would be - - - 10

So the DG of what department of politics?---Premier's.

Premier's, and who was the DG of Premier's?---I said it was Erik Finger but I have no - I can't recall. That's the first name that popped in my head.

So you don't now recall who the director-general of Premier's was in - - -?---I said it was Erik Finger. I couldn't say for sure whether it was or not. 20

So you now can't say for sure who the director-general of the Premier's Department was in January 1990?---That's correct.

Can you remember who the director-general of the Premier's Department was in February 1990?---No.

No. Can you remember who the director-general was in March 1990?---The only name that comes to mind is Erik Finger.

Did he remain the director-general of Premier's from then until you left in 1995?---No idea. 30

You don't remember?---I don't recall.

So you can't say for sure whether Mr Erik Finger was the director-general when you started. Correct?---That's correct, yes.

And you can't say whether the director-general of Premier's ever changed between when you started and when you left in 1995?---That's correct. 40

Okay. Now, did the cabinet secretariat always remain attached to the Premier's Department?---From my recollection, the cabinet secretariat when first set up was an independent unit; part of the Premier's Department but an independent unit, yes.

Okay. So if Mr Tait or you wanted to take a holiday in January, February or March of 1990, to whom would you submit your application for leave?---I would submit mine to Stuart Tait.

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All right; and to whom would Mr Tait submit his?---I presume the director-general or the premier as well, being chair of cabinet.

Right. Now, you managed the cabinet secretariat, you state?---Administratively, yes.

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So you administratively managed the cabinet secretariat. Now, had you had anything to do with cabinet at all prior to becoming he acting principal cabinet officer in 1989? ---As manager - I think the title was "Manager human resources". I evaluated, reviewed and assisted in setting up the positions for the new cabinet office or cabinet secretariat.

Which government set up the new cabinet secretariat?---The Goss government.

So after the Goss government was elected you evaluated the positions that they were going to have in the cabinet secretariat, did you?---Yes.

20

Prior to the advent of the Goss government, did you have anything to do with cabinet?---Not personally, no. I knew the person who was the secretary at the time and the girls who worked with him but no great dealings as manager of human resources.

So who was the secretary of cabinet prior to Mr Tait?---I can picture him. He had a bit of a hunched back; good man. I used to hop off the train and walk with him at Ferny Grove or - I can't recall his name. If someone said it, I could recognise it, but he was a good fellow and we had many a good chat.

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And what happened to him?---I think when government changed, they set up a more normal, if you like, cabinet secretariat based on other states and the federal government so that cabinet secretariat was done away with and they put up a different cabinet process which required more people.

And why was it more normal?---More normal because I think every other state and federal government had one.

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What was abnormal about the old one?---Abnormal about the old one, my recollections - which have been proved to be pretty vague after 20-odd years, but my recollections were there were a secretary of cabinet, whatever he was called, and two women there processing the documents. The secretary of cabinet didn't sit at the cabinet table. He

11/2/13

LITTLEBOY, K.P. XN

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sat in the corner. The documentation had minimal due process. From memory again, they might've been handed out. Cabinet submissions may have been handed out. One lot of cabinet submissions handed out on Friday for perusal by - I don't know, but I believe it was a restricted number of people and cabinet met on the Monday, whereas the new process was a two-week process. A lot of people saw the documentation, bureaucrats all over the place.

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11/2/13

LITTLEBOY, K.P. XN

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So it was better, was it, after the new cabinet secretariat came in, as far as you were concerned?---I believe it was a better system, yes, or more open to scrutiny. 1

Yes, and more people got to see what was going into cabinet. Is that the position?---Yes.

So if you said before that under the old regime the submissions might only have been provided to people on a Friday for a meeting on a Monday, that didn't give those people a lot of time to digest what was in the submissions, did it?---No, and there were very few, I believe, who saw it. 10

Right, but if they had a regime in place whereby submissions were submitted a fortnight in advance, all the ministers if they had wanted to could have had a chance to have a real good look at everybody else's submissions? ---All ministers or their policy advisers did and all DGs and their policy advisers and cabinet legislation liaisons reviewed them, depending on the classification. If it was secret it may not be viewed by - it would not be viewed by that many people 20

Well, we'll come to them as we go. In your statement you say that the first time you saw the Heiner material it was in a box that you believe was in Stuart Tait's office? ---Yes.

Did you have a look inside the box?---I don't believe so, no.

Was it a sealed box or an unsealed box?---I have no recollection, but I believe it would have been sealed.

Why do you believe it would have been sealed?---Because it was cabinet confidential information. 30

COMMISSIONER: Was that the standard practice?---I believe - yes, it was.

MR COPLEY: What do you mean, it was cabinet confidential information?---Well, all the cabinet documents were - you couldn't get into the cabinet secretariat without pressing a buzzer and someone letting you in. We wouldn't let people wander around cabinet.

But you worked in there?---I did. I could wander around. 40

That's right, so you could look - - -?---People who had - - -

You could look at what was in the box, couldn't you?---I could have. I could have, yes.

Did you?---I don't believe I did, no.

11/2/13

LITTLEBOY, K.P. XN

You didn't look in there?---No.

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Well, you'd remember, surely, wouldn't you, if you did?  
---Not necessarily. From the statements I gave the police  
I said I don't - I didn't do this and they produced  
documentation to say it did happen.

But you would remember whether you looked in that box or  
not, wouldn't you?---I may. I can't recall whether I - - -

This has been a festering sore for 23 years, hasn't it?---I  
cannot recall if I - could or could not remember.

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So you may have looked in it?---I don't believe I did.

Now, we've heard it suggested that when the time came to  
destroy the contents of the box that you actually got in a  
car and drove out to the archives and collected  
Ms McGuckin. Is that right?---All the evidence, the  
documentation I saw later on - my recollection is walking  
with Kate McGuckin, and a box that rattled, to the  
Department of Family Services, and that's it.

So you don't recall driving in a car out to archives to get  
her?---No, I don't.

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But you can recall at least walking from somewhere to  
somewhere with her?---With a rattly box, yes.

With a rattly box. Do you recall what building you and she  
set out from?---It would have been the executive building.

When you say it would have been, do you remember?---Not  
really.

So it's just a guess that it could be the executive  
building?---Yes.

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COMMISSIONER: Because that's where you worked?---That's  
where I worked, that's where the box was, that's where  
cabinet was.

MR COPLEY: Yes, and do you remember where you walked to  
with it?---Family services, wherever that is. I don't  
remember where the building is but I know we were going to  
family services.

Why were you going there with that box and Ms McGuckin?  
---To get the documents destroyed.

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Who was going to do that?---Family services with, again -  
presumably with - presumably with a representative from the  
State Libraries or State Archives there.



COMMISSIONER: Did you understand that was their standard practice? Is that why you said "presumably"?---Lousy memory, but my whole - I head Kate's statement out there.

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MR COPLEY: You mean outside this room here?---Yes, and that sort of got me thinking along certain lines. What was the question?

COMMISSIONER: I asked a question. I forget?---I'm sorry. What was the question?

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MR COPLEY: What was it you presumed?

COMMISSIONER: Yes. Was that standard practice? Is that why you presumed that someone from State Archives would be there?---No. No, I - after hearing Kate's evidence I recall that you needed permission. We would destroy them themselves, and you kept asking a line of questioning, and my thoughts of that when I heard your line of questioning was that because it was important for cabinet, cabinet gave the direction or cabinet approved - I can't remember what - the technical thing cabinet did, but again, cabinet - if the documents went to cabinet or a memorandum went to cabinet about the documents. Cabinet said - sought advice from Crown Law and from the state archivist, permission was got to destroy them. Cabinet approved the destruction or - no, it didn't approve Kate. Cabinet wanted to make sure that the documents that - we as cabinet representatives wanted to make sure the documents were destroyed. I went along, the representative from State Archives went along, documents were destroyed. The cabinet process was undertaken.

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MR COPLEY: Did you wait there while she destroyed them? ---I have no recollection of waiting there, but again, I assume I would if I picked her up.

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COMMISSIONER: Mr Littleboy, sorry, I want to go back to that long answer you just gave?---Yes.

That sounded - I'll tell you what that sounded like to me, that you've been giving this some thought and the explanation that seems most likely to you is the one you gave?---Yes.

Right?---That's what my memory does all the time, I'm afraid.

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No, that's all right. No need to explain it to me - unless I ask you a question about it. It was hearing Ms McGuckin's evidence that got your mind thinking about, "Yes, why would I be there?" Is that right?---Well, no - well, yes, but I picked Kate up.

Yes?---I would have dropped her back. I walked over there.

11/2/13

LITTLEBOY, K.P. XN

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MR COPLEY: So you have a memory of picking her up now. 1

COMMISSIONER: No, sorry, your explanation was about what - not what you did but why you did it, that is, to comply with cabinet due process?---To ensure that they were destroyed.

Okay, now, I want to focus on that?---Yes.

When you went down there and walked back with her with the rattly box what did you know about cabinet's involvement with those documents?---They had been to cabinet twice, apparently. I couldn't recall that. 10

What did you know? What did you know, or what do you remember about what happened, not what you apparently knew from what you've heard?---What I remembered, they were to be destroyed at - I'm not sure if "direction" is the correct word, but cabinet had - - -

Where did that understanding come from?---From the cabinet documents.

No, where did the understanding that cabinet wanted you to personally supervise the destruction, or personally pick up and walk down George Street with Ms McGuckin? Who - - -? ---I would assume Stuart Tait would have told me to do it. 20

Did he tell you why he wanted you to do that?---I have no recollection of Stuart asking me so - - -

All right, but again, by referring your memory back to what would normally have been done, that's the best explanation you can now give us as to why you were personally involved? ---Because I was the 2IC, the most senior representative after him, and by me walking the documents with the state archivist person to the point of destruction would complete a process. 30

I know, but did you self-motivate or were you asked to do that?---No, I would have been asked to do it.

Right, okay. Now, do you remember - and you think Mr Tait was the one that would have asked you?---I believe so, yes, as my boss.

So he's the most likely candidate?---Yes. 40

So let's assume that it was him for the moment. Did Mr Tait explain to you why taking you out of the office, putting you down to Ms McGuckin, walking along George Street with a rattly box up to families, was necessary?---I can't recall him giving any - - -

Did you know without having been told why it was necessary? ---I was comfortable with doing it.

11/2/13

LITTLEBOY, K.P. XN

No, did you know why you were being requested to do it without being told by Mr Tait? That is, did you have an independent knowledge of why you would be doing this without Mr Tait having to tell you?---I'm not sure how to answer that.

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Well, the truth would be good?---Well, it's just that I as a - in a cabinet process, cabinet said - or whatever happened, they went to document - cabinet wanted them destroyed, or they were to be destroyed through the cabinet process. It seems reasonable - or my recollection his it was okay for me to go there, and appropriate, because they were cabinet - - -

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Look, see, this is the problem. I know you're sort of looking for what was reasonable and what was likely. What I'm just wanting to know is this, could you have done simply on request of Mr Tait or someone else, without knowing why, without asking why, just because you were asked?---I could have, but I wouldn't have done anything which I believed to be wrong - - -

No, just - - - ?--- - - - or inappropriate.

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Trying to separate what was actually done with why for the moment. So you think - well, I can't do it now, you've already sort of merged the two. So you would have done what you thought was the right thing to do because Mr Tait asked you and you couldn't see anything wrong with it?  
---Yes. 1

Okay.

MR COPLEY: It was an unusual thing to do, though, wasn't it?---I'd never done it before. 10

No?---There were more - there were lots of things that I've done.

What, that were unusual?---Yes.

In that role?---No, not those sort of unusual things but things I haven't done before, therefore they would be unusual.

Well, for example, I imagine sometimes cabinet might decide that some money will be moved from the treasury to a government department. Do you recall seeing decisions like that of cabinet over the years?---Budget-type decisions? 20

Yes?---Yes.

So were you ever directed, for example, to walk down to treasury, get the under-treasurer to sign a cheque, then get the under-treasurer or someone from his office to accompany you and the cheque around to the department to her the cheque was made out?---No.

And then for that person at the department to get the cheque and then you to accompany that person to the bank to deposit the cheque? It's a stupid question, isn't it?---I wasn't going to suggest that. 30

It's a stupid question, isn't it?---It is.

It is, isn't it, because that's not the role of a second in command at the cabinet office, to physically ensure that the decisions of cabinet are carried out, is it?---No, it's the role of the director general and minister, I would have thought.

That's right, because cabinet decided the documents should be destroyed and that was it. How it actually occurred was a matter for the people in possession of the documents, wasn't it?---Yes. 40

Yes. And it was really unusual for you to be collecting Ms McGuckin from archives and bringing her into town and then escort in her down to the department for the destruction of the documents, wasn't it?---Apparently.

11/2/13

LITTLEBOY, K.P. XN

Well, it was, wasn't it?---I hadn't done it before so it was unusual.

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COMMISSIONER: I venture to suggest - I haven't met you before but I've seen you in the witness box for 10 minutes or so. I reckon you'd be the sort of bloke if you were asked to do that and it was unusual, you'd want to know why?---I would, yes. I felt it was not - I have seen - well, I don't want to digress too much, but I have seen cabinet documents that were inappropriate and I've raised the issue and had the wording changed, especially after the - you know, what's his name, the big inquiry.

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(indistinct)?---Yes, with cabinet making decisions that were totally inappropriate and I have changed, so I believe I have an understanding or at least a feeling of what's right or wrong and I had no problems with this whatsoever, the documents were approved by the state archivist, Crown Law, Cabinet, Stewart may have said, "Go and get Kate, take it out, make sure they destroyed," or, "Accompany her," blah blah and I did that and I was quite comfortable with it.

MR COPLEY: But the documents were in the position of the cabinet office, weren't they?---Because they had been to cabinet, I assume.

20

Well, does that mean - you answered my question is yes, they were in possession of cabinet? See, if you just answer - - -?---I can't recall it but I - - -

If you just answer the question I asked will get through this faster?---Okay.

Okay. So the question was: the documents were in the possession of the cabinet office, weren't they?---Yes.

30

Okay. So why weren't they just destroyed at the cabinet office with Ms McGuckin supervising or participating in the destruction at the cabinet office?

COMMISSIONER: Your answer to that might be because: (a); (b) I don't know; (c) someone told me?---Don't know.

MR COPLEY: Did it occur to you that we can just destroy him at the cabinet office?---No.

Did you say to Stewart, "I'm an important man, Stewart," or, "I'm busy, I don't have time to be escorting documents around town. Can we just do it here"?---No.

40

Did you think it was a good use of your time to have to escort her down the street with a rattly box to destroy the documents when they could be destroyed at the Cabinet office?---Yes.

You thought it was a good use of your time?---Yes. 1

You're serious?---Yes.

COMMISSIONER: Could you tell us why - did you actually even think about it at the time?---I can't recall thinking too much about it. I was a cabinet officer - - -

So did you really think it was good use of your time, or you just really didn't think about it?---Good exercise. I mean, I was working long hours. I don't mind a bit of exercise, so I have no problems with it. 10

So a good way to get some exercise was to meet up with Ms McGuckin and walk down George Street with a rattly box. Is that really what you thought?---Hindsight is a marvellous thing, but yes.

MR COPLEY: You're a fairly particular man about things, aren't you?---I'd like to think I was.

And in fact you even inquired whether there be some biscuits available for you here this morning?---I did. 20

And you didn't want the police telephoning you after a certain time last week because your wife would be having a sleep?---Yes.

So you're a fairly particular man?---Yes.

COMMISSIONER: And don't like to be inconvenienced unnecessarily?---I also have a bit of a sense of humour.

Right?---So my question about tea and biscuits year was humour. 30

MR COPLEY: But it wasn't asked only once, was it?---I have a particular sense of humour.

What, is it a persistent sense of humour?---Yes.

Okay. But you thought it was a good use of your time to have to carry the box down the street with Ms McGuckin?---I didn't think it was an abnormal or wasteful use.

Can you give me examples of other decisions of cabinet that you've had to actually physically ensure were carried out by leaving the government building and moving around city or the state of Queensland?---I think on occasions - state of Queensland is a bit extreme, but on occasions I believe I, as a very senior and well-paid person, took cabinet documents back to departments. 40

Yes?---And I did not think that that was a waste of taxpayers' money.

But the mechanics of carrying out a cabinet decision, can you recall an occasion when you actually physically supervised the execution of a cabinet decision other than this one?---No.

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Okay.

COMMISSIONER: Did you and Ms McGuckin say - you know, you're walking down the street in George Street - how far would you have walked together?---No idea. 10 minutes, I presume.

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10 minutes?---I think.

You didn't know her before?---I can't recall. I knew her name straight away. I know I've had conversations with Kate. I know the name well, I know her. I didn't recognise her outside.

Right?---But no, I can't - - -

So you're walking down George Street with a rattly box together for 10 minutes or so. Did you happen to say to her or did she say to you, "This isn't normally my job." "It's not mine either. Why we doing this"?---No.

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Neither of you thought to comment to each other about how unusual it was that you were walking a rattly box down George Street?---I have no recollection of commenting or talking about.

MR COPLEY: So when you got her to the building you had to go to did you leave her there or did you wait?---I can't recall.

You don't remember?---No.

30

Well, do you remember whether you were present when she destroyed anything?---I was not present with the documents were destroyed.

COMMISSIONER: So then making sure due compliance of cabinet's policy wasn't something that you could confirm because you weren't there?---I took a very responsible officer, a person representing the State Libraries Act or state archives - - -

Yes, you did?--- - - - to somewhere where they were destroyed.

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So how did you value-add to this very responsible - - -? ---I may have signed - - -

- - - senior officer's doing the right thing by the documents?---Someone from the cabinet office accompanying documentation.

11/2/13

LITTLEBOY, K.P. XN

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Why? Was it under threat from some external source? 1  
---Probably just a means of carrying them to the  
department.

Did you carry the box or did she?---I believe I carried it  
because all I can remember was a rattle.

Righto. So at least you carried the box for her?---Yes.

So that was good, that saved her the trouble. But what  
else, what other things did you do that she couldn't have  
done on her own?---Nothing. 10

So that begs the question what was your role? What was the  
point of you interrupting your day to get exercise by  
walking down George Street with Ms McGuckin?---Only to take  
documents from cabinet office to the place of destruction.

And now again that we've sort of ventured further into your  
evidence we can safely say it wasn't to ensure compliance  
with procedures.

MR COPLEY: Because you didn't stay to see that they were  
destroyed. 20

COMMISSIONER: Or that the procedures were followed,  
whatever they were?---Correct.

MR COPLEY: So having gone to the trouble of escorting her  
and the box down to the building - because that's what  
cabinet wanted, they wanted these things destroyed and you  
were making sure cabinet decisions were carried out - why  
didn't you wait and see that she actually destroyed - or  
somebody actually destroyed what was in the box??---I have  
no recollection of what happened after taking the documents  
to Department Family Services. 30

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Now, I'm asking you why you didn't stay?---I may have stayed. I don't recall. 1

You may have stayed?---Yes.

So you may have been present when they were destroyed? ---No, I would've remembered that.

So you definitely weren't present where they were physically destroyed?---I wasn't - I didn't see them destroyed. 10

Why didn't you see them destroyed?---Wasn't my role.

Why do you remember that you didn't see them destroyed but you don't remember where you stayed?---No idea.

What it is about the destruction of these documents that you're trying to distance yourself from?---I'm not trying to distance myself from the destruction of the documents at all.

You realise that under the Commissions of Inquiry Act nothing that you say can be used against you in any civil or criminal proceeding, don't you?---If you say so. 20

Didn't you know that?---No.

Okay. Well, if I'm wrong about that, counsel for the state will correct me?---I have a documentation that gives a lot of - that I was given.

Yes?---I read through a couple of them but I'm past reading.

COMMISSIONER: You read through your statement well enough to know that there were a couple of errors in it?---Yes, and a couple more too. 30

MR COPLEY: But you didn't know until I just told you that nothing that you say here can be used against you in any civil or criminal proceeding?---No.

All right. Well, now that you know that - and if I'm wrong about that assurance to you, someone would have corrected me - are you able to now tell us why you escorted that woman down the street with that box of documents?---I can't recall. I can only guess. 40

Yes?---My guess is that Stuart Tait asked me to accompany the documents from the cabinet secretariat with Kate to the department so that they could be shredded.

COMMISSIONER: What sort of relationship did you have with Mr Tait? I know you were 2IC to him, but what was your

relationship like? If he said to you, "I want you to go down the street?" would you challenge him if it seemed - - -?---I would. 1

You would?---Yes.

Okay. So it was that sort of - - -?---Well, no, to go down and get him a cup of coffee I'd say no.

MR COPLEY: Why would you say "no" to that?---Get his own coffee. 10

Bu why?---Because I wouldn't - I'm not paid to get him cups of coffee.

Because you're a senior man there, aren't you?---Yes.

And you weren't going to be getting him cups of coffee?---I wasn't going to get anyone a cup of coffee.

No, because you were second in charge so you wouldn't get anyone subordinate to you a cup of coffee?---I wouldn't get anyone - well, I'd get - yes. 20

If a subordinate said, "Mr Littleboy, would you go and grab me a cup of coffee?" you would have just said, "No, get it yourself"?---No, I may have got that.

You might have gotten that for them?---I might have got it, yes.

Okay. So you didn't say to Mr Tait, "Look, why do I have to accompany her down the street"?---No.

You just obeyed the direction?---I thought it was reasonable. 30

Right?---I did it.

And did you think it would have been reasonable and diligent to have actually supervised the process of destruction so you could come back and say, "It is done, Mr Tait. They are destroyed. I saw it with my own eyes"? ---if Stuart had asked me to observe the destruction, I would have. I presume he didn't ask me so I didn't.

Did you say to Stuart, "Why do we have to take them back to the department to destroy? They're here. We can just destroy them here"?---I didn't say that. Well, I don't recall saying that. 40

COMMISSIONER: Did you report back to Mr Tait about, "Mission accomplished"?---I have no recollection. I have no recollection of reporting back to Stuart.

MR COPLEY: It's more likely than not that you would have, 1  
would you agree?---Yes, more likely I would've popped my  
head in and said, "Stuart, I'm taking Kate back to the  
state archives now. The documents were shredded."

So you do you remember taking her back to the state  
archives now?---No.

Sorry?---No, I don't.

So why would you have said to Stuart, "I'm going to take 10  
her back now. The documents are shredded"?---Well, in the  
scenario of me saying something to Stuart coming back I  
believe that's what I would've said.

Do you remember now going out to state archives and  
collecting her?---Not really, no.

But you don't dispute - - -?---No.

- - - what she says that you did?---Yes; no, I wouldn't.

Now, I'll just get you to have a look at exhibit 76A. You 20  
will see it says "Secret collective minutes of proceedings  
cabinet room held at Brisbane on 23 October 1989"?---Yes.

Okay; and you can see from the names of the people in  
attendance there and the date that this was the minutes of  
the National Party cabinet room?---Yes.

Now, the police have shown you a document or a copy of this  
before, haven't they?---Yes.

Was your attention directed to page 2, third paragraph, 30  
"The Honourable the Minister for Family Services"?---It may  
have been.

All right. Do you ever recall seeing that document before  
apart from possibly the police showing it to you in recent  
weeks?---No.

Okay. Now, in your statement you state, "The cabinet  
secretary's office stopped people looking at the previous  
government's cabinet records"?---Yes.

"If the new government wanted to look at last government" - 40  
maybe "at the last government's records - - -"?---Yes.

"- - - we wouldn't let them"?---Correct.

"They would have to ask and we would write a letter to the  
leader of the previous government for authority to release  
the records"?---Yes.

So could we expand that paragraph a bit to this extent: that if the new government asked to look at the records of the previous cabinet, government, you might provide those records to them if you had the consent of the previous premier or the current leader of the opposition?---Yes.

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Okay. So the sentence, "If a new government wanted to look at the last government's, we wouldn't let them," is an oversimplification?---Yes.

You would let them if the previous premier or the current leader of the opposition permitted them to do so?  
---Correct.

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COMMISSIONER: Was that a cabinet convention or was that one that was created in the 1990's?---No, I believe it's a cabinet convention or a Westminster convention, one we copied off other states and federal government.

MR COPLEY: Because you were part of a really efficient cabinet secretariat now that was modern and up to date, you would have been astute to comply with the convention at all times?---Yes.

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Without fail?---Yes.

Good. Could you have a look at exhibit 293? Now, take your time to read through that. I want to ask you if you have ever seen that before?---"Except with the approval of the Honourable the Premier." That's not correct, as I understand it.

Now, hold on a second. It won't be a good idea to start just making a speech about it?---Okay, understood.

The question was: have you ever seen that document before?  
---The police may have shown it to me but I can't recall.

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All right. Let us admit of the possibility that the police - and by that you mean the police that claimed they were attached to this Commission of Inquiry?---Yes.

Leaving possibly that they showed it to you before, leaving them aside, have you ever seen that document before?---I don't believe so, no.

It says on the top - it appears to be a fax, doesn't it, or a copy of a fax?---Yes.

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It says on the top "From Premier's Department, 13th floor". Now, what was on the 13th floor of the Premier's Department on 19/1/1990?---Cabinet secretariat was on part of it and there was another group, but we were on the 13th floor.

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So if the facsimile machine or machines on the 13th floor were correctly set up, then it's possible that this document came from the cabinet secretariat, isn't it?  
---Yes.

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Okay, because of where it says it originates from and the date?---Yes.

And then when one looks at the content of it, it says, "Extract from collective minutes of 23 October 1989"?  
---Yes.

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And the sentence that's reproduced is the sentence that I had you look at in the third paragraph on page 2 on exhibit 76A?---Yes.

So that is a reproduction of the cabinet minute of the National Party government?---Yes.

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11/2/13

LITTLEBOY, K.P. XN

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And it was extracted and forwarded by someone in the cabinet office at 11.59 on 19 January 1990 and according to this document forwarded to Trevor Walsh at Family Services?---Yes.

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So that could not possibly have occurred, according to you, without the consent of the previous Premier, Russell Cooper, presumably, or whoever was then the leader of the opposition in January 1990?---The fact that it's an extract may - it's a bit hard to - I'd have to look at the rules - - -

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Yes?--- - - - of the cabinet hand book at the time to see whether an extract is available - it's okay to use an extract or paraphrase from it. Certainly not the cabinet document itself.

Well, it's not a paraphrase?---A statement.

It's a direct - - -?---Yes.

It's a direct translation - - -?---Yes.

- - - from Exhibit 76A, second page, third paragraph, onto this document, isn't it?---Yes. If I saw that then I'd have to check the cabinet handbook to see if it was okay.

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Right?---It doesn't sound good.

It doesn't what?---It doesn't sound like what we would have done.

This document here, 293 - - -?---Yes, my recollections of the process at the time.

- - - doesn't sound like - - -?---We would do this.

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COMMISSIONER: It offends the due process that you understood at the time?---It does, yes.

MR COPLEY: If you had been the author of exhibit 293 you would remember that, wouldn't you?---I'd hope so.

Because it's not proper, is it?---It doesn't feel proper, no.

It doesn't feel proper?---No, correct.

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MR HANGER: I hesitate to interrupt and this is all very interesting. I just wonder where it is going, and if my friend would tell me, in relation to any term of reference. I mean, it's almost an investigation into a takeover of a new government from an old government and what they're doing. But where does it take us in terms of your terms of reference?

COMMISSIONER: Mr Copley?

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MR COPLEY: Well, Mr Commissioner, your duty is to inquire fully and completely and openly into the response of government to allegations of sexual abuse in youth detention centres and it is said by some that Mr Heiner discovered evidence of child sexual abuse at John Oxley and it is said by some that the cabinet office had destroyed what Mr Heiner had found. And so the next step is to understand how and why this came to the cabinet.

COMMISSIONER: And if procedures were followed as they should have been, circumstantially you might draw different conclusions then if procedures that should have been followed, weren't.

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MR COPLEY: Yes. We've heard evidence from Mr Walsh - - -

COMMISSIONER: I'm satisfied that where you're going is okay. Are you satisfied with that, Mr Hanger?

MR HANGER: No, but I understand that's what you're ruling. No, that's just words, what my friend is saying. There is no logic whatsoever.

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COMMISSIONER: All right, maybe - - -

MR HANGER: Just let's put it as simple as this: my learned friend is suggesting that there was a breach of what is described as, I think, an old cabinet rule that a new cabinet does not have access to an old cabinet's document.

COMMISSIONER: I think that's the existing rule.

MR HANGER: Yes, that's right. So, when I say old, I mean going back, I think, generations.

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COMMISSIONER: Yes.

MR HANGER: Now, the particular offence does not relate to anything to do with destruction of documents, does not relate to sexual abuse, it relates to the setting up of an inquiry. We know was set up - - -

COMMISSIONER: No, but let's have a look at 3(e) - probably now is not a bad time - to see if we agree about what it appears to require me to do. As I understand Mr Copley's contention as to the interpretation of that, it requires me to inquire into two things, and I raised this before Christmas: (1) whether the government response to allegations of child sexual abuse at John Oxley was adequate and appropriate; and (2) to inquire into allegations that part of that response included the destruction - or included criminal acts by government in

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respect of or in relation to responding to child sex allegations. 1

So that it would follow that I'm required to investigate whether or not anything government - which I've interpreted to mean executive government - did anything illegal in relation to or in response to allegations of child sexual abuse at John Oxley Centre.

MR HANGER: Yes.

COMMISSIONER: And whether it did or didn't is circumstantial, obviously; requires drawing of inferences from acts by what people in government or associated with government or acting on behalf of government did in relation to those documents. Doesn't this go to that? 10

MR HANGER: Yes, everything you said, I couldn't disagree with.

COMMISSIONER: Right.

MR HANGER: What I'm disagreeing with is an investigation as to whether a new cabinet breached the old cabinet rule by using a paragraph which says: 20

The honourable Minister for Family Services indicated that an investigation was to be conducted into the operations of John Oxley.

We know that, that is taken for - - -

COMMISSIONER: Yes. No, we do know that. But I thought the point was that this document was not something that would have come into the hands of government - the new government, the Labor government - in the way that Mr Littleboy explained would be the only way they would be able to legitimately get their hands on it. 30

MR HANGER: Yes. And without being rude to you, I say so what? So what? We know the inquiry was started and we know the terms of reference to the inquiry and we take it from there, really.

COMMISSIONER: But we're looking at the response of the government, the then government, the Goss government - - -

MR HANGER: Yes. 40

COMMISSIONER: - - - to what Mr Heiner did, what he found, and the documents that he kept. Isn't knowledge by the government of something - it turns out to be non-controversial establishment of an inquiry. That's what turns out to be. But I thought Mr Copley's point wasn't what the contents of the document, but how the new government managed to acquire it, which seems to be

11/2/13

LITTLEBOY, K.P. XN



inconsistent with the conventional way that new governments  
can acquire of government documents. 1

MR HANGER: Yes, that seems to be correct and would be  
great for another inquiry.

COMMISSIONER: You say that is an irrelevant fact?

MR HANGER: It's nothing to do with this. We know the  
inquiry was set up; we know the terms of reference - - -

MR COPLEY: - - - amplify my line of questioning. 10

COMMISSIONER: Hang on. Sorry, Mr Hanger.

MR HANGER: It's a very interesting question.

COMMISSIONER: Yes.

MR HANGER: But it's got nothing to do with what we here  
about, which is the Heiner inquiry was established, we know  
what its terms of reference were; what happened after that?

COMMISSIONER: Yes. And one of the things is that  
happened after that is the documents it acquired were  
destroyed. 20

MR HANGER: Yes, we know that.

COMMISSIONER: And we're trying to find out under whose  
direction, why, and what.

MR HANGER: Yes.

COMMISSIONER: So what was destroyed; why was  
destroyed - - - 30

MR HANGER: Yes, and that's arguably relevant.

COMMISSIONER: Well, it's - yes, okay.

MR HANGER: Okay. But you just said yourself we know was  
set up.

COMMISSIONER: Yes.

MR HANGER: And he's trying to establish - - - 40

COMMISSIONER: No, he's not, he's trying to - no, sorry,  
you tell me what you're trying to establish.

MR COPLEY: What I'm trying to establish with Mr Littleboy  
is the circumstances in which this document, exhibit 293,  
which appears to have been given to a person working for  
the Department of Family Services on 19 January 1990 came  
to be given to Mr Walsh.

11/2/13

LITTLEBOY, K.P. XN

COMMISSIONER: Yes. 1

MR COPLEY: And my tender of this document through Mr Walsh and my questioning of Mr Walsh about it the other week wasn't objected to.

COMMISSIONER: It's already in. So you're asking about in exhibit - - -

MR COPLEY: That's right, that was not objected to.

COMMISSIONER: - - - and how it came to be in somebody's hands. 10

MR COPLEY: Yes.

COMMISSIONER: You're not trying to establish by virtue of that exhibit what we all know, that Mr Heiner was set up to inquire into John Oxley Centre.

MR COPLEY: No.

COMMISSIONER: I did understand that. I'll allow you to continue your questions, Mr Copley. 20

MR COPLEY: Thank you.

Now, Mr Littleboy, you've had a fair bit of time to look at that document and the position I think we got to a few minutes ago was that you do not think you were the author of it because you were not comfortable about the contents of it all the way it was sent out. Is that a fair summation of your position? If it's not, tell me?---Can I make a little statement?

No, you've got to answer the question. You can't make statements. See, we have this trouble all the time with people; you can only answer questions, okay? 30

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If I am unfair to you and cut you off or if one of the other barristers here or solicitors think there is something they want to elicit from you they will in the fullness of time?---Sorry, what was the question? 1

The question is before all these - until the objection occurred, had we reached the position where your view was that you were unlikely to have been the author of exhibit 293, first question?---I want to say something about this exhibit.

Can you just answer this question? I'll ask it - - -? 10  
---It's possible that I could have been.

It's possible you could have been the author of it?---In retrospect, after reading it, in contemplation, listening to - not listening, but - - -

Okay. If - - -?---Can I say why?

Well, we'll come to that. If it's possible you were the author of it do you remember how or why or what the circumstances were in which you came to compile it?---I could - yes, that's - I think I - yes. 20

Well, would you answer?---Well, my answer is I notice that Trevor Walsh is the CLLO, C-L-L-O, which is the cabinet legislation liaison officer.

Yes?---He is - it's appropriate for him to see cabinet documents. He's not a minister, so he can see cabinet documents. The Goss government got a couple of cabinet submissions, one a memorandum, I think, and then a cabinet submission, on the Heiner documentation. If I was in Trevor Walsh's position I'd ask the question, "What's the authority for establishing the Heiner inquiry?" 30

Yes?---That's in a previous government. So I would ring up someone and say, "What's the authority?" and we may have provided an extract to demonstrate to him as a representative the cabinet process there, that it was a validly set up authority for cabinet.

So you would regard the question, "By what authority was this inquiry established?" to be a perfectly legitimate and sensible question for a bureaucrat to be asking?---For a cabinet legislation liaison officer to ask, yes. 40

To ask, okay?---Yes.

Now, there would be a number of sources of information for that, wouldn't there?---Yes.

As an experienced public servant you would agree with me that the sources of information could include previous cabinet records?---Yes.

It could include going and asking the gentleman or gentlemen who were in charge of the department at the time the Heiner inquiry was created if they could enlighten on the point?---Yes.

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Or going to the minister who was in charge at the time the Heiner inquiry was created to ask her if she could enlighten them about why it was created or how it was created?---I wouldn't feel comfortable with a public servant going to a previous minister who is now a member of parliament and asking that question, no.

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What if they were no longer in parliament, got voted out? ---Definitely not.

Definitely not?---Doesn't feel good.

Okay, so the two comfortable things you would be - the two sources of information you would be comfortable with would be a cabinet legislation liaison officer asking the cabinet secretariat to have a look at the records?---Yes.

And/or a cabinet legislation liaison officer asking the people in the public service at the time Heiner was created if they could enlighten him about it?---Yes, but I always like to go back to the source documents as the key document. Anything else could be wrong.

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If you went back to this source document, which the extract presumably is, you wouldn't come away too much the wiser, would you, because it doesn't state that cabinet approved the establishment of the Heiner inquiry, does it?---No.

It just tells us that the minister raised it in cabinet? ---Yes - well, that an investigation was to be conducted.

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That's right?---Whether it was conducted or not is - - -

Well, let's pretend that we all know that it did ultimately get done?---Yes.

This extract from the cabinet record simply, at its highest, says that the then minister for family services informed the cabinet on 23 March 1989 there was going to be an investigation?---Yes.

As an experienced cabinet operative, you wouldn't have concluded from that that cabinet had authorised it, would you?---No.

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No, all right. So, now, it's possible that you're the author of exhibit 293?---It's possible.

All right, so we've got to now proceed on a certain basis, a possibility, which makes it a little bit illogical to ask you the question but I'll ask you it anyway. If you

11/2/13

LITTLEBOY, K.P. XN

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possibly wrote this document can you tell us why you might have written it to Trevor Walsh?---Because Trevor Walsh asked for any cabinet information relating to the setting up of the Heiner inquiry from the previous government.

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Is it also a possibility that you might have just decided to send it to Walsh of your own volition?---It's possible.

Beg your pardon?---It's possible.

Now, how would that possibility arise at this stage, January 1990?---Why would I do that? Well, I do not believe I would have done it off my own - without being requested.

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The other possibility in terms of requests, the request could come from Walsh or it could come from obviously anyone else in the world, couldn't it, but realistically if it didn't come from Walsh or someone in the family services department where else could have a request come from that would have caused you to compile this document and send it somewhere?---It could have come from Stuart.

Stuart Tait?---Yes.

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Do you have a recollection of Stuart Tait asking you to produce this?---No.

What causes you to say it's possible that Stuart Tait may have asked you to produce it?---That would be the only reason I would produce it without Trevor Walsh contacting me.

Okay, so that effectively defines the universe in terms of the production in terms of this document. Either Tait asked you to produce it or Trevor Walsh asked you to produce it?---Yes.

30

You wouldn't have just done it of your own volition?---No.

Thank you. He's written on there - and he gave evidence of what this says. "Note that the document is an extract of the records of the previous government and may not," underlined, "be shown to a member of the present government except by the approval of the Hon the premier." Now, before when I first gave you that document you read that out and you wanted to talk to me about that and I cut you off. What was it that you wanted to say about that note? ---My recollection is it's not the current premier that gives approval, it's the previous premier, or the leader of the opposition.

40

Well, it doesn't seem to specify which premier, does it? ---No.

It just says it cannot be shown to a member of the present government except by the approval the Hon the premier? ---Well, the Hon the premier - the only Honourable the premier is the premier at the time. 1

COMMISSIONER: A past premier wouldn't be referred to as the Honourable?---No, he'd be the leader of the opposition or - - -

Mister?---Mister.

MR COPLEY: Or Mrs?---And it wouldn't be the past premier it would be the leader of the opposition who has control of their own cabinet documents. 10

So that understanding of Trevor Walsh's as expressed there doesn't reflect your understanding of the position?---No.

To perhaps just - so we understand fully the circumstances, do you have a recollection in January 1990 of contacting the then leader of the opposition or the then former premier to ask for permission to release this or do you say because it's only an extract you did not even need that permission?---My feeling from memory is as it's an extract given to a cabinet legislation liaison officer that we wouldn't need permission from the opposition to give an extract to a bureaucrat for a good reason. 20

So it's more likely than not then that this was simply extracted and provided to Mr Walsh at Mr Walsh's request without there having to be any need to consult any former premier or current leader of the opposition?---Yes.

COMMISSIONER: Now, that was your understanding of the situation?---Yes. 30

Do you know if that's a shared understanding of the interpretation of the convention?---I don't know what anyone else - - -

Does?---Does.

So what if you were wrong about your interpretation that, "Extracts were okay, full documents were out, so I can give this extract across"? You wouldn't want to breach the convention, would you, even unintentionally?---I don't believe I would have done at the time, but my memory has been proven to be so poor that I'm just going on - - - 40

Reconstruction?---Reconstruction, but at the time that's - this is my memory of the convention and I would have been a stickler - I believe I was a stickler for rules then.

And for your understanding of the rules?---Yes.

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When it's required?---Yes.

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You would have tried to meet the requirement of the rule as you understood it to be?---I would have got the book out and made sure that what we were doing was appropriate. If it wasn't I would have said something.

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11/2/13

LITTLEBOY, K.P. XN

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MR COPLEY: All right, thank you. Now, we'll get you to have a look at exhibit 151. You state in paragraph 15 of your statement that you recall seeing this document in 1990. Do you agree?---I did - I do.

1

Yes, and you said, "I changed some of the wording at the end of the cabinet decision and put a proper finish to the document." Then it says, "I would have drafted the cabinet decision based on the recommendations." So I have read out completely everything that you have said about exhibit 151. So we understand this document - and we have spoken with other witnesses in terms of distinguishing the first page called "Cabinet minute decision number" from the other pages because our understanding is that the first page is the product or the outcome of the pages attached behind it?---Yes.

10

Does that reflect your understanding too?---Yes.

All right. Now, when you state you changed some of the wording at the end of the cabinet decision and put a proper finish to the document, which piece of exhibit 151 are you referring to?---I would be referring to page 7, the recommendation.

20

Right?---It was my job then to look at the recommendations, consider them and, without knowing the outcome from cabinet and solely based on the recommendations, make it a succinct, actionable decision.

All right. When you say without knowing the outcome of cabinet deliberations, it might seem a silly question, but what do you mean to convey by that to me?---One wouldn't presume to assume what ministers might decide on in cabinet.

30

Because that would be presumptuous on the part of the cabinet secretariat?---Definitely.

Yes, okay. So we have identified page 7 of the document as being the one that you changed some wording at?---Yes.

Do you recall which paragraph the words that you changed appear?---Actually I can't remember changing them, but my role was to change recommendations on every submission. If they weren't succinct enough or were rambling, I would - - -

40

Yes?---Yes, so here I'd have to look at this one and that one to see the difference and assume it was me that changed it or, thinking about it, it may have - the change that I made may have been superseded by a change as discussed in cabinet.



Well, look, according to paragraph 15 of your statement, Collis, detective, showed you a copy of a cabinet submission dated 12 February 1990. You then state, "I recall seeing this document in 1990. I changed some of the wording at the end of the cabinet decision." So the paragraph distinguishes between - and maybe this is just sloppy use of words. Paragraph 15 of your statement distinguishes between a submission dated 12 February 1990 which, of course, the submission ends 5 February 1990 and it talks about a decision and the decision is dated 12 February 1990. So do you understand there are two possibilities here? You changed something on the cabinet's submission or you changed something on the minute?---I changed something - I wrote a draft cabinet decision based on the recommendation.

1

10

Okay. So if you wrote a draft cabinet decision based on this recommendation, the decision would have reflected faithfully paragraph 12(i) and 12(ii) on page 7 of the submission?---Well, it may have. What I would've done would've reflected that as much as possible.

Yes?---I would've corrected any poor English or made it succinct and I would - and Stuart Tait would take a copy of all the draft decisions in with him as he sat next to the premier and, as a decision was made, tick it or make changes to the decision, the draft copy of a decision.

20

All right. Now, if we look at the cabinet decision, the first paragraph of the cabinet decision reflects paragraph 12(i) on page 7, doesn't it?---Yes.

Not only does it reflect it, it actually is word for word the same?---"Fully" has been changed to "full".

Has it? Okay, right, but the differences are immaterial are minor, aren't they?---Yes.

30

Right. However, paragraph 2 does not reflect recommendation 12(ii), does it?---No.

No. It says that cabinet is going to request a further memorandum?---Yes, and I would presume that that's what cabinet decided so Stuart changed this copy.

Let's not worry about presumptions?---Okay.

You didn't draft paragraph 12(ii), did you?---No.

40

No?---I didn't draft the decision 2.

Decision number 2?---No.

Do you remember what you put on the draft decision?---I would've put the same as the recommendation.

All right. That clears that up. So to have done a draft cabinet minute reflecting 12(i) and 12(ii) you would have had to have had access to the submission?---Yes.

1

That stands to reason. Would you have read through the submission?---I would've.

Okay; and did the submission ring a bell with you in terms of exhibit 293, the extract from the National Party cabinet room?---I really don't have any recollection.

Did you have any role to play in the compilation of the pages behind the cabinet decision beginning "Security classification B cabinet submission" all the way through to page 7? Did you draft it?---Good God, no.

10

Why do you say, "Good God, no"?---Because the department would've done it.

The department would have done it?---Yes.

Okay?---Trevor Walsh would have perhaps written it as the CLLO for the department.

20

We have heard some evidence from those people about it, but we just need to find out what role you played in the document?---Yes.

And you say, "Good God, no," none?---No, I wouldn't have.

Now, moving onto an allied but slightly different topic, do you have any recollection of why it was decided in January of 1990 to bring the subject matter of the destruction of documents to cabinet?---No.

The initiative did not come from you?---No.

30

From your observations about the cabinet secretariat, did you hear anyway in cabinet secretariat saying, "I think we should get these documents up to cabinet for them to decide what to do with them"?---I have no recollection.

Prior to the extract dated 19 January 1990 or the fax dated 19 January 1990 which you may have authored, had you heard of the Heiner investigation?---I can't recall. I mean, it would've been common knowledge in the newspapers.

Well, that's an assumption you're making, isn't it?---I can't recall.

40

So your answer is you just can't recall?---I can't recall.

Was it possible in January 1990 that a cabinet secretariat might - someone there might contact a minister or a minister's staff and say, "Look, been speaking with the

premier" or whoever "and cabinet feels" - the premier feels 1  
or somebody feels - "we'd like a submission from your  
department along the following lines about an issue"?  
---It's possible.

It's possible even as early as January 1990 that might  
happen?---Yes.

Do you have any recollection of that happening with this  
destruction issue?---No.

What about in connection with the indemnification for 10  
Mr Heiner for costs?---My only recollection is reading the  
documentation now. I have no recollection of the details  
of it at all.

All right, thank you. Now, I would just like you to have a  
look at exhibit 158, please. Just hang onto that one you  
have got there because they're to be understood  
consecutively, these documents. Have a read of that,  
everything on it, if you would like to?---Thanks.

I'll tell you what the evidence is about what that says 20  
because someone has read it out to us?---Yes.

It says:

I rang Ken Littleboy. They (the cabinet secretariat)  
have large sealed box containing all Noel Heiner's  
papers, pages or tapes, pages, et cetera. Noel wanted  
to know whether they would become cabinet docs and thus  
be secret. I explained to him that unless they were  
made for a submission to cabinet, then they would not  
be. I told him I would let him have a considered advice  
tomorrow possibly.

And the signature we have heard is Mr Ken O'Shea. Now, 30  
thinking back to February 1990, did you know who Ken O'Shea  
was?---Yes.

He was the crown solicitor?---I've spoken - I know the name  
well. I believe I spoke to him many times after that.

Well, now, this document was shown to you by  
Detective Collis recently, wasn't it?---Yes.

And you said to Detective Collis - and for the record 40  
paragraph 25 of your statement - that you did not draft  
this document?---I have no recollection of it.

Well, you said - I'm only reading exactly what's here now?  
---Yes.

I'm not playing games with you?---No.

"I did not draft this document for Stuart and I have not seen it before." So it wasn't, "I have no recollection of it"?---Okay. 1

It was, "I did not draft it and I have not seen it before." Are you sticking to that or are you simply saying, "I've got no recollection now"?---I've got no recollection.

So it's possible that you have seen it before?---It's possible.

Before the police showed it to you?---Yes. 10

Is it possible that you drafted it?---It's possible.

Did you commonly draft correspondence for Mr Tait to sign? ---Yes.

Do you see a connection between exhibit 151, the decision to seek a further memorandum, and this exhibit 158? ---Sorry, age has slowed me mentally somewhat. The question was: is there a difference between this - - -

No; no, is there a connection? Do you see a connection? ---12 February, 13 February, the date - - - 20

The dates are one day apart?---Yes.

The subject matter, leaving aside what Mr O'Shea has written on it - - -?---Yes, there's obviously a link; yes.

You say "there's obviously a link". The typewritten part of it doesn't give the reader any idea at all what documents are being spoken of, does it?---No, it doesn't.

Okay, because there could have been any number of official records of cabinet that cabinet might have been concerned about a writ being issued over, couldn't there?---Yes, you're right; yes. 30

Yes, so prima facie, leaving aside what Mr Tait's written on it, pretending that's not there, there's no obvious connection between these two documents, the decision of 12 February and this letter of the 13th, is there?---No.

Now, to understand what it was that Mr Tait wanted advice on in the particular rather than the abstract it was necessary for Mr O'Shea to pick up the phone and ring you, wasn't it? Yes?---I guess so, yes. I can't recall him ringing me for this information. 40

No, but let's pretend?---Yes.

We can even pretend he never did, if you want, for the purposes of this question?---Ken O'Shea would have rung me to ask me more about it, I guess, yes.

11/2/13

LITTLEBOY, K.P. XN

Okay, because he would have been absolutely none the wiser as to what he was required to advise on looking at the terms of the letter, wouldn't he?---It's possible. 1

Yes, well, it's quite possible, isn't it, because all it says is, "We want to have" - advice is sought about what action might be taken should a writ be issued to obtain information that is considered to be part of official cabinet records?---Yes, and then the letter goes on to say, "Ring me for further information."

That's right?---Yes. 10

It doesn't enlighten Mr O'Shea at all as to the identity of these records?---That's right.

Who might be after them?---Yes.

Why they might be being sought?---Yes.

In what forum they're being sought, anything of that nature, does it?---No.

In terms of detail it's a singularly unhelpful document, isn't it?---I see there's a little bit different. 20

Sorry, what's that?---Cabinet handbook and a lot of other inquiries we had after this said that you couldn't hide information. We couldn't stop people looking at documents simply by saying, "We've got a cabinet submission here. It's about blah, blah, blah and, by the way, we'll stick the documentation onto it so that no-one can FOI it, for instance."

Yes, that's a different issue?---We wouldn't do that. 30

All right?---But that seems to be what he's saying here.

Well, no, what are you reading from, the typewritten or the running writing?---The typed one.

Okay. He doesn't tell the - - -?---No, it's not; it's not. I'm on the wrong bent.

You're on the wrong bent?---I'm going on about something else.

Well, my point to you was the document doesn't help Mr O'Shea understand what documents he's meant to be advising about?---No. 40

He's got to ring Mr Littleboy to find out?---Yes.

It doesn't even say, "Mr Littleboy will be in touch to enlighten you." The onus is on Mr O'Shea to ring Mr Littleboy?---Yes.

11/2/13

LITTLEBOY, K.P. XN

Now, you must have known that Mr O'Shea was going to ring you?---Yes. 1

Because otherwise it would have come as a complete surprise to you when Mr O'Shea phoned and said, "I've got this letter from Tait. What's it all about"?---Yes.

You would have said, "I've got no idea"?---Exactly.

So it's more likely than not that you have seen the letter prior to the police showing it to you, isn't it?---Yes. 10

And it's more likely than not that you knew that Mr Tait was writing in those terms to Mr O'Shea?---Yes.

From your point of view as the second in command having to apparently fill in the blanks here for Mr O'Shea, wouldn't you have been more comfortable with Mr Tait setting out in some detail what it was Mr Tait wanted advice about rather than the onus being on you to accurately convey what it was Mr Tait wanted advice about?---Not really.

Not really?---No. 20

But you didn't draft this document?---I may have drafted it.

You may have, all right?---Because it's a simple document.

Well, because you may have drafted it, I now must ask you this question: assuming you did, did you keep it as vague as that deliberately?---No. It just sprang to mind when you asked that question I wouldn't be putting documents relating to a cabinet decision in a letter to someone; you know, I wouldn't particularly be - although a decision is not secret after it's been announced so - no, I wouldn't have. 30

But this wasn't just anyone you were - - -?---It was the crown solicitor.

This was the crown solicitor, wasn't it?---I certainly wouldn't have been deliberately vague to the crown solicitor.

And he had actually played a role prior to the cabinet decision on 12 February in connection with this Heiner matter, hadn't he?---Apparently. 40

According to the cabinet submission that you read to compile a draft minute for cabinet?---Yes.

So you knew that Mr O'Shea, if he could only be told what it related to, would say, "The Heiner material"?---I have no idea why we didn't mention Heiner in the letter.

Can I suggest to you the possibility was to keep everything off paper so that there was no record; that it was deliberately done?---If it was, it didn't work - - - **1**

Well, that's a different issue?--- - - - because there's paper - well, to me again you'd ring him up. You wouldn't put anything on paper. By the very fact that you put it on paper you've made a record.

Yes?---If you didn't want anyone to know about it, you'd just make a phone call. **10**

And if you didn't want anyone to know about it, you wouldn't put in the letter what the subject matter of the advice was you were really after?---It's possible, yes.

Possible, yes, but you're not positively asserting you wrote exhibit 158, in fairness to you, are you?---I could've. I could've written it. **20**

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You could have?---It would have been under direction. I wouldn't do anything essentially without being asked to by Stewart.

1

Okay?---He's the boss.

Right. So either he composed it or you composed it under his direction?---Yes.

And you said to me before that you have no recollection of Ken O'Shea ringing you?---No.

10

But looking at the content of what Mr O'Shea says that you told him - see, he's dead now, we can't ask him?---That's a shame.

But looking at the content of it, is this something that you would have told Mr O'Shea, that they had a large sealed box - - -?---Yes.

- - - containing all Noel Heiner's papers?---Yes.

And that they want to know whether they would become cabinet documents and thus be secret?---Yes.

20

Do you know now why you wanted to know whether the documents could thus be secret?---Again - what was the question again, sorry?

Do you know why would have told Mr O'Shea that they wanted advice about keeping the documents secret?---To make sure - my understanding of the documentation, that it was tainted in some way.

Yes?---And that the inquiry wasn't undertaken in a manner could go to court. So the options may have been - again, thinking in hindsight, retrospect - that if you take the cabinet they can't be accessed, although I know that if there is a court process, the courts can get cabinet documents easily.

30

Yes. Well, just a second there now. What you're saying is that there was a belief that if you took documents into cabinet the government could at least throw up some resistance to an application for access to them by saying, "No, they're cabinet documents"?---Yes that's - - -

Whether a court accepted that claim - - -?---Yes.

40

- - - which might be called Crown privilege or public interest immunity. Are you familiar with those concepts? ---Yes.

Yes - was a matter for the court?---Yes.



But prima facie, if a document went into cabinet the government could in all honesty say, "Well, those documents have been considered by cabinet. They're cabinet documents now, therefore they're secret?---For FOI purposes.

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Forget about FOI, didn't exist then?---Didn't it?

No?---Yes.

Because you sent to me before a little while ago - you volunteer that - that "We" - and I assume you meant the Cabinet Secretariat - "didn't tolerate people putting documents into cabinet for the purposes of just keeping them to be cabinet secret"?---Yes. If I saw an attachment that offended the Cabinet Handbook I would bring it to someone's attention (indistinct) Stewart, et cetera, yes.

10

Right. Well, an application for Mr Heiner to get an indemnity wouldn't have offended your understanding of what was proper, would it?---No.

Because that's perfectly legitimate?---Yes.

That if a public service or person retained by the Crown to do something, he may need the government to stand behind him should that person be the subject of action?---Yes

20

But the destruction of the documents wouldn't have been in the same clear-cut category, surely, from your point of view because surely you would have thought to yourself, "Indemnification is one issue, but why do they want to bring these documents into the cabinet"?---I can't recall any thoughts on that.

You don't recall having any thoughts about that?---No.

30

Is the sum total of your knowledge of that time - that is at the time he spoke to Mr O'Shea - so far as documents are concerned, is it to be found in Exhibit 151?---Which is?

Which is the cabinet submission?---Yes.

You hadn't had any discussions with anyone from Family Service about what they were up to?---I don't recall having any discussions with anyone else, no.

You don't have any recollection of talking to Trevor Walsh? ---No I don't.

40

Sue Crook?---I know the name Sue Crook, yes. I don't even remember talking to Kate McGuckin about the jolly documents before, and then they produced a document to say that I had, so no, I don't have any recollection.

Okay. But see, this issue blew up, so to speak, or erupted or became controversial as early as 11 April 1990, didn't it, when there was an article in a paper called the Sun. Do you remember that?---No. I remember it was controversial but I don't remember when or - - -

But it was controversial soon after it was all destroyed, wasn't it?---Yes.

And so if something becomes controversial soon after it happens would you agree with me that you would be more inclined to remember the detail of it, compared to the scenario that you were brought in here today to ask about a decision made in 1990 that's never been controversial?---I would be more inclined to, yes.

Yes. But even allowing for the fact that it became to some extent a matter of public concern as early as April 1990, you can't recall now what information and where you derived the information from the on what is contained in exhibit 151?---No.

Did you, when you read exhibit 151, have any misgivings about the wisdom or otherwise of bringing these documents forward to cabinet for destruction?---I must admit that I didn't read it in detail when the police gave it to me.

No, I'm going back to them. Back when you - - -?---Yes, okay. No, otherwise I would have raised issues if I felt there were issues there, so.

So really your understanding as at 13 February 1990, if Mr O'Shea's file note is correct, it was that they - be it the Cabinet or the Secretariat or all of it - were hoping to be able to keep the documents secret because they were now in the cabinet area; if what O'Shea has written is correct? ---Yes.

Okay?---Yes.

Well, it's possible that what Mr O'Shea wrote is incorrect. Are you disputing what Mr O'Shea has written there?---What did he write again?

Beg your pardon?---What did he write again?

I'll read it, "They had a large" - well, it's common ground you had a large sealed box?---Yes.

Right, so that's correct. "I want to know whether they would become cabinet documents and thus be secret." Are you disputing that that is what you told Mr O'Shea in 1990?---No.

No. Okay, thank you. Now, could you have a look at exhibit 168, please. You'll see it's again a cabinet decision and attached to it is a cabinet memorandum. Now, the police showed you that the other week, didn't they?  
---Yes.

1

And you said in your statement, paragraph 16, that, "I don't specifically recall seeing this memorandum before." And by that you're talking about the document that Mrs Carrick has signed, aren't you?---Yes.

But dealing with the actual decision number, 118, did you prepare that document for signature?---I would have in normal - I would have drafted a decision with each of those options in there.

10

Right?---And left it for cabinet to - or Stewart to cross off whichever one cabinet decided not to do.

Well, given that there's no crossing out on the decision?  
---No, the decision produced would be what cabinet decided, wouldn't show what was crossed out.

Are you saying to me that you would have effectively prepared four draft decisions?---No, I would - one decision - - -

20

Yes?--- - - - with the four paragraphs on it.

So if we look at this decision, it's only got a decision to defer on it?---Yes.

Which really isn't any of the four options, is it?---No. To me that means the cabinet debated it, discussed it and arrived at that decision.

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Did you type the decision number 118?---After cabinet it would have been prepared by a keyboard person.

1

Right, but she - - -?---I would have checked it from the draft that Stuart handed out.

Did you attend these cabinet meetings?---Not - I didn't attend this one. I have attended a couple, two or three, but not this one.

Did you attend the one on 12 February 1990?---No.

10

Okay, and you didn't attend this one on 19 February 1990? ---No.

So the decision there on 19 February was to defer it to allow the secretary to cabinet to liaise with the state archivist?---Yes.

Now, I'm going to get you to have a look at this document, please. See how it says "Submission number 117" up the top?---Yes.

"Consequence of option 4". There's a connection, isn't there, between what I've just shown you and exhibit 168, in that the cabinet memorandum bears the number 117, doesn't it?---Yes.

20

Option 4 on 168 was referral of the material to cabinet for noting?---Yes.

This document I've just given you, do you know who typed it?---No.

Do you recognise anything about the document in terms of its typing or its content to be able to assist us as to where it was typed, that is to say, was it typed in the department of premier, cabinet, agriculture or family services?---To me it looks like a brief from the premier's department to assist the minister in the cabinet debate. It looks like a briefing note.

30

Just read it more carefully, though. Read the last paragraph in the bold type?---Yes, it proposes a recommendation.

Yes, so even though it proposes a recommendation, are you suggesting that this document was one done up and given to the sponsoring minister or do you think when looking at the recommendation that it was one done up in the cabinet secretariat to assist the cabinet generally with what it should do?---It looks and feels to me - or looks to me that it was done by the department for the premier.

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Why do you say for the premier?---The premier is chair of cabinet. It wouldn't have been done - each submission, I

11/2/13

LITTLEBOY, K.P. XN

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know - I'm sure towards the end of the - but at the start, each submission would have got a brief from the department. The department would provide a brief of the submission to her own minister.

1

Yes?---The premier's department would provide a brief of another minister's submission to the premier. So as this was early stage I know it - I'm sure it was at the end, but I would assume it was at the beginning that the premier would have a cabinet book with all the submissions in, the draft decisions and the briefing notes from bureaucrats in the premier's department about the contents of the decision making a suggestion or - - -

10

All right. So you think that this document headed Consequence of Option 4 - correct me if I'm wrong now - was a document typed up by someone in the premier's department for the premier?---I believe so, yes.

Funnily enough, the recommendation that it makes that the recommendation be deferred to allow the secretary of cabinet to liaise with the state archivist is what cabinet actually decided on 19 February 1990, isn't it?---Yes.

20

This document that I've shown to Mr Littleboy was marked for identification number 7, Mr Commissioner, and I'd ask that it now be tendered as an exhibit, but to keep it connected with where it ultimately found expression I'd ask that it be made exhibit number 168A.

COMMISSIONER: Thank you. MFI 7 will now become exhibit 168A.

ADMITTED AND MARKED: "EXHIBIT 168A"

MR COPLEY: Thank you. Could I have a look at that, please?

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COMMISSIONER: Sure.

MR COPLEY: What time will you be adjourning?

COMMISSIONER: At 1.00.

MR COPLEY: Okay, that's fine.

COMMISSIONER: Or thereabouts.

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MR COPLEY: There is a witness that we need to complete before 1.00 who will be quite short, so I was just going to continue with Mr Littleboy for a little while longer then ask if he could be stood down till after lunch and we call Ms Carrick next.

COMMISSIONER: Sure. You understand that, Mr Littleboy? ---Yes.

11/2/13

LITTLEBOY, K.P. XN

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You're going to be here for some of the afternoon, if that's okay?---Thank you. 1

MR COPLEY: If you'd have a look at exhibit 169. Have you had enough time to familiarise yourself with what's in there so you can answer questions?---No. I haven't read the second one.

Just have a read of it?---I'm a bit of a slow reader at this age. Yes.

Now, leaving aside whether the police showed it to you or not in the last month or two, and they may not have, have you seen that letter signed by Tait to Mr O'Shea before? ---I can't recall it. 10

Could you have drafted it for Tait?---Yes.

What about the attachment which is a draft letter to the state archivist?---I don't recall it. I could have - probably would have.

It's a pretty lengthy letter, isn't it?---Yes. 20

In fact, it ends by saying, "If you want any further information get in touch with Mr Littleboy"?---Yes.

So it's possible that you did the draft for Mr Tait of both of these letters?---Yes.

Now I'm going to try and cross-examine you about a document you may or may not have written so this process has got its limitations, but if you did write the draft letter, it doesn't tell the state archivist that anyone was desirous of obtaining a copy of the material that you wanted to destroy, does it?---No. 30

Is there a reason why it doesn't tell the archivist that if you drafted it?---I would ask myself did I know that someone was desirous of getting that material.

Okay, so that would be your sensible, with respect, suggestion, that if it's something you didn't know it wouldn't have found its way into the letter?---Yes.

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Thank you. That can be returned. Have a look at exhibit 172, please. Now, you said in your statement that Detective Collis showed you that document - well, not that might have been a reference back to the last one I showed you, I think. Have you seen that reply from Mr O'Shea before other than possibly the police showing it to you? ---I don't recall it.

1

All right. That can be returned. Now, I would like you to look at exhibit 173. That is a copy of the draft that you saw before that Tait sent to O'Shea seeing it would be okay if that draft went to the archives, then O'Shea replied it would be and then this is the letter that it is asserted was sent to the archivist. Now, what do you say about who actually drafted that for Tait to sign?---It's got my initial on the bottom so I would assume I drafted it.

10

And where do we see your initials?---Bottom left-hand corner there's a "KL" and also there's a notation here "KL 23 February".

All right. So can we work on the basis then that you did draft exhibit 173?---Yes.

20

Now, at the time that you drafted that letter you said in the third-last paragraph on page that these notes and records were no longer required or pertinent to the public record. Do you see that?---Yes.

Yet in submission number 117 which was part of exhibit 168 there appears this sentence:

The fate of the material gathered by Heiner is yet to be determined. This is a matter 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.

30

Now, in the letter that you have drafted to Ms McGregor you didn't tell her that solicitors wanted access to these records, did you?---No.

You said in fact they were no longer required?---Yes.

How could you assert that?---I do not recall.

Because you read the memorandum from Mrs Carrick to compile the draft decisions, didn't you?---I would have, yes.

40

Yes?---Yes.

And you would have known from reading that that some solicitors were desirous of getting a copy of the records, wouldn't you?---Yes.

Yet you say here to Mrs McGregor - and I know Tait signed it but you have said you drafted it, "The government is of the view that the material is no longer required"?---Yes. 1

That was a gross oversimplification of the position, wasn't it?---Yes.

The material was apparently being sought by solicitors? ---Yes.

Is there any reason why you just didn't say to the archivist, "Look, the government's of the view it's no longer needed but there is this firm of solicitors that's made some demands for it. Nevertheless, we want your advice about destruction"? ---That would be reasonable. 10

It would be reasonable to do that, wouldn't it?---Yes.

It would be fair and in the spirit of the new government that was going to be all open and accountable, wouldn't it?---It would.

And of the new cabinet office that was going to be an improvement on the old and have due process and all this business?---Yes. 20

But it wasn't done, was it?---No, it doesn't appear to have been done.

Why not, sir?---I don't know. Someone may have asked for it not to be included in the letter.

Okay. So who might that someone have been?---Well, if I drafted it, it could only have been Stuart. 30

Are you meaning to convey to me by that that your failure to include that in the draft would have been a failure due to an instruction or a direction from someone above you?---It may have been, yes. I mean, all my drafts were changed either extensively or minimally and Stuart had the final say of what went out.

Well, you're not suggesting for a second, are you, that you put a paragraph in to alert the archivist about the solicitors - - -?---I don't recall doing that.

Okay?---But I may have been instructed on how to write the letter, for instance. 40

Well, if you were instructed on how to write the letter and if you were told not to put that in, you wouldn't have felt comfortable about that, would you?---In hindsight I wouldn't have.



COMMISSIONER: Do you mean that at the time he set different professional standards for yourself than you do now?---I thought I was pretty ethical then and now, but I really don't have any real recollection of this time apart from the box that rattled.

1

MR COPLEY: Yes, but I just need to know precisely what your evidence on this point is?---Mm'hm.

The failure to alert the archivist to the solicitors' interest was not a failure or was not an omission that you made of your own initiative, was it?---I don't believe so.

10

Because that wouldn't be consistent, you would say, with how you conduct yourself as a person acting ethically? ---Yes.

Right. An explanation for the failure to include it in the letter is that you were directed not to put it in the letter?---Unless I was very careless and hadn't put it in.

There are really only two possibilities, aren't there, because you knew about the solicitors' interest?---I may not have - yes.

20

Well, you did?---Yes, but I may not have thought it was that important.

Yes. It's just that the phrase is "is no longer required or pertinent to the public record"?---It's pretty definitive.

It is, isn't it?---Yes.

And she's getting told effectively in this letter these documents are of no utility, value or not wanted by anyone at all as far as the cabinet knows?---Yes.

30

And that wasn't the position, was it?---Apparently not, no.

This archivist - she was misled by what she was told in this letter, wasn't she?---She wasn't given all the facts.

Okay. You can mislead people by not giving them all the facts or you can mislead them by telling them something positively wrong?---Okay.

But one way or the other she was not made aware that there were solicitors interested in getting these documents, was she?---Correct, no.

40

And she should have been, shouldn't she?---Yes.

Because if she had have been - let's just assume that she was told that. What would be the reason for not telling her that is a better way of putting it?---To make it easier for her to make a decision.

1

Or to make easier for her to make the decision that was sought?---To destroy the documents.

To destroy, yes. Why was it that it was so urgent to destroy these documents?---Again the only reason that comes to mind now is, as I stated before, that the Heiner inquiry wasn't set up properly and therefore the documents couldn't be used in court, for example, because they weren't properly set up.

10

But surely that was a matter for a court to worry about if and when anyone ever took any legal action over it, wasn't it? Do you agree with me that there was - the process of destruction here was achieved or engineered by not telling the archivists all relevant facts?---It would appear that relevant facts weren't included in the letter, yes.

Yes, and the failure to include the relevant facts wasn't an omission on your part that you take responsibility for because - - -?---Can't recall.

20

Well, I suppose you'll say it's possible that you simply forgot to tell her or it's possible you deliberately didn't tell her because someone told you not to tell her?---It's possible.

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40

All right, and if it's the latter possibility, who could have told you not to tell her?---The only person could be Stuart. 1

Why do you say - - -?---He was my boss.

Why do you say he'd be the only person?---Well, the premier wouldn't tell me.

Why not? I'm not suggesting he did?---No.

I'm just asking you why he wouldn't have?---Because there was a protocol to go through. 10

Did you ever speak with the premier?---Yes, but certainly not about - when I sat with him in cabinet once or twice, did speak with him.

Yes?---In the corridor, he knew your name, and briefings, I had spoken to him, but not - he never gave me - he wouldn't have given me this instruction.

So are you saying to me that there was a pecking order? ---Yes. Stuart was the one that was the secretary of cabinet. He spoke to the premier. 20

Do you see now when you look at what exhibit 173 doesn't tell you and you then look at your conduct - and I don't mean that in a pejorative way, but simply your conduct in your dealings with the archivist and destruction, do you see now why you're being asked about what you remember about destruction and why you accompanied her to the act of destruction?---Yes.

Someone was very, very concerned to see that these documents were destroyed, weren't they?---I guess so. 30

I beg your pardon?---Yes.

And who was that?---I still believe it was part of a process. I can't recall anyone saying, "Now, you make sure that you go along and you make sure they're destroyed, because," blah, blah, blah. I have no recollection of any conversations like that.

Would that be a convenient time to stand Mr Littleboy down?

COMMISSIONER: Yes. Mr Littleboy, would you mind coming back at quarter past 2 this afternoon?---Thank you. 40

WITNESS WITHDREW

MR COPLEY: I call Myolene Carrick.

**CARRICK, MYOLENE** sworn:

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ASSOCIATE: For recording purposes, please state your full name and your occupation?---My name is Myolene Carrick and my current position is leader of the transition project team with Centacare.

Please be seated.

COMMISSIONER: Good afternoon, Ms Carrick. Welcome?  
---Good afternoon.

10

MR COPLEY: Could Mrs Carrick be shown her statement, please? Mrs Carrick, could you just look through that document, please, to confirm that it's a statement that you signed on 30 January 2013?---Yes, that is.

I tender that statement, Mr Commissioner, and it can be published as it is.

COMMISSIONER: Mrs Carrick's statement will be exhibit 312 and I direct its publication.

ADMITTED AND MARKED: "EXHIBIT 312"

20

MR COPLEY: If it can be returned to her.

Mrs Carrick, in that statement you state that apart from perhaps knowing about the Heiner investigation as information that you'd heard discussed at the senior executive management team meeting, you had no involvement in the establishment of the Heiner inquiry?---That's correct, yes.

That's correct?---Yes.

30

Did you have any role to play in the ending of the inquiry by Mr Heiner?---None whatsoever, no.

None whatsoever?---No.

I've just got to get you just to speak up?---Sure, okay.

No, listen, it won't amplify your voice. That's just for recording purposes?---All right. Okay.

You've got to just use a louder voice?---Okay.

40

Thank you?---None whatsoever.

None whatsoever. Thank you. Now, I want you to have a look at a memorandum that the police showed you recently which we call exhibit 168. It's got attached to it two pages. Mrs Carrick, just ignore the first page because

11/2/13

CARRICK, M. XN

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that's the cabinet decision, but looking at the second and third page of that document, does your signature appear on it?---Yes, it does.

1

Where does it appear?---At the bottom of the second page where I signed for Ruth Matchett.

Okay, and the date that you signed it, is that there? ---Well, it says here 13 February 1990.

Mrs Carrick, why did you sign that cabinet memorandum?---I signed because I was asked to.

10

Who asked you to sign it?---I'm fairly certain it was Trevor Walsh who worked in the director-general's office.

How soon, or how much time prior to signing it were you asked to sign it?---Very little. It was brought to my office and I was asked to sign it.

Where was your office?---It was in the family services building. I think it was then still on the same floor as the director-general's office.

20

Did Mr Walsh say why he wanted you to sign it?---I don't remember exactly, but it would have been because Ruth was unavailable or away - unavailable to sign it.

Is that something that he said or is that something you surmised from the fact he asked you to sign it?---I would have asked him. I don't sign thing without asking.

Yes?---I would have asked why was I asked to sign it, because I remember at the time that was highly unusual. I did not usually sign any cabinet submissions, and Trevor came to my office and asked me would I sign this. Ruth had requested it.

30

Did he say Ruth had requested that you sign it or that someone sign it, or can't you say?---I can't remember. It was a long time ago, but I would only have signed it if I had been asked to sign it, because I had no knowledge of this whatsoever.

So anything contained in that document, any assertion of fact or statement of opinion, was not yours?---Definitely not.

40

You didn't compile the document, you just signed it?---I had nothing to do with it.

Did you read it before you signed it?---I would have read it, yes.

Did you say, "Listen, Trevor, why am I being asked to sign this?" or, "I don't want to sign it," or anything like that?---I honestly can't remember the conversation, but anybody who knows me, who has worked with me, knows I don't sign things blind and I would have asked why was I being asked to sign it as I had absolutely nothing whatsoever to do with its preparation. It was not within my portfolio of responsibilities.

1

Youth detention centres weren't, you mean?---Sorry?

Do you mean to say when you were the deputy director-general youth detention centres weren't within the portfolio of the department you were responsible for?---No, they weren't.

10

Well, you did sign it?---I did.

In the hours, days or weeks after that did you ever tackle Ms Matchett and say, "Why was I asked to sign that cabinet submission"?---That was not the culture of the day.

What do you mean by that?---Well, when Ruth became head of the department my clear recollection is that I was not included in any of the goings on in the department and so it would not have been appropriate for me to have asked her that question.

20

Prior to her becoming the head of the department had she worked in the department?---Had I worked in - - -

No, she, Ruth Matchett?---Yes.

Before she became the head of the department were you higher than her or was she higher than you before she was appointed the head of it?---I think I was higher than Ruth.

30

Did she ever report to you?---No, I don't think so.

Okay?---I don't think so. It's a long time ago. I don't think so.

So are you saying that you didn't ask her or tackle her about the issue because you didn't think she'd appreciate being asked?---Something like that, yes.

After you signed it, in the days, weeks or time that followed, did it become apparent to you that there was some controversy about the issue that you'd signed?---Yes.

40

When did that become apparent to you, do you remember? ---Well, I remember at the time when I signed it that (1) it was a highly unusual request for me to sign anything because there had been quite a significant change in the

culture of the leadership in the department after Ruth became the head of the department, and so I was very surprised that I was asked to sign it anyway. 1

Yes?---It was a matter of some controversy, yes, but I had nothing to do with it other than putting my signature on this because I'd been requested to do so.

Who was responsible for youth detention centres in the portfolio of the department at the time you signed that, leaving aside the director-general who was presumably responsible for everything?---Yes. My recollection is it was George Nix. 10

Did you say to Trevor Walsh, "Well, hang on, this is George's area. Why don't you get him to sign it"?---I possibly could have. I don't know.

Do you remember whether George Nix was around the place? ---I have no recollection whatsoever.

No further questions, Mr Commissioner.

COMMISSIONER: Thank you. Mr Hanger? 20

MR HANGER: No questions.

COMMISSIONER: Mr Harris?

MR HARRIS: No questions, commissioner.

COMMISSIONER: Mr Bosscher?

MR BOSSCHER: No, thank you.

MR COPLEY: May Ms Matchett be - Ms, sorry, Carrick be excused? 30

COMMISSIONER: Yes, certainly. Ms Carrick, thank you very much for coming. Your evidence is appreciated. You're formally excused from the requirements of your summons? ---Thank you.

WITNESS WITHDREW

MR COPLEY: 2.15?

COMMISSIONER: Yes, we'll adjourn till 2.15. Thank you. 40

THE COMMISSION ADJOURNED AT 12.54 PM UNTIL 2.15 PM

**LITTLEBOY, KENNETH PETER** on former affirmation:

COMMISSIONER: Mr Copley.

MR COPLEY: Thank you. Before lunch, Mr Littleboy, I mentioned to you the expression the pecking order and the hierarchy. Did anyone stand between Mr Tait and the director-general?---No, not at that stage.

10

At some stage did someone?---After that.

When after that?---When - I think it was - I've forgotten his name, premier's chief of staff who used to be prime minister, is now - - -

Yes, what's his name?---Kevin Rudd.

Right?---Kevin Rudd came on the scene sometime later, I'm not sure when. It may have been towards the end of 94 or 5, and the cabinet secretariat was subsumed under the - I think it was called the cabinet office, which was under Kevin Rudd, under the DG.

20

So he had nothing to do with the cabinet secretariat in January, February, March, 1990?---No, he was one of Goss's people.

He was what?---One of the premier's people.

So does that mean he wasn't - - - ?---He wasn't a public servant.

30

He wasn't a public servant?---No.

He was what, a ministerial staffer or something?---Yes.

Okay. Now, when you composed that letter to the archivist that omitted to say that, "By the way, there are some solicitors that are anxious to have a look at these documents," how did you feel about leaving that out of the letter at the time?---I can't recall.

You don't recall feeling uncomfortable about it?---I don't recall writing the letter either. It's been proved to me that I did, but I don't recall writing it.

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And how has it been proved to you that you did?---My initials are on the letter.

Okay?---And - yes, I think that was the document I saw.

Yes?---My initials were on the bottom of it.

11/2/13

LITTLEBOY, K.P. XN

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Yes, and you said before that you believed that Stewart Tait didn't want that in the letter?---If it wasn't in there either I was incompetent or I was asked not to put it in. 1

So the possibilities are you were asked not to put it in or you were incompetent?---Yes.

Well, you must have some recollection whether you were asked or not?---No.

MR HANGER: With respect, my friend has been asking a lot of speculative evidence all morning. It doesn't help. He says he doesn't recall writing the letter; he's satisfied he did because of his initials being on it, but as I understand his evidence so far that's as far as it goes. 10

COMMISSIONER: Yes, that's what he says, but Mr Copley is entitled to either examine or cross-examine and sometimes you do get close to speculation when we're dealing with things that happened 23 years ago. But sometimes it's really not speculation, it's either. Even though people say, "Oh, I can guess or have a stab at it," what they really mean is, "looking back on it now, knowing who I am and how I approached things and how things were normally done back there, this is what I'd say." And that's more than speculation, that's almost approaching something like an informed opinion about an event. I mean, we can look at a document and we see something totally different to the author or somebody who read it in the context that it was received in then, which would be quite different to what it is here. 20

MR HANGER: I accept that someone can say, "My normal practice," or something like that, but my friend is transgressing beyond that now, but - - - 30

COMMISSIONER: If we were in a trial I'd agree with you, but I think you can - - -

MR HANGER: I realise it's inquisitorial.

COMMISSIONER: Yes, I think you can go - I mean, I take your point, I do it myself. I sometimes expect more of people than their memory allows. But given that we're in a circumstantial realm I'm inclined to let Mr Copley have his head a little bit. 40

MR HANGER: As you please.

COMMISSIONER: Thank you. Yes, Mr Copley.

MR COPLEY: Well, I'd suggest to you that you wouldn't have been incompetent, Mr Littleboy?---It's possible. My normal process that I can recall in drafting any

correspondence would be to review the document, pull out the bits that I thought were relevant and pertinent - - - 1

Yes?--- - - - and include them in. I may not have thought that that was a relevant or pertinent bit. In hindsight if I thought that, that's poor analysis of the submission.

Well, the person who composed exhibit 168 thought that it was relevant for cabinet to know that solicitors were seeking the documents?---Yes.

It surely would have been relevant for the archivist to know that solicitors were seeking the document if her consent to destruction was being sought, wouldn't it? ---Yes, if I can - I know I'm not supposed to say anything, but at the time we were looking at 13 or 14 departments putting in 15 to 20 cabinet submissions per department which had to be reviewed, written, considered, passed on; and this was one matter in all the documentation that was going around, so. 10

But what does that answer mean?---Well, it means that I had a lot of work to do at maybe I wasn't paying particular attention when I was drafting that letter, I was thinking about something else, I don't know. 20

But her opinion that came as a result of that letter was necessarily an ill-informed opinion, wasn't it, because she wasn't told that the solicitors wanted to documents?---If that would have made a difference, yes.

Well, somebody thought that it made a difference, didn't they, because they put it in the information to cabinet? ---There was a lot of information in the information to cabinet and all of that wasn't included in the letter. It was seven or eight pages long. 30

No, I'm just looking at the one that you prepared the draft options for, exhibit 168, it was only two pages long?---I'm referring to the cabinet submission prior to that.

Well, that would be further back and harder to remember. I'm looking at exhibit 168, which only has two pages attached to it, which is the memo that Mrs Carrick signed? ---That's the one that said that there was people looking for - legal people - - -

Yes, there were requests from solicitors acting the staff members. And that document was the more recent of the two that you would have seen, wouldn't it?---Yes. 40

And exhibit 168, if you want to just have a look at it, says in the submission part of it under the heading Background it says in paragraph beginning:

During the course of the investigation Heiner gathered information of a potentially defamatory nature in the form of written material and electronically recorded material. 1

And then it says:

In view of the Crown solicitor's advice and the limited value of its continuation I've terminated the investigation and taken possession of the material?

---Yes. 10

And then if you look at Exhibit 173 it says that:

During the course of the investigation questions were raised concerning the possibility of legal action against Mr Heiner and informants because of the potentially defamatory nature of the material gathered and because of the limited value of its continuation the department has decided to terminate the investigation.

So there's a correlation between what the state archivist is told in that paragraph and three of the paragraphs in exhibit 117, isn't there?---Yes. 20

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Then the letter goes on to tell the state archivist in exhibit 173 about the advice that's been received about whether the documents were public records or cabinet records and, of course, Mr Tait had sought advice from the crown solicitor on the point about whether they were cabinet records, hadn't he?---Yes.

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Yes, because you were the person - - -?---Yes.

- - - who was delegated the task of fielding that inquiry from Mr O'Shea. So the letter helpfully tells the archivist what the crown solicitor's views are about that. So to that extent it's a pretty comprehensive summation of the position, isn't it, as the author understood it to be?---Yes, the letter seems to follow this submission more than the other submission.

10

Yes, but it leaves out the simple fact that a solicitor wanted access to the documents?---Which was in the other cabinet submission memorandum.

Yes, exhibit 168?---So this appears to be the one used to draft the letter, not the other one.

20

But you were aware of the contents of both, weren't you, because you were second in command?---I should've been, yes.

And you read everything to make sure that it was properly formatted and all the rest of it?---Yes.

Well, didn't it hit home to you that if it was necessary for cabinet to know that solicitors wanted these documents, it would be necessary for the archivist to know that solicitors might want the documents too?---In retrospect, yes.

30

And your speculation before lunch that it was something that was deliberately left out of the letter was, I suggest to you, the more correct or the better explanation that it wasn't incompetence that left this out. It was a deliberate decision to leave it out?---Speculation.

Speculation now, is it?---I have no idea why - - -

Well, you were the one who introduced the speculation into this, weren't you?---Okay.

40

Why did you introduce the specter?---I was thinking of why it would be left out. It's one of the choices perhaps or one of the options.

I never suggested to you that it was left out at someone's behest, did I?---Perhaps I'm good at thinking of options.

COMMISSIONER: Is that assisted by your experience in the office, those options?---Of those options. 1

Array of options?---At looking at options; reasons why something doesn't occur.

I know; I know, but there is a difference. I was just talking to Mr Hanger about this. There's a difference between me never having worked in your area coming up with some explanation for something I don't know anything about and had nothing to do with and you who worked in the office and who was part of the context, the culture of the office. You can speak much more authoritatively about how things might have happened even if you can't exactly remember. This isn't a place to be cagey. What we're trying to work out here is what happened by asking people who are most likely in the world to know what might have, right, and you're one of those people?---Okay. I'm not trying to be cagey. 10

Good?---The reason I gave that option is because over 40-odd years in the public service I've written many a letter and be told to change it, "Take that out. Take that out. Take that out," so was one of the options that I considered for why it wasn't in there, simply for that reason, that I've had many drafts changed. 20

MR COPLEY: So the possibility is that you put it into a draft and someone told you to take it out?---It's possible.

Rather than you just not putting it in because somebody told you not to put it in?---It's possible.

The other possibility is that you said - these are your words - incompetence?---Well, I may have used this letter to - that submission to draft the letter and not the memorandum. 30

COMMISSIONER: This is early days, isn't it? Where are we in the new Goss government? How many months old is it? ---This is well into a very fast 30-odd years in the wilderness. We've got to change the world so there were cabinet submissions coming out of every which way. Everyone wanted to do something.

Okay?---Very busy.

Let's put ourselves in the context, if we can. Let's understand who is who and what's happening. How old is the Goss government by this time?---It would've been a month old. 40

A month?---Late December.

As you said before, everyone was active. Why were they active?---Appointments hadn't been made.

11/2/13

LITTLEBOY, K.P. XN

Yes. Why not?---Because it was a new process; new system; new cabinet secretariat set up. 1

Yes, post-Fitzgerald?---Yes.

Everyone was scrutinising everybody else?---Yes.

You didn't get an appointment till you showed that you were deserving of it?---No, I didn't get an appointment until - I don't know why I wasn't appointed actually. Why wouldn't I have been appointed? 10

As you said, everyone was acting for a while?---Yes; yes.

That makes sense. A new government wants to see - you want to test out a broom before you buy it, even a new one? ---Yes.

So that's the context we're in. We're a new government. We have just been voted in. We're not going to be doing a slipshod job that we just accused the previous government of having done, are we?---No. 20

We're a bright new shiny broom and we're there to - we're still in the enthusiastic stage of public administration? ---Mm'hm.

Now, you have somehow become involved in what's become known as the Heiner affair in its very early stages. All right. So can you bear all those contextual elements in mind when you're answering a question Mr Copley asks you so that you can give your best possible and most truthful answer?---Yes.

MR COPLEY: See, by the time the letter to the archivist was sent the fate of these documents had been before the cabinet not once but twice, hadn't it?---Yes. 30

And the cabinet perhaps very prudently wasn't rushing into authorising destruction, was it?---No.

It kept deferring it?---Yes.

So I would suggest to you that it's inherently unlikely that you would have inadvertently or incompetently overlooked a matter as important as the fact solicitors wanted access to these documents in your letter to the archivist?---One would think so, yes. 40

Because cabinet wanted proper advice from the archivist, didn't it?---Yes.

That's what they deferred decision for?---Yes.

So it's just inherently unlikely that you would have simply forgotten to include that relevant consideration for the archivist to be aware of?---Yes. 1

It was deliberately left out of the letter, wasn't it?---It wasn't put in the letter.

Yes, deliberately.

COMMISSIONER: There are two options for this, aren't there? You didn't put it in or you put it in and someone took it out. Isn't that what you said before?---Yes. 10

So of those two options, knowing yourself, knowing the other people in the office, knowing the procedures, how things worked back then and all those other contextual things, what do you think? Of the two options, do you think it's most likely you left it out or do you think it's most likely you put it in and somebody else took it out? ---Probably more likely that I put it in and someone took it out, but that's biased for me.

You would have said, I'm assuming - and again I'm working on the basis of the short period of time I have seen you in the witness box, but you strike me as somebody who set - and I think you told me before that you set high professional standards for yourself?---Yes. 20

And you wouldn't ordinarily describe yourself as incompetent even if you made the odd mistake from time to time because you're human, would you? You wouldn't characterise your professional - - -?---No, I wouldn't.

No, and you would be surprised if anybody who knew you would either, wouldn't you?---I did have certain times when I was less than - - - 30

Perfect?---Perfect, yes.

Yes, well, don't we all?---But generally in the bureaucracy I would class myself as competent.

But you would be careful, especially in those early days, wouldn't you?---They were a bit rushed but, yes, with the scrutiny after the Fitzgerald Inquiry; yes.

It's not like you were dealing with how much milk to buy for morning tea, was it?---No. 40

I think we have all established that it was an unusual incident to be dealt with?---Yes.

One of those things that if you don't write notes about and record things, might come back and bite you on?---I didn't feel it was something that would bite me at all.

But it did?---I didn't feel uneasy about any activity I did. That's my recollection of it. 1

MR COPLEY: Did you ever say to Mr Tait, "Hang on a second here, why is cabinet being asked to destroy these documents? These records didn't emanate from cabinet. These records weren't prepared for cabinet, be it ours or the previous cabinet. Why are we being asked to get involved in this decision about destruction, Mr Tait?" Did you ever ask that question?---I have no recollection whether I did or not. 10

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Does that seem to you to be a fairly sensible thing to be wondering about, looking back on it?---In hindsight, yes. 1

But you can't recall whether you stopped to think about that?---No.

Ms McGregor responded to that letter that Mr Tait sent, didn't she?---Yes.

I'll show you exhibit 175. Have you seen that letter before, aside from the occasion when the police showed it to you?---I don't recall, but if it was addressed to Stuart I would have seen it. 10

"I don't recall, but if it was addressed to Stuart I would have seen it"?---Yes, I would have seen all letters going to Stuart at some time or other.

Well, in your statement in paragraph 23 you said, "I had not seen this document before"?---Sorry, I don't recall seeing the document before.

That letter came back into the cabinet office on the same day as Mr Tait's letter went out, didn't it?---If you say so. 20

All right, well, I'll suggest, and if I'm wrong someone will object, that exhibit 173 is dated 23 February 1990 and that exhibit 175 which you're holding is dated 23 February 1990?---Yes.

Up the top it bears a facsimile 23/2/1990, 1344?---Yes.

So about 1.44 pm someone from archives was faxing that somewhere or other?---Yes, which suggests a sense of urgency. 30

It sure does, doesn't it?---Yes.

What was the urgency?---I don't recall. Cabinet said, "Destroy the documents - - -"

No, cabinet said, according to exhibit 168 - - -?---Seek advice.

- - - to just seek advice?---Someone would have made it urgent. 40

Who would that have been?---For my purposes it would be Stuart.

You said to me before that a public servant doesn't presume to know what cabinet will decide?---Yes.

You said that before lunch, didn't you?---Yes.

For that reason the cabinet is given draft decisions that reflect the various options in the cabinet submission?  
---Yes.

1

I'll get you to have a look at this document, please, which is another copy of exhibit 175 but it's got some handwriting on it. The typing is the same, isn't it?  
---Yes. It's a memo from Stuart to me. "Please destroy records as per above after to cabinet on 26/2/90."

What date does - - -?---The 23rd.

10

So KL is you?---Yes.

"Please destroy the records as per above after to cabinet on 26/2/1990"?---Yes.

Signed Stuart Tait, or initialled Stuart Tait, 23/2/1990?  
---Yes.

So given that public servants don't presume to know what cabinet is going to decide how was it that you were able to - you received this letter, this memo, on the bottom of what is a copy of exhibit 175 that tells you to destroy these records after to cabinet in three days' time?---Good question. Stuart, who wrote the memo, may have had information that I didn't.

20

Well, when you saw that what did you - what did you say to Mr Tait when you saw that written on there?---The fact that I didn't destroy them, I may have said, "We can't destroy them. The department should," and the state archivist people were involved and they went to the department for destruction. I certainly wouldn't have destroyed them or felt it was my role to destroy them.

30

But you felt it was your role to accompany Ms McGuckin down the road with the rattly box?---They were in cabinet's care and as a cabinet person I accompanied her to them and carried for her.

These exhibits tend to suggest that you're the person that was getting lumbered with or stuck with all the dirty work on this?---I was 2IC. There was no-one further to pass the documents on to, I suppose, for - to pass the work on. I was the most senior one after Stuart.

Did you say to Mr Tait, "Look, I'm not getting involved in this destruction of the documents. If you want to destroy them, you do it"?---I have no recollection of saying that and don't - I have no memory of that.

40

So anyway, if this memorandum purports to be the truth or if it contains - if what is in it is the truth, you were given a direction three days before a cabinet meeting to

destroy these records after cabinet on the 26th of the 2nd, 1  
which was before cabinet had decided to destroy them?  
---Yes.

I tender that photocopy of the letter, of the exhibit which  
is exhibit 175, and ask that it be made exhibit 175A.

COMMISSIONER: The document dated 28 February 1990 will be  
exhibit 175A. Thank you.

ADMITTED AND MARKED: "EXHIBIT 175A"

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MR COPLEY: So what went wrong on 26 February that cabinet  
didn't authorise destruction that day?---I have no  
recollection of dates. What went wrong, if it went wrong  
at all, I assume you're talking about cabinet's decision to  
seek the state archivist's - - -

Well, you'd got that. That came in at 1.44?---Yes. I'm  
confused about all the timings.

Okay. 1.44 on 23/2/1990 the archivist said you can destroy  
them?---Yes.

20

On that date, after she made that decision, Mr Tait said to  
you, "Please destroy the records as per above," meaning as  
per her consent, "after to cabinet on 26 February"?---Yes.

Cabinet did not decide to destroy them, as far as we can  
ascertain, on 26 February. Rather, it decided to destroy  
them on 5 March?---Yes.

So my question to you is what went wrong on the 26th that  
proved Mr Tait's confidence - - -?---I have no idea. I  
have no idea what happened to change - - -

30

You don't know?---No - or I can't recall it, if I did know.

Why was it important for the family services department to  
know about the state archivist's decision?---They were the  
- from listening to evidence, they were the ones that  
owned the documents and the ones - people who own the  
documents - - -

Didn't cabinet own them by then?---Does cabinet own  
attachments to - if they're attachments to submissions  
they're a cabinet document. This was a box of stuff - - -

40

That I'd suggest you've gone - that you had received in the cabinet office?---Yes. Whether or not the actual box went into cabinet, I don't know. I can't recall. 1

Who would be able to tell us that?---Stewart.

Right. Could you just have a look at exhibit 180. Do you know from looking at that document - and there's no signature and there's no typing in terms of to which minister it's directed - but are you able to identify where a document like that might have originated from?---Can I have a little bit of time to read it and look at it? 10

Yes. Bear that in mind when you read it?---Yes. To me this looks like a brief to the premier.

A brief to whom?---A premier.

Wouldn't it say, "The Honourable the Premier"?---Sorry, "The Honourable the Minister," yes. I just assumed premier. Okay. Yes, it wouldn't be to the premier, as you say, because - - -

Beg your pardon?---It wouldn't be to the premier because it says Minister. 20

No?---So it would be Family Services, presumably.

Yes?---Yes.

It probably would be, wouldn't it?---It's a brief - what we'd call a cabinet brief.

Right?---They were more formalised after the initial days, but - - - 30

Yes?---Yes.

And in paragraph 7 it says, "The state archivist has given written approval for destruction of the material"?---Yes.

And of course she had given that approval on 23 February, hadn't she?---Yes.

Yes. And the written approval had been sent to Mr Tait, the cabinet secretary, hadn't it?---Yes.

And so for Family Services to be aware of the fact that written approval had been given, someone in the cabinet Secretariat would have needed to have told Family Services? ---Yes. 40

And in this briefing to the minister this document, also in paragraph 8(a) reminds the minister that correspondence has been received from solicitors?---Yes.

So you'd agree with me that the author of this document must have thought it important for the minister to know that?---Yes. 1

You were the person who informed the Family Services Department about the written approval for destruction from the archivist, weren't you?---If I've seen letters to that effect - - -

All right, well - - -?--- - - - prove that, yes.

- - - I'll get you to have a look at this?---Yes, that's my signature. 10

Yes?---Sent to Trevor Walsh because he was the cabinet legislation liaison officer.

That's right, and it is dated 26 February 1990 and it attaches the state archivist's consent?---Yes.

And on the front of that it says Re Cabinet Submission? ---Yes.

Does that word, Re Cabinet Submission, mean this is relevant to a previous cabinet submission or it's relevant to an impending Cabinet submission?---No idea. 20

All right?---Could be either.

I tender that document and ask that it be made, simply in terms of its chronological construction, exhibit 175B.

COMMISSIONER: The Cabinet Secretariat fax dated 26 February 1990 the exhibit 175B.

ADMITTED AND MARKED: "EXHIBIT 175B" 30

MR COPLEY: Thank you. Would you look at exhibit 181, please. Attached to that decision is a cabinet submission, isn't it?---Yes.

Now, did you compile that cabinet submission?---Normally I wouldn't compile a cabinet submission from another department.

Is that because the job of the department to do it?---Yes, or a policy person would write the submission for that department. 40

Okay. It bears the signature of Anne Warner, we've heard evidence of?---Yes.

And it appears that it was signed 27 February 1990?---Yes.

Now, the last exhibit I tendered, exhibit 175B, which was that fax from you to Trevor Walsh was dated 26 February 1990, wasn't it?---Yes.

1

And that was the document attaching the state archivist's consent to destruction?---Yes.

And this document, cabinet submission number 160 of 1990 tells us on page 2 that the archivist has been consulted under the heading Consultation, doesn't it?---Yes.

And it tells us that the results of the consultation is that - paraphrasing - she supports the course of action recommended?---Yes.

10

And the recommendation from the minister was at the material gathered by Mr Heiner be destroyed?---Yes.

And in this submission to cabinet the author of it, on page 2, again reminds the minister in cabinet that representations have been received from a solicitor representing certain staff members at JOYC in which those representations were for the production of the material referred to in the submission?  
---Yes.

20

Now, he would have read this at the time it came in or shortly after from Family Services wouldn't you?---Yes.

And did it hit you then, "Gosh, we got the archivist to consent to destruction without telling her that a solicitor wants it"?---Just looking at the dates, 27 February, normally submissions would be submitted one week before cabinet a draft.

Yes?---Then they'd be submitted, then after everything was okay but be submitted on the Tuesday before cabinet for compilation in a book, sent out, and then cabinet the Monday after, so almost it was a three-week process.

30

Yes?---Some submissions were rushed through when done urgently and they might have taken two days to get through the system.

Yes?---If it was deemed that the premier gave approval, things could be rushed through. So the date of the 27th, is that two weeks before or a week before? I can't work it out.

40

Well - - -?---The decision - is it close to the decision?

We'll just have a look at exhibit 213 - - - ?---5 March.

- - - which is a calendar the 1990. 27 is a Tuesday?  
---Yes, and cabinet is a Monday.

11/2/13

LITTLEBOY, K.P. XN

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11022013 21 /ADH(BRIS) (Carmody CMR)

I'm sorry, hang on a second. The 27th is a - yes, is a Tuesday?---Yes. **1**

27 February; and cabinet met the following Monday, 5 March? ---Okay, that seems normal, yes.

So six to seven days before cabinet met?---Yes, and there should have been a draft done the week before, but you're saying that all the evidence is showing that this was done the day after I sent the fax.

That's correct. It was, wasn't it?---Yes. **10**

**20**

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11/2/13

LITTLEBOY, K.P. XN

21-95

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Yes, and if you had read it, and you said you would have read it, you would have seen again that the author of this document in family services thought it important to remind the minister in cabinet yet again that solicitors wanted these documents?---Yes.

1

That would have had alarm bells ringing for you, because even though the document goes on to say the archivist has consented and you faxed through the consent, you would have realised that the archivist didn't know that salient fact, wouldn't you?---One would hope so.

10

So what steps did you take to make sure that the archivist became aware of that?---I don't believe I took any.

Why not?---I have no recollection.

But you must remember?---Why must I remember?

Because, you see, all of this hit the fan?---Yes.

Here, I'll show you something. Have a look at this newspaper article. See, that's dated April 11, 1990? ---Yes.

20

So within a month there's a big controversy about the ending of this inquiry and the fate of the documents, so I'd suggest to you this has been something that has been in the mind of members of the community to some extent from within a month of the decision being made. Therefore I'm suggesting to you you must remember why you didn't contact the archivist to make sure that she knew she was consenting to the destruction of documents a solicitor wanted?---I do not remember.

Because it's not as if this was a decision made in 1990 and you were first taxed about it in 2013?---When the police interviewed me about this issue I did not and I still do not recall having any conversations with Kate McGuckin, the state archivist, whoever it was, beforehand, and the crown solicitor. I had no recollection, still don't have any recollection, of talking about this matter with Ken O'Shea, none whatsoever.

30

Did you ever talk to Ken O'Shea about any other matters? ---Yes, many other matters. No idea what they were.

No idea of those either?---No.

40

This was a decision that was made during the period when you were acting as the principal cabinet officer?---Yes.

When you would have been trying to do a good job?---Yes.

To impress them so that you got the position permanently? ---Yes - or that's your words, but mine - yes.

11/2/13

LITTLEBOY, K.P. XN

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COMMISSIONER: You adopted them, I think?---Sorry? 1

You adopted them, I think, Mr Littleboy?---Okay.

MR COPLEY: They didn't force you to stay there for the next five years, did they?---No, but I left after five years.

Yes?---It was a pretty high pressure job with lots of work, long hours, and I notice that most principal cabinet officers only lasted five years before they moved on. 10

Well, the effect of it all seems to be, would you agree with this, that the archivist's consent was seen as an important - - -?---Yes.

- - - consent to have before destruction?---As well as the crown solicitor's advice.

Yes, but the people that were drafting the submissions up into cabinet kept telling the cabinet about the solicitor's interest in the documents, didn't they?---Yes.

But that wasn't passed on to the archivist?---No. 20

So her consent was obtained without her knowing the full and true facts, wasn't it?---Yes.

You would have been aware of that, I'd suggest, by 5 March 1990?---Possibly.

Because it then became a matter of controversy from 11 April 1990, didn't it?---If you say so. The dates - yes, it was - - -

Well, look, you worked for politicians, didn't you, in the cabinet? They were politicians, weren't they?---Yes. 30

If something gets on the front page of the paper, that's controversy in the mind of a politician, isn't it? ---Everything nowadays is a controversy.

But back in 1990 maybe they were more robust. If it got onto the front page of the paper that would have been regarded as a controversy by politicians, wouldn't it? ---Yes.

So within about a month of the decision being made there's a controversy. That would have caused you, wouldn't it, to remember what you did and why you did it?---I have no recollection. 40

No recollection?---None whatsoever.

Why do you say that? Who are you protecting?---Pardon?

Who are you protecting?---I'm not protecting anyone. I have no recollection of it. 1

But this was a singularly signal event, wasn't it, the destruction of documents that you accompanied around town to be destroyed?---Yes.

You've never before or since done that, had you?---Well, I don't know whether any other issue that may or may not have been controversial that no-one has picked it is as important as this that I can't remember either. You know, I do not remember. 10

Yes, but, you see, we're only inquiring into this issue? ---Yes.

You agreed with me before lunch that it was a ridiculous scenario to suggest that someone from the cabinet office would need to accompany a treasury official from the treasury building to a department building to deposit cheques or to have cheques moved around to ensure that cabinet decisions were carried out?---Yes.

So this event of the destruction would have been also a stand out in your mind because it was one where you played a physically active role in ensuring that a cabinet decision was carried out?---Yes. 20

Why was that?---Why was what?

Why was it necessary for you to carry out a physically active role in this?---Well, again, because the documentation - Stuart said, "Make sure the documents are destroyed," or - - -

But you were a man of some seniority there in that cabinet secretariat, weren't you?---Yes. 30

You weren't just a bloke who just sat there and did whatever Mr Tait said?---I don't believe the destruction of the documents was inappropriate. I didn't at the time and I still don't really believe they were, so I don't think I did anything wrong. I didn't think it was controversial. I wasn't trying to hide anything and what I did, I did - what I recall, which was accompanying Kate McGuckin with the box.

But it was controversial, because they were destroyed in the face of a solicitor's request for them, wasn't it? ---Yes, but because something is controversial doesn't mean to say it's correct or the issue is as found. 40

Of course, but because it is controversial and was controversial from almost a month after it was decided, I am suggesting to you that the fact of that controversy

means that you should have had and have retained a much better recollection of these events than you're making out?---Well, I can assure you I don't. 1

Because I'd suggest to you that if you were asked for the first time in the last three or four years about a cabinet decision in 1990 that had never before been in the paper or discussed it might be quite reasonable for you not to remember the ins and outs of it, particularly if you didn't play any physical role and do any physical acts in achieving cabinet's intention. Do you see the distinction between the two?---Yes. It still doesn't improve my memory. 10

I beg your pardon?---It still does not improve my memory of that time.

MR HANGER: Can I see that newspaper article you've shown the witness?

MR COPLEY: Now, could you have a look at exhibit 212, please? Have you ever seen this letter before?---I don't believe so. 20

I beg your pardon?---I don't believe so. I have no recollection of this letter.

All right, well, we'll have that back. Could you have a look at this document, please? Have you seen that document before?---By the initials on the bottom, I would have drafted it, but I haven't read it yet.

Okay?---Yes. 30

Okay. Now, in that letter Mr Tait is soliciting a further cabinet submission from Ms Matchett?---From memory, yes.

1

Recommending that the documents and material be handed to the archivist for destruction?---Yes.

And that's a document that you - did you type it?---I wouldn't have - well, in those days I may have. They were getting rid of typing pools or they got rid of typing pools so I may have typed it, yes, and may have done a draft and a keyboard person would have polished it off.

10

Okay; and what significance do you attach, if any, to your initials on the bottom left-hand side?---That means I drafted it.

All right. I tender that document and ask that it be made exhibit 175 - I think it's C.

COMMISSIONER: The letter of 26 February 1990 will be 175C.

ADMITTED AND MARKED: "EXHIBIT 175C"

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MR COPLEY: I'll just get you to have a look at exhibit 293 again?---Thank you.

Remember that's that extract from the cabinet records? ---Yes.

I'll get you to have a look at this document here. Just read that to yourself for a second?---Yes.

Now, would you agree with me that that seems to be a summation of speaking points that the Minister for Family Services might have made to the cabinet in October 1989? ---That's what it looks like, yes.

30

Would this sort of document be kept in the records of the cabinet secretariat?---No; no, by definition an oral submission doesn't exist so this document wouldn't become a cabinet document. It would be like a brief for the minister to speak at at cabinet so the only thing that would come out of this in cabinet processes that I'm aware of is a cabinet decision. There would be no submission with it. It would be recorded as an oral submission and a decision.

40

Have you ever seen that document before?---I don't believe so. The previous government - - -

I beg your pardon?---It was a previous government brief.

Be that as it may, I'm just asking if you had ever seen it before?---No, I don't believe so.

11/2/13

LITTLEBOY, K.P. XN

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So it's not one that you can say you provided to Trevor Walsh on 19 January 1990?---No, I don't believe so. 1

Does the notation down the bottom with the date "19/1/1990" assist in that regard in working out whether you could have provided it to Trevor Walsh?---I'll have to read it. I have trouble reading it.

Just get your glasses then?---To me those notes say that whatever his name was - Trevor Walsh, I think, the CLLO from Family Services had a copy of this in his departmental files and wrote on it that he confirmed by the fax that I sent him that - that on there would indicate to me that this was part of another document. 10

But not part of a cabinet record from the old government? ---No, part of a document provided to someone about the Heiner business.

All right. We will have it back. No further questions, Mr Commissioner.

COMMISSIONER: Thank you. Mr Hanger? 20

MR HANGER: Thank you.

I would just like to clarify something about exhibit 293, if you don't mind. I think that it's been cleared, 293. As I understand it, there is a longstanding tradition that the documents of one cabinet don't go to the documents of the next cabinet - - -?---Yes.

- - - when we have a change of government?---Yes.

And that's something that's respected. However, government, of course, must continue at the public service level?---Yes. 30

And I'm right, aren't I, in saying that it's proper for the cabinet secretary to release decisions to the cabinet legislative and liaison officer?---I don't know about decision but it certainly would be - I couldn't see a problem - I don't feel there's any problem with this because it's an extract and it's going to a bureaucrat, not a politician.

Yes, and the idea is that this cabinet confidentiality doesn't go to another cabinet member. It doesn't go to a subsequent cabinet?---Yes, exactly; doesn't go to the politicians. 40

Yes, but certain decisions can be passed down to the relevant public servant. I understand that's a CLLO? ---Yes.

11/2/13

LITTLEBOY, K.P. XN  
LITTLEBOY, K.P. XXN

And that's what happened, I think, there, is it not?---Yes, 1  
if you wanted to - yes.

Is that clear?---Yes.

Thank you. You can hand that back. The other thing I  
wanted to ask you was to have a look, please, at exhibit  
173. You recall my learned friend asked you about that at  
some length?---Yes.

And you were asked to speculate and we had some discussion 10  
about what speculation is and there are some things that  
you can speculate on because you know this is your  
invariable practice and so something must have been done.  
Now, what's complained of here is something that's left out  
of that particular letter to the state archivist, namely,  
that solicitors were saying, "Keep the documents," or  
seeking the documents or words to that affect. Do you  
remember that?---Yes.

And, of course, your omission there may have been - and I'm  
not putting this to you - deliberately misleading. Could  
it be that?---Could have in retrospect. 20

Would you have deliberately misled?---I don't believe so,  
no.

It could have been an oversight, carelessness?---Yes.

That's another option. It could have been perhaps an  
oversimplification?---Yes.

Without being an oversight?---Yes.

That is to say, you didn't tell them, but you were 30  
simplifying things, as you must do?---Yes, as this was  
copied from the previous submission, not the other one  
which had the other business in it.

Yes, and you may have regarded the destruction of the  
documents as not an important matter since there had been  
discussion on it and advices on it from crown solicitors  
and such like?---Yes.

And you may have failed to have the wisdom brought about  
23 years of inquiries into the Heiner matter to appreciate  
that this might be an important matter for the next 40  
23 years?---Yes.

Because while my friend has cross-examined you very ably about the unusual nature of this, you were working for a new government?---Yes.

1

In a new position?---Yes.

And we have actually had tendered as an exhibit the number of decisions made by cabinet in one meeting?---Yes.

You were responsible for getting all that material to cabinet for each meeting?---Yes. For each meeting and after each meeting.

10

MR COPLEY: Well, I think from memory that exhibit related to the National Party cabinet room.

MR HANGER: Was it?

MR COPLEY: Exhibit 76A was the big list of decisions from the National Party cabinet room.

MR HANGER: Well, we shall assume that the Labor Party were busier. I'm sorry, because I didn't realise it was a National Party Cabinet?---I know for a fact that there were more Cabinet documents going through under Labor than they were under the National Party.

20

Yes, particularly, I imagine, in that first burst of enthusiasm?---I think forevermore.

Forevermore, all right. Okay?---It was swamped.

And in that context was this matter that's become collectively known as the Heiner matter a big deal at the time?---Not for me, no. It was just another of - all cabinet business was important as far as I was concerned.

30

Of course. And you may well have thought the disclosure that solicitors wanted the documents, having been repeatedly drawn to cabinet's attention, was irrelevant to the archivist?---Yes.

I mean, I can't say that that's the case, but these are matters that we can speculate on the same as learned friend can?---Yes.

Yes, thank you.

40

COMMISSIONER: Thanks, Mr Harris.

MR HARRIS: I have no questions, Commissioner.

COMMISSIONER: Yes, Mr Bosscher.

MR BOSSCHER: I couldn't think of one, Commissioner, after Mr Copley's examination, so I have none.

11/2/13

LITTLEBOY, K.P. XXN

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11022013 24 /ADH(BRIS) (Carmody CMR)

COMMISSIONER: Thank you. Mr Copley, do you have any more? 1

MR COPLEY: Yes, I do. Could you just look at exhibit 173 again. There's a box on the right-hand side?---Yes.

Is that your writing?---Box on the right-hand side?

See the hand-written down the bottom?---That's mine, yes.

What does it say?---"Material and copy of Crown solicitor's letter of 16/2/90 hand-delivered to state archivist SA" - I presume the state archivist today - "dated 23/2." 10

So does that mean that you took out the Heiner material to the archivist for her to look at?---It would, yes.

And not only that, you took out a copy of a letter?---The Crown solicitor's advice.

Yes?---Yes.

I'll get you to have a look at exhibit 164?---Thank you. 20

Is that the Crown solicitor's letter, a copy of which you took out to the archivist?---Yes.

Why did you give her that letter?---Probably because I was asked to; that's the immediate explanation that springs to mind.

All right, thank you. No further questions.

COMMISSIONER: Thank you. Mr Littleboy, thank you very much for your evidence, the time you've taken to give it. It's appreciated. You're formally released from the obligations under your summons?---Thank you. 30

WITNESS WITHDREW

COMMISSIONER: Yes, Mr Woodford.

MR WOODFORD: Mr Commissioner, we have a statement under the hand of a Wayne Anthony Mills.

COMMISSIONER: Yes.

MR WOODFORD: It might be convenient to tender that one at this stage. I understand from our communications that nobody at the bar table required Mr Mills for cross-examination. 40

COMMISSIONER: Righto.

MR WOODFORD: It can be published as is.

11/2/13

LITTLEBOY, K.P. XXN



11022013 24 /ADH(BRIS) (Carmody CMR)

COMMISSIONER: Okay. Mr Mills' statement will be exhibit 313 and I direct its publication. 1

ADMITTED AND MARKED: "EXHIBIT 313"

MR WOODFORD: Thank you. We are now, Mr Commissioner, going to move to two witnesses perhaps this afternoon concerning the resident of JOYC, Shelly Neil.

COMMISSIONER: Yes.

MR WOODFORD: Now, before the witnesses are called I'll tender a series of documents that deal in part with the allegations that Ms Neil made back in 1991 and the documents relevant to what took place thereafter. Now, there are some matters of publication with each of the documents. It might be convenient if I hand up a bundle of all of the documents that I'll be tendering to you, Mr Commissioner. 10

COMMISSIONER: Yes.

MR WOODFORD: And walk you through each of those documents. I do note that each of my friends received a copy of that bundle this morning. Now, as that bundle comes up, Mr Commissioner, you'll see that some matters are highlighted?---Yes. 20

Those are the matters that in my submission are the names that would not be published, consistent with previous rulings that you've made in these hearings.

COMMISSIONER: Yes.

MR WOODFORD: The first document that I'll tender is a Department of Family Services and Aboriginal and Islander Affairs memorandum dated 17 April 1991 referable to the resignation of a particular youth worker. That one-page document you will see annexes a handwritten resignation from that person. I'll tender that. 30

COMMISSIONER: That will be exhibit 314.

ADMITTED AND MARKED: "EXHIBIT 314"

MR WOODFORD: Thank you. We might as well deal with publication as we're going through. 40

COMMISSIONER: And the highlighted parts of the document won't be published. Is that right?

MR WOODFORD: That's correct. Just for my friends, I haven't had an opportunity to highlight their copies, but no doubt - - -

MR HANGER: I'll accept what you're saying.

11/2/13

WOODFORD, MR

MR WOODFORD: No doubt they can follow along. There are only a couple of names that we're concerned with with each of these documents. If there's anything other than that I'll bring it to their attention.

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MR HANGER: I'll presume the ruling that you made before applies to this.

COMMISSIONER: Yes, it does. Thanks, Mr Hanger.

MR WOODFORD: I think that was a joint one by Mr Hanger and myself in the end last time. That's the first document, thank you, Mr Commissioner.

10

COMMISSIONER: Yes.

MR WOODFORD: Moving to the second document, that is a memo under the hand of Mr Ian McIntyre. It's dated 14 May 1991.

COMMISSIONER: Yes.

MR WOODFORD: You'll see it's addressed to the attention of the regional manager, Mr K. Otter. They're the two gentlemen who are hopefully giving evidence this afternoon, Mr Commissioner: Mr McIntyre first, he was the manager of the centre at the time certain allegations were made by Ms Neil. That document is his report of the matter going to his line manager, Mr Otter.

20

COMMISSIONER: Right.

MR WOODFORD: I won't trouble you with the content of the document at present. I will be walking Mr McIntyre through some of that in a few minutes. It sets out what he did in response to certain allegations that he received. Now, in terms of non-publication, Mr Commissioner, you'll see that the same name from the previous document from exhibit 314 is also highlighted on that document. I'll tender that memo and I'll ask for the same orders concerning nonpublication of that name.

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COMMISSIONER: Yes, that will be exhibit 315 and I direct its publication except for the highlighted parts.

ADMITTED AND MARKED: "EXHIBIT 315"

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MR WOODFORD: Thank you. The next document in the series is a memorandum dated 8 July 1991. The signature block records it as Ken Otter. 1

COMMISSIONER: Yes.

MR WOODFORD: You will see that's signed by someone else. He will explain that when he gives evidence. It's 8 July to the divisional head. Now, what that document is about is it is Mr Otter referring the matter further up the line.

COMMISSIONER: Yes. 10

MR WOODFORD: So we have had it going from Mr McIntyre up to Mr Otter and then Mr Otter attaches Mr McIntyre's report to that memorandum and it goes up to the divisional head.

COMMISSIONER: Yes.

MR WOODFORD: Mr Commissioner, you will see at the bottom of that document there's a notation. We will deal with that later. There's also a received stamp indicating that the matter has got to the office of the director-general - director-general of the department on 25 July. I just note that for the moment. Now, I will tender that document. There are no publication issues with it. 20

COMMISSIONER: The confidential document dated 8 July 1991 will be exhibit 316 and it may be published without amendment.

ADMITTED AND MARKED: "EXHIBIT 316"

MR WOODFORD: Thank you. Now, the next document in the series is a notice of complaint. It's signed by Ruth Matchett, the director-general of the department, and dated 29 July 1991. Just going back to that received stamp I mentioned on exhibit 316 a few moments ago, that was 25 July 1991 so it appears four days later Ms Matchett has referred this matter to the Criminal Justice Commission. Now, there are the publication matters that I have highlighted in the document that I have handed up. 30

COMMISSIONER: Yes.

MR WOODFORD: Again for my friends it's the same name. I tender that document. 40

COMMISSIONER: The notice of complaint will be exhibit 317 and will be published subject to the deletion of the highlighted passages.

ADMITTED AND MARKED: "EXHIBIT 317"

MR WOODFORD: Thank you. Now, the final document in the series - and this is more as a matter of completeness than anything - is a letter from a Sir Max Bingham QC dated 29 October 1991 to the director-general, Ms Matchett, referring to the CJC's investigation and the fact of that investigation having completed. So the picture, Mr Commissioner, that emerges from those documents is that you have allegations being referred to the manager of the John Oxley Youth Centre, Mr McIntyre, a written report going up to Mr Otter, Mr Otter referring it to the divisional head, the divisional head referring it on to the director-general, Ms Matchett, Ms Matchett referring it onto to the CJC and then the CJC completing its investigation. So I will tender that document. There is one matter of non-publication that I would note. Again it's the same name and I seek that same order.

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COMMISSIONER: The CJC letter of 29 October 1991 will be exhibit 318 and it will be published except for the highlighted surname.

ADMITTED AND MARKED: "EXHIBIT 318"

MR WOODFORD: Thank you, Mr Commissioner. Those are the series of documents that I will be tendering at this stage in reference to the allegations made back in 1991 by Mr Harris's client (name suppressed). Now, Mr Commissioner, if you have exhibit 315 there, there is just one matter I will note for the record. This is Mr McIntyre's report for 14 May.

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COMMISSIONER: Yes.

MR WOODFORD: If I could take you to the bottom paragraph on page 1, you will see there that it refers to the allegations of (name suppressed) being referred to the Inala Juvenile Aid Bureau, but also that a Mrs Heather Denhouting, D-e-n-h-o-u-t-i-n-g, a solicitor from the Inala Community Legal Services, visited the centre to advise or explain to (name suppressed) certain matters and represent her. That's what the documentation indicates. Now, Mr Harris has made some mention to us of his desire for Ms Denhouting to be called as a witness.

30

Now, whether or not we do that will depend upon the evidence we hear today, but we have requested that Mr Harris get authority from his client to waive legal professional privilege concerning his client's communications with Ms Denhouting at that time. I want to place on the record that Mr Harris confirmed that he has indicated in writing that his client does waive legal professional privilege so far as her interactions with Ms Denhouting at that time in the event that we seek a statement from Ms Denhouting.

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COMMISSIONER: Is that right, Mr Harris?

11/2/13

WOODFORD, MR

MR HARRIS: That's correct, commissioner.

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COMMISSIONER: Thank you.

MR HARRIS: I have those instructions.

COMMISSIONER: Thank you.

MR WOODFORD: Thank you. Mr Commissioner, I will now call Mr Ian Robert McIntyre.

**McINTYRE, IAN ROBERT** affirmed:

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ASSOCIATE: For recording purposes please state your full name and your occupation?---Ian Robert McIntyre, retired.

Please be seated.

COMMISSIONER: Good afternoon, Mr McIntyre, welcome?  
---Thank you.

MR WOODFORD: Mr Commissioner, may Mr McIntyre see the three-page statement that he supplied to this Commission of Inquiry?

20

Mr McIntyre, I have had placed in front of you there a three-page document. Can you confirm that that is the statement that you have supplied to this Commission of Inquiry?---Yes, I confirm that.

Mr Commissioner, I will tender that.

COMMISSIONER: Mr McIntyre's statement will be exhibit 319.

ADMITTED AND MARKED: "EXHIBIT 319"

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MR WOODFORD: Do you want to deal with publication issues at this stage? I will hand up a copy of the statement and I have highlighted - there are a large number of matters. As a matter of convenience I have highlighted those in order to save a little time. Could I just approach Mr Hanger for a moment? Thank you, Mr Commissioner.

COMMISSIONER: All right. I direct the publication of Mr McIntyre's statement subject to the deletion of the highlighting.

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MR WOODFORD: The highlighted matters contained in the statement that I have handed up a copy of.

COMMISSIONER: Yes.

MR WOODFORD: Each of those is consistent with the previous rulings that have been made by you, Mr Commissioner.

11/2/13

McINTYRE, I.R. XN

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11022013 25 /CES(BRIS) (Carmody CMR)

COMMISSIONER: And the highlighted copy will be part of the exhibit. That will be exhibit 319A.

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ADMITTED AND MARKED: "EXHIBIT 319A"

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McINTYRE, I.R. XN

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MR WOODFORD: Thank you. Mr McIntyre, I see you've got your documents there. Don't worry about that for the moment. I'll take you to what we need to go to. Just some background matters first. Principally my questions for you this afternoon are about some allegations made in 1991 by one of the residents at the John Oxley Youth Centre, (name suppressed) about a particular youth worker at the centre. You understand what my questions are about?---Yes, I do.

1

Let's deal with your position, firstly. Back in 1991 at the time of these allegations you were the manager of the John Oxley Youth Centre?---That's correct.

10

When you arrived at the centre you were initially the deputy manager under a Mr Tim Evans. Is that correct? ---Yes.

You applied and received that position when Mr Evans left? ---That's correct.

You went through the application process?---Yes.

You remained at the centre up until 1995 when you retired? ---Yes.

20

Dealing with the allegations of (name suppressed) you were in the position of manager at that time?---Yes, I was.

You have your statement in front of you there. I'm looking at paragraph 5 of your statement. The situation is, is it, that you were approached by another worker at the centre, a Mr Muelenberg, who reported some things that had been told to him by (name suppressed). Is that correct?---That's correct, yes.

Back at that time at the John Oxley Youth Centre you were the manager. Who did you report to outside of the centre? ---The regional manager Ken Otter.

30

You've seen Mr Otter outside the court today?---Yes.

We're interested in these events back in 1991. I want to get a feel for what your memory is like. We'll come to a report that you wrote back in May 1991 about these events in preparing for coming to this commission. Is it that you're giving evidence predominantly from what's contained in that report of yours or do you have your own independent recollection of the events?---That is an accurate - to my knowledge, that's accurate to what transpired at that time.

40

Okay, but when you first were contacted in order to come along and give a statement and give evidence was your memory refreshed by that document?---Yes. This document was sent to me by a previous investigation, the CJC, about three months - three years after I arrived in the UK.

Yes?---Apparently there was another inquiry. I'm not sure of the details. They conducted an interview on the phone and sent me a statement which I duly signed and returned and I never heard another thing. This was sent to me to refresh my memory, they said.

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Did it in fact do that when you had a look at the document?  
---Of course.

Yes?---It was about eight years later.

We'll go to that document specifically. If the witness may see exhibit 315, please, Mr Commissioner.

10

I've placed in front of you there a document dated 14 May 1991. That carries your signature on the second page, does it?---Yes, that's my signature.

That's a document, is it, off to Mr K. Otter. That's Mr Ken Otter, is it?---Yes.

At that time when you wrote this report was Mr Otter your line manager?---That's correct.

20

His title was the regional manager, was it?---Yes.

In that document, casting your mind back, did you set out in there all that you could of your knowledge of the matter?---That's correct.

The purpose of that was to give Mr Otter something formal, in writing, about these most serious allegations?---That's correct.

We'll come back to that document in a few minutes. The evidence that we have so far that we understand is that (name suppressed) has made some allegations about an event that occurred at Wivenhoe Dam on 4 April 1991. You're aware that was the date of the allegation, of the alleged conduct?---Yes.

30

I just want you to pick that up in your mind as a reference point. So we're talking about 4 April. What I'm interested to find out is when it was that you first learned of these allegations?---Yes.

From your statement do I understand that Mr Muelenberg reported these allegations to you?---That's correct. That was the first I'd heard of it.

40

I'd like to work out what day that was, and perhaps the best way of achieving that is to look at some surrounding events that may have taken place after you became aware of this allegation. The youth worker involved, is it the case that you spoke to him after you'd received these



allegations?---Yes. He came to my office and asked to see me. 1

When he came to see you did you raise with him the allegations that had been made?---I had no idea. He walked in and said, "I've got something to tell you," and that's when he told me what he'd been told. That was the first I'd heard of it.

When that youth worker came in had you seen Mr Muelenberg - you hadn't seen Mr Muelenberg at that stage?---Not before he came and asked to interview me - have a discussion with me in my office. 10

Okay, but just to be clear on this, the youth worker that the allegations had been made against, are you saying that he came to see you before Mr Muelenberg came along?---No. I've got them mixed up, I'm sorry.

Okay, no, that's all right?---I thought you were talking about Mr Muelenberg. He came and told me of the allegations.

Yes?---I was obviously very concerned about that and I immediately went to see (name suppressed) because she was only a 15-year-old child, and it was rather - or very concerning, actually. She confirmed that something had happened and - - - 20

You've detailed what she said in the statement. You don't have to repeat that?---No, we don't need to.

No. Now, just before you move to tell me more, I just want to take it a little bit by little bit, because I'm trying to piece together the chronology of how things happened, the order of things. So firstly we've got Mr Muelenberg coming to your office reporting this allegation to you. The first thing you did was to go and see (name suppressed). Is that correct?---Yes. 30

You discussed the matter with her and she confirmed that it was true - well, she confirmed that that's what she was saying about the allegation. Is that correct?---That's correct.

That was on the same day that Mr Muelenberg came along? ---Yes. I believe it was. I'm very sure it was, actually. 40

Just keep moving for us there now. You've seen (name suppressed) and you've discussed the matter with her. What did you do after that?---I advised the youth worker of the allegation.

How did you do that? Did you invite him to your office? ---Yes. I said, "We've got a serious matter to discuss."

11/2/13

McINTYRE, I.R. XN

11022013 26 /RMO(BRIS) (Carmody CMR)

The youth worker came to your office and you spoke with him about the matter?---Yes. **1**

You outlined the allegation to him, did you?---Yes.

Was there a response from him in terms of - or what did he want to do about it?---He was very distressed and he just said, "I've had enough of this place," and - something like that.

Yes?---I remember saying to him I didn't want him just to - he said, "I'm leaving," basically, and I wanted him to think about it and resign appropriately. **10**

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11/2/13

McINTYRE, I.R. XN

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What did he say to that?---No, he said, "I'm off." 1

And he was off and that was it, out he want?---That was it.

Right. Now, before he left, we have a document here I'll ask you to have a look at. May the witness see exhibit 314 please, Mr Commissioner.

COMMISSIONER: Yes.

MR WOODFORD: I just want you to put yourself back in the office there. You're speaking with this particular youth worker, he's telling you that he's going to resign, and as you said, he's off. Just have a look at the second page of that document first. Now, you'll see that that's a note of resignation by, I think we agree, the particular youth worker?---Yes. 10

Now, was that written out by him in your office, or have you ever seen that before?---As a matter of fact, no.

Okay?---I've never seen that.

When you were in the office there with him, just to be clear, he told you he was resigning and he left?---Mm. 20

And you didn't have any involvement with him back in the centre after that point?---Not at all, none whatsoever.

Just looking at the front page of that document, if you turn your eye to that, we see it's indicating it's off to the manager of personnel services, but it indicates a resignation as from 16 April 1991?---Mm'hm.

It's indicating that you yourself accepted the resignation from that date. Do you see that?---Yes, I do. 30

Looking at that document, is it that that date, 16 April, the date of that resignation, was the day that you became involved with dealing with the allegations?---That was the day that I believe he left the detention centre and went home.

Okay, as we've already discussed?---Mm.

314 can be returned to the custody of the commission, Mr Commissioner. 40

We're up to the point of that particular youth worker leaving the centre and it appears that this is all happening on 16 April from what you said. Is that correct?---That's correct.

Now, after the youth worker left I'm interested in the steps that you took after that time. Did you discuss the

matter with your line manager, Mr Otter, at all?---Yes, I did. 1

Was it that day?---I couldn't say. I imagine it would be very soon because this was a very serious matter. I think I would have contacted Ken almost immediately - or Mr Otter.

Do you now recall the advice that Mr Otter gave you?---Yes, it was very clear. What I expected anyway; police be involved, they do the investigating, and it will be passed to the CJC for their further investigation. 10

That being a result of it being a government operation? ---Mm'hm.

Is that correct?---That's correct.

Now, sticking with 16 April - and we're up to the point of the particular youth worker leaving the premises - see from your report, the 14 May report, there are a couple of other things that have taken place concerning your involvement with the matter. You mentioned the police being involved or you contacting the police?---Mm'hm. 20

You've also made some mention of Shelly's mother?---Mm'hm.

You've also made mention of a solicitor becoming involved. I want to deal with each of those topics. On 16 April after you dealt with the youth worker do you recall now what your next step was?---Say that again, please.

Sure. Just going through the chronology of what was taking place on 16 April, you've had the youth worker in your office, outlined matters for him, he's resigned and left? ---Mm. 30

We know at some stage you've contacted the police, or we know from your report. Do you recall when that was? Was it that day or some time later?---I think it was later. The next day, perhaps, I'm not sure. And I contacted Mrs Neil, I think the next day, and she came in immediately.

Yes?---And I explained to her what - the allegations Shelly had made.

We'll come to her in a moment. Let's just stick with the police for one moment. You contacted them at some stage, you think maybe the following day, did you say?---Mm. 40

We know from your report that Shelly left the centre on 19 April?---Mm'hm.

Is that correct?---That would be correct, yes.

Now, do you know if any police attended the centre while Shelly was still there in response to this report that you made?---Not to my knowledge. I didn't think the police interviewed Shelly at the centre, but I understood they were going out - I told them - they rang me, I think, and I told them she'd been released.

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Okay?---And to contact the area office and liaise with them.

I just want to take you back to your report - your 14 May 1991 report - do you see the last paragraph there on the first page? You indicate that the (indistinct) the Juvenile Aid Bureau were advised of the allegation on 18 April 1991. You also indicate that a solicitor, Heather Denhouging from the Inala Community Legal Services visited the centre to explain to Shelly the legal implications and to represent her interests during the police investigation. Do you see how you note that there?---Yes, I do. I notice that.

10

The next part - - - ?---That was an initiative by the Juvenile Aid Bureau.

20

Okay. We'll come to that. You note that arrangements were made for the police to interview Shelly at the centre on 18 April?---Mm'hm.

You see that on the second page of that report at the top there?---Yes.

Do you recall whether the police actually attended the centre prior to Shelly being released?---Actually, I don't think they did.

When you say in that report "arrangements were made" is that - - - ?---I expected them to come.

30

Okay. You expected that because you'd called them and made a referral to them about the allegations you'd received. Is that what you're saying?---That's correct, yes.

And as a part of that you seem to be indicating in that document that the solicitor actually did attend the centre - - - ?---That's my - - -

- - - and see Shelly before she was released. Is that your recollection?---That's my belief, yes.

40

I'm just piecing that together from what you said a few moments ago. You yourself didn't call the solicitor and have her attend?---No.

Your understanding is that the Juvenile Aid Bureau contacted a solicitor and then that solicitor attended the centre?---Yes.

11/2/13

McINTYRE, I.R. XN

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Is that correct?---Yes, that's correct.

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Okay. Now, you were indicating before that you had some contact with the police after Shelly had been released. Is that correct?---It would be by phone call - - -

Yes?--- - - - advising that she had been released, because I was concerned they hadn't come out to the centre, in my recollections of it, and to visit her at her mother's home either at the area office or - they should contact the area office, I think I would have said.

10

Okay. They were logistical matters, you were letting them know where she was so they weren't coming out to the centre to see her there?---That's right.

Is that what you're saying?---Yes.

So a courtesy to the police?---Yes.

Let's go back now. You mentioned Shelly's mother attending the centre?---Mm'hm.

Now, you contacted her - you yourself?---Yes, yes.

20

We have this date, 16 April 1991 as our reference point as to when this all ends up in your lap, if you like. Is it that day or some time later that you call Shelly's mum? ---I call her the next day, I think, and she came in immediately. I may have called her on that day, the previous day, but she came in the second day - the next day, anyway - whether I've phoned her in the morning or the afternoon before, I couldn't say.

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You have got that report of yours in front of you there? 1  
---Mm'hm.

Just go on to the second page. Do you see that first new paragraph? You make mention of Mrs ((name suppressed) coming to the centre on 19 April?---Mm'hm.

So it may have been a day here or there if she's coming on the 19th?---That's right.

So looking at that, is it that you're unsure of when you called her but was somewhere in that window of 16-19 April? 10  
Is that correct?---Yes, I can't be 100 per cent sure whether I advised her the day before the 19th on the 18th or - but I know she came in straightaway.

I'm just being fair to you to point these things out so you can see the other detail that we have because we know it was in your office on 16 April, but is it the best you can at some stage you called her mother. She arrived?---Yes.

Going on that document, her daughter left with her on 19 April. Is that correct?---That's correct. 20

Now, at that stage, is it the case that (name suppressed) was due to be released to liberty within a couple of weeks. Is that correct?---That's correct.

And you as the centre manager at that time had the authority and made the decision after speaking with her mother that she could be released into her - released early. Is that correct?---Yes, that's correct.

Just going back now, back to the start when Mr Muelenberg came to your office, the report that he gave to you of these allegations that he received from (name suppressed) - 30  
was that an oral report that he made or did he give you something in writing?---No, he didn't present anything in writing. He just came into my office and told me of the allegation and I said I'd take it from there.

On that point we have heard from Mr Muelenberg - this is day 15, page 17, line 42 - that once he had made the report to you, he took over the management of the allegation?---That's correct.

Mr Muelenberg had discharged his obligations, if you like, by bringing it to your attention. Is that correct?---Yes, that's right. 40

And then you in turn went about putting in place the response to it; calling the police; calling her mother; speaking with Mr Otter; attending to all of those matters. Is that correct?---That's correct.

Then ultimately when (name suppressed) left the centre with her mother, you had no further involvement in the management of the matter after that point?---None whatsoever. It becomes the responsibility of the area office because (name suppressed) is still under the care of the department and it was their responsibility to care for (name suppressed) and deal with matters thereafter.

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Okay; and you yourself some time later gave your report to Mr Otter?---Mm.

And those other matters such as referring it to the CJC if necessary et cetera was a matter for Mr Otter to attend to?---Yes.

10

Or, rather, Mr Otter to take it up the line?---That's correct.

So far as investigating the allegations that had become a police matter. Is that correct?---Yes, it was a police matter to investigate. My understanding was - when I was a child care officer in Townsville, I was with the child protection section and if there was a serious allegation made or we had serious concerns, we'd refer it to the Juvenile Aid Bureau in Townsville and they would conduct interviews and investigations because we weren't that qualified to do that sort of work.

20

They were serious allegations?---And that's why - - -

A report had been made to the police?---That's right.

It was a matter for the police to investigate it, not for you?---That was my view.

You could go back to running your centre?---Yes.

30

Fair enough?---Yes.

Right. Yes, I have no further questions of Mr McIntyre.

COMMISSIONER: Thank you. Mr Hanger?

MR HANGER: Just very quickly.

So, Mr McIntyre, as far as you were concerned, the system was working?---As far as I was concerned, yes.

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Your subordinate reported it to you. You confronted the alleged perpetrator. You reported it up the chain to your superior who reported to a superior again?---Yes.

And ultimately it went to the CJC for investigation? ---That's correct.

11/2/13

McINTYRE, I.R. XN  
McINTYRE, I.R. XXN

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And in terms of caring for the child concerned, apart from referring it to the police, you contacted the mother? 1  
---That's correct.

And the mother came in. The youth worker involved was in fact, as I understand it, an extraordinarily popular young man. Is that correct?---Well, to say "extraordinary" could be an exaggeration really.

Probably my exaggeration?---Okay. He was, you know, fairly popular and the children liked him and gave him a nickname and were friendly, you know, and I had no complaints about his work. However, you know, making an allegation like that - - - 10

You have to do something?---Absolutely.

Of course; I'm sorry, there's no criticism. You must do that. Of course a few days after this became known within the centre it was time to discharge the girl anyway so she was discharged a little bit earlier, I think?---That's correct.

Yes. Thank you very much. 20

COMMISSIONER: Thanks, Mr Hanger. Yes, Mr Harris?

MR HARRIS: Thank you, commissioner.

Mr McIntyre, when you did your report on 14 May 1991 to Mr Otter, at that time had you consolidated all the information with respect to the matter for this report? ---Could you explain - - -

Can I put it like this: did you receive any written report from Mr Muelenberg in this matter?---No, only the verbal conversation I had with him initially. 30

Mr Muelenberg gave evidence that he did a report and passed it on to you.

MR WOODFORD: I don't know that that's entirely fair to say that. Mr Muelenberg, you may recall, Mr Commissioner, indicated that he had had a double bypass, I think, and had some difficulties with his memory. Now, day 15, page 18, line 12 he indicated that he believed - those are his words. He believed he filled in a report at the time. However, in paragraph 8 of his statement he said he didn't make any written report. So perhaps the question is - Mr Harris may want to flesh out whether or not there was any written report made, but it certainly needs to be in the context that Mr Muelenberg wasn't putting it out there as a proposition in concrete. 40

COMMISSIONER: Fact.

11/2/13

McINTYRE, I.R. XXN

MR WOODFORD: We have conflicting evidence from him and, as he indicated, he did have those medical problems with the consequent memory problems.

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COMMISSIONER: Okay. Do you accept, Mr Harris, that it may not be as firmly established as your question suggested?

MR HARRIS: Thank you, commissioner.

Was it the policy within the department, if an incident happened, that a worker had to do a report, a worker like Mr Muelenberg?---If an incident happened, youth workers would write a report on the incident and pass that on.

10

In this case it's a serious complaint, isn't it?---Yes.

Would you expect Mr Muelenberg to write a report?---Well, he didn't - to my knowledge, I never got a report, a written report, from him. Once I got that information, my immediate concern was for (name suppressed) and wanted to talk to her and once she confirmed it, that was - you know, you accept what a young child says and move forward.

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Did you get anybody to sit down with (name suppressed) and take a full report off her with respect to her allegations? ---No, I didn't. I thought that would be the responsibility of the Juvenile Aid Bureau. I might be wrong, but I have a sense from my past experiences that if we get too involved - you know, we're social workers - we can contaminate the inquiry by the relevant authorities and it was suggested that we don't get too involved in investigating. It's not our role.

1

Your report of the 14th indicates that on 16 April the incident was reported to you by Mr Muelenberg, then on the last paragraph of your report you say, the Inala Juvenile Aid Bureau were advised of the allegations on 18 April 1991. So that's two days after the incident took - or that the report was made to you?---Yes.

10

Can you - or do you have any recollection why it took so long for the police to be advised?---I have no idea. (name suppressed) wasn't at any risk. Nobody was at risk. I don't know. I really don't know.

You go on to say that (name suppressed) was at risk due to physical threats on the 19th, in your report. Now, do you think it would have been prudent to have the police involved immediately in such a serious allegation?---Yes, you could say that.

20

Did you make any arrangements for (name suppressed) to be medically examined with respect to her allegations?---No, I didn't.

Could the witness see exhibit 304, please?

COMMISSIONER: Sure.

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MR HARRIS: Could you turn to the second page, please, and have a look at that document? Have a read of it and could you tell the commission if you were aware of the existence of that document?---That was in 1986. No, I'm not familiar with it.

That report, although it's dated 1986, issues guidelines to managers?---Yes.

Is that correct?---That's what it appears, yes.

MR WOODFORD: Mr Harris may have handed the witness the wrong exhibit. It might be 303 if that's the one that Mr Harris is referring to with those four steps on page 2.

40

MR HARRIS: Yes.

MR WOODFORD: That's 303.

MR HARRIS: My apologies. Exhibit 303. Could I take you to page 2 of that? This is - well, have you ever seen that document before?--No. Not to my knowledge, no. I wasn't manager in 86. It wouldn't come to my attention.

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All right. I'll approach this in another way. Were there any procedures or guidelines put in place, or any manuals put in place, that directed you what to do at the John Oxley Youth Centre when incidents like what happened to (name suppressed) happened?---If there were I wasn't aware of them and I never referred to any guidelines. I just used my own initiative.

10

When you became the manager of the John Oxley Youth Centre were there any protocols in place that allowed you - or that required you to report on incidences with respect to what happened in incidents where issues happened between clients of the institution and staff members? Were there any protocols in place?---Well, my understanding was it was to be referred to the line manager if it was considered a serious matter. If it was just an ordinary day-to-day management issue you were expected to deal with it, and this was in the very serious category.

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This was in the upper echelon of the serious category, all right. Did (name suppressed) and her mother attend to your office together at the centre and you explained to them the circumstances of what had happened?---(name suppressed) told me - I think mum came in the next day, (name suppressed) came in the next day. I had a discussion with her about there was a disruptive atmosphere in the institution and was it healthy for (name suppressed) to be in that. Given that she had two weeks to go I suggested to her mother, "Would you be prepared to take her back home?" She said, "Of course."

30

What I was meaning, did you have a conversation with (name suppressed) and (name suppressed) in your office with both parties present or was it individual. Can you recall?---From memory I think I spoke to mum - I'm not sure, to be honest. I would expect I spoke to mum first and then (name suppressed) would have come down and we would have advised her that - of the decision I've made to release her into the care of mum. That's what I imagine would have happened. I can't - - -

Now, on the day in question, which was 4 April, did you seek statements from any of the other staff members who were at the Wivenhoe Dam on that date?

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MR WOODFORD: I think my friend means 16 April. If the day in question was the day it was all in Mr McIntyre's office when he first became aware of the allegation - I think that's what my friend is referring to. That's 16 April.

MR HARRIS: Sorry, I'll rephrase that question.

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COMMISSIONER: Okay.

MR HARRIS: The incident with (name suppressed) happened on 4 April 1991.

MR WOODFORD: Well, alleged to have happened.

MR HARRIS: Alleged to have happened. Now, after 16 April did you go around to all the other staff members who were involved in that excursion and obtain statements from them or obtain from them what had happened on that excursion? ---Definitely not. After I got that information from Mr Muelenberg my immediate concern was the safety of (name suppressed) and I didn't think it was for me and I shouldn't, I thought, go and start interviewing staff, taking statements from them. This was a matter outside of general, normal management control. It's more appropriate for it to be dealt with by the correct authorities, namely the police.

10

Do you know what information was ever passed on to the police by your - from the John Oxley Youth Centre? Do you know if there was any information passed on?---Any information passed on?

20

Passed on about the (name suppressed) incident other than the telephone call saying the incident had happened? ---Passed on to who?

The Juvenile Aid Bureau and Inala?---I just advised them of the allegation and just my expectation they would then investigate it.

No further questions, Commissioner.

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MR BOSSCHER: No, thank you.

COMMISSIONER: Thank you, Mr Bosscher.

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MR WOODFORD: Just one thing there, Mr McIntyre. 16 April 1991 being a key date, I see your report that you sent to Mr Otter went through on 14 May, a number of weeks later. Was there any particular reason why it was a few weeks before you sent it through? Anything you can recall?---No real reason, no. 1

I take it from your evidence you were in contact with Mr Otter in any event right from the start?---Yes.

Is that correct?---And Mr Otter suggested that we should put this in writing for the file. 10

Yes. Thus you sent him that report?---And that's why I sent that report, yes.

Okay. I neglected to ask that, Mr Commissioner. I don't know if anyone's got any questions about that.

MR BOSSCHER: Nothing.

MR WOODFORD: May Mr McIntyre be excused, please, and could exhibit 315 be returned to the commission. 20

COMMISSIONER: Yes, certainly. Mr McIntyre, thanks very much for the time you've spent giving evidence today. It's appreciated. You're formally excused from the obligations of the summons?---Thank you.

WITNESS WITHDREW

MR WOODFORD: Mr Commissioner, I have a Mr Otter outside. I'd like to call him this afternoon. It's just before 4.30. I don't think he's going to be particularly long.

COMMISSIONER: Is he short? 30

MR WOODFORD: I think so. I think we may take 10 minutes or so with him. And he's been waiting all day to get on. We'll just check with - we'll notify security. See, if we stay after 4.30 we've got to - there are some security issues that we have to handle, but nothing is too difficult for Mr Otter. Bring him in.

MR WOODFORD: Thank you, Mr Commissioner.

**OTTER, KENNETH JOHN** sworn: 40

ASSOCIATE: For recording purposes please state your full name and your occupation?---Kenneth John Otter, and my occupation is educator for Careers Australia Group.

COMMISSIONER: Good afternoon, Mr Otter. Thanks for waiting all day. It's appreciated?---I had a book, Mr Commissioner, so I was right.

11/2/13

McINTYRE, I.R. REXN  
OTTER, K.J. XN

MR WOODFORD: Thank you, Mr Commissioner. May Mr Otter see his five-page statement, please? 1

COMMISSIONER: You mean you weren't watching the proceedings out there, live streaming?---Sometimes, sometimes not.

Oh dear. Okay.

MR WOODFORD: I've had placed in front of you, Mr Otter, there, a five-page document. Can you just confirm for us that that is the statement that you provided to this commission of inquiry?---Yes, it is. 10

I'll tender that one, Mr Commissioner.

COMMISSIONER: That will be exhibit 320.

ADMITTED AND MARKED: "EXHIBIT 320"

MR WOODFORD: Thank you. I note there are no masses to continue with concerning publication.

COMMISSIONER: I'll direct its publication. 20

MR WOODFORD: Thank you. Mr Otter, I have some questions for you this afternoon about the John Oxley Youth Centre, in particular some allegations that were made back in April 1991 by one of the residents, a Ms Neil - Ms Shelley Neil. It's that topic that I'll ask you some questions about this afternoon. From your statement do I understand correctly that back in April 1991 your position was that of regional manager for south-west Queensland?---That's correct.

And even though its south-west Queensland, that encompassed Brisbane and Ipswich districts, is that correct?---That encompassed seven area offices from and Inala, west to Charleville and north to Murgon and two detention centres. 30

All right. But part of your responsibilities - just one part of it - was overseeing various centres including the John Oxley Youth Centre?---Correct.

And that included overseeing or being the line manager to the fellow we've just heard from, Mr McIntyre. Is that correct?---That's correct.

You yourself, in terms of the line - we had Mr McIntyre reporting to you as a regional manager, do I understand that you yourself, your line manager was someone called the divisional head and that was Leigh Carpenter at this time?--I believe so. 40

That's L-e-i-g-h Carpenter, C-a-r-p-e-n-t-e-r. And then above the divisional head at that time the director general

of the department - this is back in April 1991 - was Ms Ruth Matchett. Is that correct?---Yes. There may have been a deputy in there but I just don't recall; it's a few restructures back, but yes, the director general was Ruth Matchett.

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Okay. Now, looking at your statement I understand that you yourself have no real recollection of - or no real independence recollection of these matters concerning Shelley Neil and your involvement, but your memory is effectively refreshed completely from the statements that you've read. Is that correct?---Yes. When I was handed the inter-office memo which had been sent from Ian McIntyre to myself I then generally recalled the matter. I didn't recall the outcome at that time but I recall that matter.

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Okay. Now, that memo - if the witness could see exhibit 315, please. While that's coming over, having looked at that document previously are we correct that Mr McIntyre contacted you after he received an allegation and sought your direction?---Yes, that's correct.

As part of that direction did you ultimately request from him a written report of the matter?---Yes.

20

Now, I've placed in front of you our exhibit 315, which is Mr McIntyre's letter of 14 May 1991. That's in fact addressed to you. Is that correct?---Yes.

That's the report that you received, the one that you requested?---Yes.

Now, having received that report, it was obviously in relation to some fairly serious allegations, correct?---That's right.

30

As regional manager did you then refer the matter further up the line?---Yes, I did.

I'll show you a document. May the witness see exhibit 316, please. I've placed in front of you there our exhibit 316, which is a letter dated 8 July 1991. It carries your signature block on the bottom of it and it's addressed to the divisional head. Do you see those details?---Yes.

So you'd received the report from Mr McIntyre. That document, does that represent the matter being referred further up the line to the divisional head, given the seriousness of the allegation?---Yes. I'm not sure whether this would have been the original communication, but it may have been.

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This is certainly a formal communication moving up the line?---Yes.

Is that correct?---That's right, yes.

11/2/13

OTTER, K.J. XN

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The document speaks for itself. A couple of details I want to highlight with you, though. It doesn't seem to be signed by you. Is that correct?---No, it's not. 1

Who's signature is that?---I think that's Julie Kinross.

How we spell Kinross?---K-i-n-r-o-s-s.

Right. Is that someone that worked under you at the time? ---I'm not sure. I remember the officer, I'm not sure what capacity she was working in there, but I'm assuming it was in the regional office and as my duties took me in a car all around the region regularly it may be that I prompted her to sign it on my behalf. 10

Okay?---I don't recall exactly, though.

Okay. But you're left in no mistake in your own mind that that was a document that you were well aware of the contents of?---Yes. Yes, I would have written it.

Right?---And it would have been signed off by that officer.

Okay. Now, there is a handwritten note there, that's not your handwriting?---No. 20

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Okay. It seems to say, "To principal liaison officer, office of DG for your further action, if necessary," dated 23 July 1991. It appears to say something like that. Are there some marks that would have been made higher up the line than where you were at?---Yes, that appears to have been signed off by the divisional head on 23 July.

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Right; and then do we have the date stamp there of 25 July 1991 going up further from the divisional head? Working on your knowledge of the department, your knowledge of how the processes worked at the time, it appears to you, does it, that it went to the divisional head and then up to the director-general on the 25th?---That's correct.

10

From your statement, do I understand your expectation - given that this was a serious allegation concerning a departmental employee, your expectation was that it would be referred to the CJC. Is that correct?---Yes, that's correct. Whilst it potentially constituted an allegation which, if proven, could be an indictable offence, hence referral to police, it also potentially was a matter of misconduct so it would fall into that category that you would report to the CJC.

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Right. Mr Commissioner, I won't tax this witness with those details, but you will recall exhibits 317 and 318 - 317, the referral by Ms Matchett, and then 318, the final report from the CJC, sir. Yes, I have no further questions for Mr Otter.

COMMISSIONER: Mr Hanger?

MR HANGER: No questions.

COMMISSIONER: Mr Harris?

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MR HARRIS: Thank you, commissioner.

Mr Otter, can I just take you to paragraph 8 of your statement there, please?---Yes.

You say, "My role then as regional director would have been to ensure the proper reporting processes were followed and that my direct manager was informed." Now, by that you mean your direct manager above you?---Yes.

Okay. So you actually relied on the proper information coming through to you as to the incident that had happened?---Yes.

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Now, in your role as the regional director, would you have required the officers under you, Mr McIntyre and the officers there, to give you a full report with statements from all of the members that were involved on that incident or out on that day? Would you have expected that?---I

11/2/13

OTTER, K.J. XN  
OTTER, K.J. XXN

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don't believe so in this particular case because, the matter having been referred to police and it being in relation to a potential indictable offence, it would've been general practice not to conduct our own internal investigation. There may have been later matters that I don't recall in relation to procedures surrounding outings which were the venue where this allegation occurred, but in terms of making an independent investigation, no, we wouldn't have done that because general practice was that if a matter was referred directly for police to be the sole investigators, then we would leave that to them.

1

Was any explanation given to you why it took between - yes, from 16 April to 18 April - that the matter wasn't referred to the police much quicker?---No, I don't recall - I don't recall that. I'd be speculating. I could speculate if you wish but I don't know.

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No, fair enough. I just wanted to know what - in your role you would have expected the police to come in and do their investigation and then eventually, if the police had decided to criminally charge the person, that would have gone through the court system. If the police had done their investigation and there was no charge, would the police then do a report back to your office?---It would be unlikely. I'm just trying to recall because procedures have changed over the years. At that time a matter such as that would not have been investigated in a similar way to child-protection investigations within families. The scope of child-protection investigation in families would encompass a different level of proof that police might apply in deciding whether to lay charges or not, so it was a different sort of venue. In the years since I think that the investigations in relation to alleged matters between residential care staff or staff in detention centres has aligned more closely to that child-protection process. So this would have been seen at that stage more as a matter of investigation of an offence by police. However, from the perspective of the child there would have been a fair deal of attention given to the safety of the child initially, but it wouldn't necessarily have resulted in another inquiry, if you like, if police had not pursued charges. I can't say that for a fact, though, because in this case the child left the centre and the youth worker left the centre, so therefore there would not have been an ongoing issue in relation to an ongoing relationship between the two. That could have played a part as well. Thank you.

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COMMISSIONER: But you could theoretically do that, couldn't you? You refer to the police under section 14. They do their job. If it doesn't come up to proof they send it back to the department to investigate itself as to whether or not it's breached its duty of care to the child?---They could have. In this case there wouldn't have been the capacity to follow up an inquiry with the officer concerned because he'd left the department, however, yes, you could argue that there would have been scope for a review of procedures.

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Well, not only that but whether or not the child was in need of better protection than what the system was giving the child at the time, wouldn't you?---Yes.

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If instead of being in the care of John Oxley Centre she was in foster care or something like that and that sort of thing had happened the department would be right there on the doorstep, wouldn't it?---Yes.

But this was its own doorstep?---I think the detention centre system at that particular point was in a state of change. There had been quite a significant structural change where detention centres were relating regionally rather than centrally.

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Yes, I know that sort of structural stuff?---Yes.

But isn't the basic premise that the system itself should do no harm? It certainly shouldn't do any more harm to a child that it's supposed to protect than the family or the situation the child has been taken from. I mean, you shouldn't be worse off as a child for having been in the detention of the state than you would have been if you hadn't been?---You shouldn't, no.

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No?---And as I've said before, my recollection of this is not strong, however I think some of the elements are that, as I understand it, the child did not want to pursue the matter. That would not preclude, I suppose, investigations being made in relation to other workers that might have been involved in the situation, but without thinking it through I don't have a strong opinion, because if you didn't have access to the worker and you didn't have access to the child then you would be asking for input from other workers without the opportunity to have someone respond to those allegations.

40

I know you didn't have coercive access to the worker, but there was no harm in asking him, was there?---Maybe not.

Some people cooperate, you know. They don't actually need to be forced to do something, they actually do it without being compelled?---This was a serious allegation.

Yes, I know, but he'd either confirm it or he'd deny it, wouldn't he?---Yes. I'm not sure, but I believe in this case that he may have denied it as he was leaving the employ of the department, but I'm not clear on that.

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All right. Anything arising, Mr Harris?

MR HARRIS: I won't be much longer, Mr Commissioner.

Were there any manuals, general instructions, protocols in place that required officers say at the John Oxley to provide the proper information with respect to what actually happened on these outings?---There would have been guidelines. I don't recall exactly what form they took at that particular time. I do recall there were some evolving processes during the nineties where more structured manuals were developed and in terms of the whole structure of youth justice at that stage, that became more structured with the advent of the new juvenile justice legislation. I don't recall exactly the form the manuals took but I believe there would have been local manuals. Some of the actions may have been driven by detention centre regulations, but they would have been fairly high level.

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I have no further questions.

COMMISSIONER: Thanks, Mr Harris. Mr Bosscher?

MR BOSSCHER: Nothing, thank you.

COMMISSIONER: Mr Woodford?

MR WOODFORD: No, thank you, Mr Commissioner. May Mr Otter be excused?

COMMISSIONER: Yes, thanks, Mr Otter for waiting all day, as I said. Your evidence is appreciated. You're formally excused?---Thank you.

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WITNESS WITHDREW

MR WOODFORD: That's it for the day.

COMMISSIONER: All right. 10 am tomorrow?

MR WOODFORD: Not with us. I think you have a different - Mr Hanger might be here but I don't think the rest of us will.

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COMMISSIONER: Right, okay. Yes, fine.

MR WOODFORD: I think it's residential care day tomorrow, Mr Commissioner, the fifth day of hearing.

11022013 32 /RMO(BRIS) (Carmody CMR)

COMMISSIONER: All right. Yes, I'll adjourn the hearing of 3E until Wednesday, 10 am. **1**

MR WOODFORD: Thank you.

THE COMMISSION ADJOURNED AT 4.50 PM UNTIL WEDNESDAY, 13 FEBRUARY 2013

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11/2/13

WOODFORD, MR

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