



SPARK AND CANNON

TRANSCRIPT OF PROCEEDINGS

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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 30/01/2013

Continued from 26/01/2013

DAY 18

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.

COMMISSION COMMENCED AT 10.15 AM

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COMMISSIONER: Good morning, everybody. Mr Woodford.

MR WOODFORD: Mr Commissioner, I will tender a statement of Tanya Heidi Preston. I understand that none of those persons given leave to appear require Ms Preston for cross-examination. There are some matters in terms of non-publication in paragraph 9 of her statement.

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COMMISSIONER: Just read it into the record and I'll make the order.

MR WOODFORD: Thank you. The two names appear a number of times in paragraph 9. My submission is that they wouldn't have been published, consistent with previous orders made in relation to those names.

COMMISSIONER: I'll make an order in those terms, but otherwise the exhibit will be published. The number of that exhibit will be 297.

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ADMITTED AND MARKED: "EXHIBIT 297"

MR WOODFORD: Thank you, Mr Commissioner.

MR COPLEY: Mr Commissioner, I call Susan Elizabeth Neilsen.

NEILSEN, SUSAN ELIZABETH sworn:

ASSOCIATE: For recording purposes please state your full name and your occupation?---Susan Elizabeth Neilsen, and I'm a senior program officer.

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COMMISSIONER: Good morning, Ms Neilsen. Welcome?
---Commissioner.

MR COPLEY: Ms Neilsen, between 1986 and 1992 you were employed by the Queensland State Service Union, weren't you?---Yes.

And I'm particularly interested in your employment and activities with that union in the period of 1989 to 1990?
---Yes.

40

And in connection with any activities that you engaged in on behalf of the union for employees who were working at the John Oxley Youth Centre at Oxley or Wacol?---Right.

Okay? Now, in paragraph - sorry, I should get you to have a look at your statement first of all. Would you look through that document, please, to confirm that it is a

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statement that you gave to the police on 24 January 2013? 1
---Yes, it is, but I need to mention that records my name
as nee Ball, and Ball was actually my married name.
Neilsen is my maiden name.

Yes, I was going to come to that with you. But, yes, it
certainly does, it says that your name is Susan Elizabeth
Neilsen, nee Ball?---Yes, so it should be formerly Ball.

Okay. I tender the statement nevertheless?---Otherwise it
is my statement. 10
Yes.

COMMISSIONER: Subject to the correction, statement will
be exhibit 298.

ADMITTED AND MARKED: "EXHIBIT 298"

COMMISSIONER: And can it be published?

MR COPLEY: It can be.

COMMISSIONER: I direct that exhibit 298 be published. 20

MR COPLEY: And can it be returned to the witness, please?

COMMISSIONER: It can be.

MR COPLEY: Will I call you Ball or Neilsen, then?---I
know who you're talking to so - - -

Yes, I know, but - - -

COMMISSIONER: Will everybody else? 30

MR COPLEY: - - - which would you prefer?---I'm happy for
you to call me Ball in relation to this matter.

Okay. All right. Well, Ms Ball, can I suggest to you that
in your statement at paragraph 14 you talk about seeking a
meeting with the minister's office and you thought that
when you had the meeting it was in fact with the
director-general, Ruth Matchett, and that you provide some
statements to her?---Yes.

Now, are you referring there are two statements from
members of your union expressing concern about matters at
John Oxley?---Yes. 40

Okay?---There was a bundle of largely handwritten letters
and materials, some was typed.

Yes?---And from memory the members had requested that we
present this information over to the department for them to
take some action.

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Well, I might get you to look at Exhibit 72B through to 72J because I'm going to suggest to you that these documents were the ones that you handed over, but not to Ms Matchett, to someone else prior to Ms Matchett becoming director-general. So first of all if you just have a look at the documents to see if you recognise them?---Yes, I agree. I believe it was somebody senior in the department but because the incidents around this time happened - the change of regime - so in terms of who was the director-general at the end of the National Party government and then the new National Party, I just have a recollection of somebody like a director-general or a director.

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Right?---That I handed the documents over to.

Okay. Well look, we'll just clarify first of all what documents were handed over and then we'll worry about to whom and when. So could you have a look at this bundle that Mr Blumke is going to show you. Probably if you look at the way they're set out, the dates on them, the signatures on them, that might help. You can take it from me that they're all concerning complaints about the John Oxley Centre and management?---The majority of them I would definitely say were. I'm not sure about all of them.

20

Yes?---But they're consistent with the ones I remember and the nature of the concerns.

Right?---And the way they were written. They seem to be - I remember they were original - like, I lot of them were in pen and handwritten.

Yes. And a number of exhibits 72B through to J are handwritten and in pen, aren't they?---Yes.

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So looking at those documents now, do you think it more likely than not that they were the letters of complaint that you handed over?---I'm almost positive that they comprise them.

All right?---They're very consistent with the ones I remember.

Right. Okay?---They might even have been more.

Sorry?---There may have even been more than that. I couldn't tell you the exact number.

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Possibly?---There was definitely a bundle like that.

Yes. Now, I want you to have a look at exhibit 64, please, and I want to ask you whether or not you recognise the writing on either of those pieces of paper there. So if you want to go to the second page first to see if you

recognise the signature there at all down the bottom?---I'm pretty sure that's Brian Mann's writing. 1

You think it's Brian Mann's writing?---Yes.

All right?---That looks like his signature.

Well, if it's not your writing we can ask Mr Mann about that later in the morning?---Okay. It's not me.

And you're not the recipient, apparently, the memo because it's addressed to Janine, isn't it?---Yes, to Janine. I don't know if - should I read it? Do you want me to read it? 10

Well, we all know what's in it. If you want to read - - -? ---It looks like it maybe was from a phone call that he had.

Yes. Well, look, we can ask him?---Okay.

But unless you've seen it before I'm not much interested in asking questions about?---Okay. 20

Have you seen it before?---No, not that I can remember.

Okay. No, okay. Well, we'll have that one taken back from you and I'll get you, please, to have a look at this document, exhibit 69. This is a handwritten note to someone called Brian and it bears a signature or an initial at the bottom of it and what to see whether or not you recognise the writing or the signature?---It's not my writing. It is somebody from the union staff. I think it's Tony Brown, one of the organisers.

Okay, but it's not your writing?---No. It's definitely one of the - I recognise the writing from the union staff. As to who, I can't remember. 30

40

All right, but looking at it, does the name Danny Lannen mean anything to you?---I think - yes, it does. I recognise it. I don't know if - I think he was a youth worker. I don't know if he was a delegate but he was definitely somebody that rang the union a fair bit, from memory.

1

Was Brian Mann in the hierarchy of the union superior to you?---Yes.

Did you report to him or work under him or for him?---No; no, I had my own areas of responsibility. Brian was the senior industrial officer around this time and was dealing a lot with award negotiations and things that were happening in terms of - I'm pretty sure the departments were going through a number of award matters and Brian had had a lot of dealings in the past with the corrections area and with members who were shift workers and John Oxley and Westbrook. I had taken over looking after Westbrook as well and so we had a lot of - we had a lot of strife with the members particularly around the shifts and the rostering and overtime and there was a lot of disputes. So Brian would certainly have been the person that I would've gone to to relay information from the members on the ground and then if something then needed to go to the Industrial Commission or if he needed to liaise with Jenny Mawker who was our director of industrial services - around those types of matters, then he's somebody I would have gone to for advice, yes.

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You have mentioned that there were complaints about staff rostering and things of that nature?---Yes.

You state in your statement that you have no recollection of any person at any stage raising any issue regarding child sexual abuse?---That's correct; not at John Oxley.

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Okay; and you also have no memory of any allegation of child sexual abuse being raised in any correspondence that you prepared or read in relation to the management of the John Oxley Youth Centre?---That's correct.

Now, would you have a look at exhibit 105, please, and exhibit 105A? I just want to see whether or not on exhibit 105, which is the first one you will be shown, there are any markings on there that you might have made on the document anywhere at all?---No, but Janine Walker has put my initials at the top up here so I'd say that she's asked me to do some sort of response of some sort.

40

Okay?---That looks like that would be where she would've allocated this to me perhaps.

Right. There are two pieces of - - -?---Yes, that's Janine down the bottom, "Sue discussed with me."

So on the bottom of exhibit 105 the handwritten note says, "Sue discussed with me," and you identify that writing as Janine Walker's?---Yes.

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Then on the top of the typewritten note there's a stamped box that says "Received 22 January 1990" and then below that is the letters "Ans'd" and there are two letters "S" and "B"?---Yes, that's Janine's written "SB". I don't know if it means answered. I think that was the received stamp and that would be her allocating this to me - to allocate it.

10

So they're your initials but you didn't put them on the document?---No, that's definitely Janine.

Okay?---That's not the way I would do my initials.

Now, you will see from that document that it's a complaint or a letter from Daniel F. Lannen?---I think this is a copy of material that was given to the independent person that the department appointed to look into matters subsequent to us handing over the handwritten statements.

That may well be so?---I think it was a copy for our noting of what he gave - what he said to Mr Heiner.

20

All right. Well, we will get you to look at exhibit 105A. Now, leaving aside the first page - look, just leave the first page for a second and open it up. You can see it's another copy of exhibit 105, isn't it?---Yes.

Right. Now look at the first page which you have got in your right hand. It's a handwritten note. You have had an opportunity to read that?---Mm'hm.

And it appears to be directed to someone called Sue? ---Mm'hm.

30

Enclosing a copy of a report the author had written regarding an incident he had discussed on the phone with Sue recently?---Mm'hm.

Now, were there any other Sues employed at the State Service Union around 11 January 1990 who were handling matters arising out of John Oxley?---No.

Were you the only Sue?---Yes.

40

Just hang onto exhibits 105 and 105A. I will get you to have a look at a document that we call marked for identification 1. Do you recognise the writing on that page?---Yes.

Whose is it?---That's my writing.

Now, it's handwritten, isn't it?---Yes.

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Can you please read everything out on it starting from the top of the page where it says "15/1/90"? 1

---15/1/90, Daniel Lannen: style of management is still being maintained, resulting -

well, I've got an arrow but that is an acronym I use for "resulting" -

in no meaning out of inquiry so far; personnel division have told him that they can't do anything; general feeling amongst staff that unless changes are made, they will leave; shame that experienced, good people are all looking for other jobs; morale is as low as it can go. He was personally threatened by a senior staff member and threatened that he was going to be sued for jeopardising career. He is sending me a report on the incident. Job is stressful enough without threats from other staff. He feels situation is totally inappropriate. Take up situation with new minister and acting director-general. 10

So if that's your handwriting, are you able to assist us with what it is a handwritten note of. We know what it's about because the content is there, but what's it a handwritten note of?---This would be a - I would've taken a phone call and I can - especially the way I've handwritten over his name so I've obviously checked the spelling when he's rung and I'm writing down what he's told me so - and I know that personnel division had very much reiterated that the staff were to go to them with matters of concern; that they didn't like them coming to the union. 20

Yes?---Under the new award that was in place at that time there were very specific grievance procedures that had to be followed and I think there was this element of frustration that staff felt that they couldn't - every time they took something to the department they just got fobbed off. 30

All right?---And I think the threats - that was around issues around the staff were being threatened about - from memory, concerned by the manager around that there was some of - I guess matters that could've been seen to be perhaps vexatious or that were going to, you know, cause him concerns to his career.

To the manager's career?---Yes, to the manager's career by the staff, you know, complaining about him. 40

Yes, okay, but the point of it is you have now been able to identify that document as one you wrote?---Yes.

It emanated from a phone call from Daniel Lannen to you? ---Yes.

And in the document he said that he was going to send you a report on the incident?---Mm'hm. **1**

And exhibit 105A which you have just looked at before is addressed to Sue. You were the only Sue working for the union at that time and the handwritten note on 105A refers to a report about an incident that you have discussed recently?---Yes.

Yes?---I don't know if it's the same incident but it would seem to be consistent. **10**

Yes, it seems as though it - - -?----It's just the date. There's a big gap in the date, I suppose, but I'm assuming it's the same incident.

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Yes, exhibit one hundred and - - -?---The incident of him being threatened. 1

Well, the statement concerns something that occurred on the 10th over to 11 January, doesn't it, if you look at the body of exhibit 105 and the contents?---Yes, it does.

The document exhibit 105 bears the date of 11/1/1990 at the top, doesn't it?---Yes.

The phone call appears to have been had on 15/1/1990? ---Yes. 10

Then the document, although dated 11 January 1990, seems to have been received or allocated for at least - either received and/or allocated for someone to do something on 22 January 1990?---Yes.

Mr Commissioner, on the basis that the witness has now adequately identified exhibit MFI - or marked for identification document number 1 I tender that document, but recommend to you that it be marked as an exhibit 105B just to keep it with these other two documents. 20

COMMISSIONER: Thank you. MFI 1 will be admitted and marked 105B.

ADMITTED AND MARKED: "EXHIBIT 105B"

MR COPLEY: Thank you.

COMMISSIONER: Thank you.

MR COPLEY: I'm going to suggest to you that you did indeed have some involvement at least in terms of attending some meetings with Ms Ruth Matchett?---Yes. 30

But that that didn't occur until after 1 January 1990? ---That would be correct.

Because I'm going to suggest to you that she became the director-general of the Department of Family Services after the state election which elected - - -?---I think she was acting originally. I don't know if she was ever actually appointed but she was definitely acting.

Okay, well, whether she be acting or permanently appointed, she didn't become the head person in family services until after the state election on December 2, 1989. Does that refresh your memory at all?---That would be - I believe that would be correct. 40

Could you now have a look at exhibit 125 and you will see down the bottom it bears the name S. Ball, industrial officer, and a signature. Is that your signature?---Yes, it is.

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The document speaks for itself to this extent, in that it says it's a report about a meeting with Ms Matchett on 19 January 1990 at 3 pm to discuss issues concerning John Oxley?---Yes. 1

Does this purport to be - you attended the meeting, according to the list of those present. Did you make notes about what was said during the course of the meeting? ---Yes, I did.

When did you make those notes?---At the meeting. 10

So as things were being said were you making notes about what people were saying?---Yes. I was very much in the habit of doing that. I used to take a lot of minutes at meetings, yes.

Were you able to do shorthand or anything of that nature? ---Not formal shorthand, but I had a shorthand type style that I had learnt while I was at university so that I could take good notes.

So looking at this document - well, speaking in the abstract, first of all, in January 1990 how would you characterise your note-taking? Would you characterise it as comprehensive and accurate or just a bare outline of what people might say at a meeting?---I tried to be fairly comprehensive about -particularly about who would have said particular matters and the crux of the issues. 20

Yes?---But trying to, like, not record, you know, extraneous material, because a lot of people would get off - might get off the track with certain things. So this would be a pretty good summation, I'm expecting.

So insofar as you recorded what somebody said you would assert that you did so accurately and comprehensively, would you?---Yes. 30

The first paragraph asserts that Ms Matchett spoke and said that she had requested the meeting and it asserts that Ms Matchett was of the belief that Mr Heiner's investigation was improperly constituted by the previous chief executive. Do you now have a memory of Ms Matchett saying that or would you say, "I can't remember any of this, really. I just go on what's in the note"?---I remember Ms Matchett was very - she was quite strong on this issue. I remember she was very - quite a forthright person, and I remember Sue Crook was very much in the picture in terms of advising her and them trying to get this issue under control. 40

The note then goes on to say that Ms Crook indicated that it was now believed by the department that Mr Pettigrew

didn't have the power to have established the inquiry, nor to have appointed Mr Heiner, okay, so when you use the expression "Ms Crook indicated - - -"?---She said - - -

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- - - did she say something or did she distribute a document that contained that, or how did she communicate that notion?---That would have been she was saying it.

Okay?---They both - they're stating it.

The note goes on, "It was further indicated that certain management staff at JOYC had threatened legal action against the department as a result of the inquiry and this was also causing concern to Ms Matchett"?---So Ms Crook would have said that.

10

So although it only says, "It was further indicated," you would say that that was an indication given by something Ms Crook said?---Yes.

Thank you. You don't record whether Ms Matchett demurred or assented to that proposition in the note?---No, I don't think - no, it was obviously Sue Crook speaking around that point.

20

Then the note says that Ms Crook said or indicated that the department was now seeking advice from crown law as to how to proceed?---Yes.

That, "Ms Matchett indicated to the union representatives her view that the inquiry was not legally constituted and therefore should be abandoned as soon as possible"?---Yes. I think that was Ms Matchett's main concern, was she had inherited this - it wasn't - this sort of informal inquiry. I think the term "inquiry" was a bit ambitious, really, because it was just somebody who was appointed to go out and take statements and look into it to be seen as independent by the staff.

30

Yes?---It was always really an exercise in fobbing the staff off, because I don't think - - -

Well, you don't know - - -?---That was the style of the personnel division, though, to do that.

Yes, but you don't know, do you, who exactly set it up? ---I'm pretty sure that the personnel division advised Alan Pettigrew that something had - once these letters were handed over it was the concern that they had to do something, because the staff were very much rumbling about, you know, taking industrial action.

40

Okay, yes, accepting all of that, you don't actually know what Mr Pettigrew's motivation was in terms of what he wanted the inquiry - the inquisitor, the investigator -

we'll call him an investigator - to do, do you?---No, I don't. 1

No?---And I believe that there was genuine - they genuinely thought that some, you know, usable evidence might come forth, rather than hearsay and Chinese whispers, that there would be some factual evidence that could or could not establish one way or the other what the issues were.

But my point to you is even though you might think that, you don't actually know what Mr Pettigrew was trying to achieve, do you, because he didn't confide in you, did he? ---No. 10

Mr Heiner never confided in you what his intentions were about how fair dinkum, for example, the inquiry should be? ---No.

In fact, did you ever meet Mr Heiner in his capacity as the investigator at John Oxley, for a start?---I don't believe I did.

Okay?---I don't think I've ever met him in person. 20

At all?---No.

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Right, okay. Then Ms Walker put in her contribution. 1
You've recorded that there. And then it appears you made a
contribution because you added something to that?---Yes.

Do you remember speaking at the meeting yourself?---Yes.

Okay. And then it says:

*It was stressed that the abandonment of the inquiry
was a serious matter and that we were not at all
supportive of this move.*

Now, you weren't the only two unionists at the meeting. 10
According to the note at the top there was a Mr Lindeberg
from the POA there?---Yes.

So when you say that, "We didn't support the abandonment of
the inquiry," who does the we referred to?---It was all of
the union representatives.

Okay. So Mr Lindeberg wanted the inquiry to continue too?
---Yes, because it was in his members' interests to - - -

COMMISSIONER: No, just tell us if he did, what he told 20
you about why he wanted it rather than you sort of - - -?
---Yes, he - - -

MR COPLEY: Yes, by you or a supposition by you?---Yes.
Um - - -

COMMISSIONER: It may make sense that he would, but don't
tell me what makes sense, just tell me what he said?---Yes,
he said that it was a serious matter and that we didn't
want this inquiry to be abandoned.

MR COPLEY: Okay. And, "Ms Matchett then replied that she 30
appreciated our concerns and she remained supportive of
resolving staff issues." Now, is that a summation of her
attitude when you wrote, "She remained supportive of
resolving staff issues," or did she say, "I remained
supportive of resolving - - -"?---That's what she said.

Okay. But she reiterated that pending further legal advice
it was her intention to abandon the inquiry?---Yes.

And she asked that the discussion be kept confidential?
---Yes.

Now, did she explain why she wanted you three - 40
Mr Lindeberg, Mrs Walker and you, Mrs Ball - to keep the
matter confidential?---Yes, because she was concerned to
get that advice and do not exacerbate the problems and
concerns of the staff at the centre until we could get
legal advice as to whether the inquiry was properly held.
Because I think she was concerned that there may be other
staff members who had concerns.

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NEILSEN, S.E. XN

Yes. See, you're just drifting into starting to tell us what you think she was concerned about - - -?---Yes. 1

- - - as opposed to what he actually said?---Mm'hm.

When you say, "I think she was concerned," is that just your way of telling me this is what she said; or are you actually, when you stop and think about it, trespassing into an area of trying to explain what might have lain behind the remarks he made?---I'm sorry, I'm a bit confused - - -

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Okay.

COMMISSIONER: I tell you what, the best way of - - -? ---I'm just trying to put it in the context, I guess.

Yes, don't bother about that?---Okay.

If you just answer the question you're asked?---Yes.

I'll put in the context?---Okay.

And you don't have to explain the answer or convince me that that makes sense because this is the context. I'll pick that up?---Okay. 20

MR COPLEY: When this meeting ended did end with any plan on the part of the department to have a further meeting with you unionists at all, or was it just left completely up in the air?---I believe that was left with that Ms Matchett, I believe, was going to contact the senior officers of both unions with further advice.

And who would you have regarded at that time as the senior officer of your union?---With respect to this matter it would have been Janine Walker or Laurie Gillespie. 30

Okay, thank you. Now, I'll just get you to look at exhibit 127. This is a letter from the State Service Union to Ms Matchett and it is signed by Janine Walker, we've heard, but your name is at the top, Mrs S. Ball on the left-hand side?---Yes.

What significance should one attached to the fact that your name appears up there on the letter but nowhere else in it? ---I've drafted the letter. 40

If you were to read the content of the letter you'd see that it doesn't make any reference to the issue of the inquiry or investigation by Mr Heiner at all?---Yes.

It's a complaint about staffing levels, amongst other things?---Mm'hm.

Okay. Do you recall drafting that letter now?---Yes. 1

Given that it's about staffing levels, would you concede that the staffing levels in a centre like that would be a matter for the determination of the department in the city rather than the manager of the centre?---No, because the staffing levels were controlled by budget as well.

Yes?---So personnel in the city were very much involved in - and this would obviously have been - would have caused an industrial dispute, so yes, I think staffing levels, it would have been done in consultation between the management of the centre and head office. 10

But of course if head office told the manager, for example, "Well, there's only x hundred thousand dollars for the next three months allocated to you to run or to staff the facility. You'll have to do the best you can." Then if that was what he was told then it would be a matter involving head office as far as you were concerned? ---Absolutely, head office, yes.

Okay. And it seems that from this letter that notwithstanding that there was - and you don't like the word "inquiry" so we won't use it - notwithstanding the fact that there was an investigation going on by Mr Heiner, this was a matter that you at the union were involved in drafting letters about and sending to Ms Matchett even though Mr Heiner is doing his investigation?---I don't know that - I felt - this says 23 January. I think Mr Heiner had - he'd been and spoken to people and I think that had sort of - it came to a halt, from memory. 20

Well, my point to you, though, is this: that irrespective of what Mr Heiner had done - - -?---Yes. 30

- - and when he had finished doing it - - -?---Mm'hm.

- - - there was that activity - the union getting people to go and see Mr Heiner - but there was this concurrent activity, if you like, of the union writing not to Mr Heiner, but way over his head to Ms Matchett about staffing issues at John Oxley?---Yes, we wouldn't have written to Mr Heiner.

Okay. And the reason you wouldn't have written to Mr Heiner about staffing issues was why?---He was appointed by the department to speak to departmental staff - - - 40

Yes?--- - - - about matters they have raised in the bundle of letters and was to gather that information in a usable form that could give - to sort of lay to rest any possible defamation type actions, any vexatious issues, matters - a lot of the complaints in my view were based a lot on change

of shift and staff coming on and saying, "I heard this and did you hear that," and lot of hearsay, so it was to sort of sift through that and come up with what were - if there was any legitimate complaints that could be acted on or should be acted on by the department, to inform the department of those.

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Okay?---This issue - this would have been a very common issue across the department. Probably I would have had similar things. I know Westbrook at the same time, there were issues with the youth workers at both centres.

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Yes?---Went and visited them both.

Yes?---And there were lots of problems with the staffing levels and lack of funding and those types of issues.

All right. Thank you. Now, would you look at exhibit 135, please. Now, you will see the name S. Ball at the bottom and a signature. Is that your signature?---Yes, it is.

And the document records detail regarding a meeting with the acting director-general about JOYC on Tuesday, 6 February 1990?---Yes.

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Okay, at 1 pm. And it asserts that you and Mr Mann attended for the union. That's true?---Yes.

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The first paragraph says:

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Ms Matchett indicated she called this meeting with us separately to the POA as we stood on different ground.

What is the expression "as we stood on different ground," or something she actually said, or was that your summation of a number of other things that she said at the meeting? ---That's something she said.

Did she elucidate upon that and describe what she meant by standing on different ground?---Not that I can recall and I haven't indicated it.

10

All right. Then it says:

Ms Matchett and Ms Crook attended for the department.

Then it say this:

The department outlined that, as a result of legal device, they had abandoned the inquiry headed by Mr Heiner and they were yet to be advised as to whether to destroy all of the evidence provided to the inquiry to protect staff from legal action by the management staff at JOYC?

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---So that would be Sue Crook outlining that.

Why do you say that?---Because - well, firstly, she would be representing the department but, secondly, she was very - the person we liaised with in personnel and I know staff had contacted her. They were concerned. They had threats about legal action for possible defamation so, yes, that's why I would think I would've indicated that way.

30

All right. Now, the next paragraph says Ms Matchett indicated something. Does the fact that the next paragraph speaks of Ms Matchett indicating something, whereas the previous paragraph speaks of the department outlining - does that assist in working out that it was Ms Crook? ---Yes. I would have said it was Ms Crook anyway, but, yes, very much.

Now, Ms Matchett said she still didn't want you to tell your members the inquiry was abandoned?---Yes.

40

Did she explain why she didn't want you to tell your members that?---I think that there was - she had concerns. She definitely conveyed concerns to us that this would - that the staff would be very upset and I think she wanted

to tell them all at once rather than it being conveyed through us, through other people, and I think she wanted to tell everyone at once.

1

It then says, "The union again restated its view that the inquiry had been valid." Now, who for the union stated that, you or Mr Mann?---I think that would've been Mr Mann.

You used the expression there "been valid". Thinking back on it now, was that expression "valid" meant to convey that it was lawful or simply that it had been a worthwhile endeavour?---A worthwhile endeavour.

10

Okay?---I think we felt it was a worthwhile endeavour because the staff did have confidence in it.

Yes?---They did feel that - they did believe that the department took their concern seriously and we were worried that they would now feel that they'd been tricked.

And then it says:

We sought advice as to what the acting director-general was going to do. However, the department indicated they couldn't enlighten us at that stage?

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---That would've been Sue Crook.

Sue Crook again?---Yes.

All right:

The union indicated staff morale was at a low ebb and the union was going to have a meeting with its members on Friday following the director-general's visit to ascertain the direction staff wanted to take.

30

So was that something Mann said or you said?---I think I would've said that because I was probably the one that was more involved with actually meeting with the members in person, but Brian would've - I expect would've come with me because this would've been something that they would've been threatening to take action on for sure so I would've needed he and I to both attend because it would likely end up in the Industrial Commission.

Okay. The second-last paragraph says:

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The acting director-general reiterated her view that our members should have used grievance-handling procedures as provided by the regulations to air their concerns in the first place and the inquiry would have been unnecessary.

Do you remember her saying that?---Yes, and that was very much the view. It was a very strongly held view. 1

By whom?---By Ruth Matchett.

Okay?---I think she - well, my memory is that she - when she sort of came across this issue - when we raised it with her that - she felt that if it had been handled correctly by the previous government through the grievance-handling procedures, then it would never have got to this, never even - an inquiry would never have even be needed. 10

It appears from the last paragraph that her view was not shared by the State Service Union?---That's correct.

And is that for the reasons set out in the last paragraph? ---That's correct. The grievance-handling procedures were in the award but weren't really working in practice. The department had a history of keeping a lot of information on people's files and the staff were quite nervous or anxious or just felt that - we would raise things with them and they would raise things with personnel month after month after month and nothing would ever - nothing would change. 20

Are you saying that the staff that made complaints didn't want the fact - were uncomfortable with the fact that they made a complaint and the terms of the complaint might be recorded on the complainant's staff file?---It may have been recorded on their staff file and also they didn't have very much confident that anything would then even come of it. 20

I will get you to now look at exhibit 162. Down at the bottom of that document it says "S. Ball" and there's a signature. Is that your signature?---Yes, it is. 30

So these are notes that you made of a meeting held at JOYC on 16 February 1990 at which Ms Matchett addressed the staff?---Yes.

Okay. I'm sorry, if I said Ms Matchett attended this meeting, I think I'm in error there?---Yes, I was going to say because the way I've recorded the notes it's not.

Yes?---I'm talking about a - like, this is subsequent to the address by Ms Matchett to the staff. This is a subsequent meeting. She's obviously been and spoken to them and then we've had a meeting with 20 members and myself and Brian Mann. 40

And there is a series of asterisks down the page and they seem to be recording various facts. Where did the information contained - for example, "The inquiry is abandoned" and "All documentation is destroyed" - who said that and, if it was you, where did you get that knowledge

from?---These seem to be dot-point notes that I have recorded from Ms Matchett's address to the staff. 1

Did you attend her speech to the staff earlier in the week?
---I think I did.

Okay?---I think I was there. I didn't speak but I'm pretty sure I was in attendance.

All right. We will see if this helps you. Would you have a look at exhibit 156? Now, I can't actually put to you at the moment with certainty what this document is, but it would appear to be speaking notes regarding a 10.30 meeting in which the speaker refers to herself as the acting director-general, if you read the second paragraph?
---Mm'hm. 10

So if you just peruse that document, that might help you in determining whether or not you had ever heard those sentiments contained in there expressed before?---Yes, I'm pretty sure I heard this relayed to the staff by Ms Matchett.

All right?---I haven't seen this document but the contents of it are consistent with my memory of her addressing the staff. 20

Thank you. Exhibit 156 can be returned. So insofar as exhibit 162 is concerned, the point about, "The inquiry is abandoned" and, "All documentation is destroyed" - that's something that you said to the staff based on something that you either heard or thought you had heard at the earlier meeting?---Yes.

Okay, thank you. In the next paragraph it talks about staff fearing - many fearing Peter Coyne will act on his threats to sue them for giving evidence?---Yes. 30

Is that in fact what staff conveyed at that meeting on 16 February 1990?---Yes, and they had conveyed that to me even prior - like, prior to this meeting. That was something that definitely had been told to them before.

40

There seems to be an inconsistency between fearing being sued by this Peter Coyne, yet further down the page them being unhappy that Peter Coyne was moved and the reason is that they didn't feel moving him solved the real problems. Then it goes on to say that Peter had in fact been trying to solve these problems and he too was moved. So was there a division of opinion between members of the union at this meeting? Some were happy that Peter Coyne was gone, others were unhappy that he was gone?---Yes, there was definitely divisions and I think that the questions about the legal rights was really more because the Heiner material was basically never going to be revealed, so people felt that there was always going to be the original documents that could have been seen to be quite defamatory was all that was - you know, that would be left to be relied upon, and that moving him, in one respect, didn't really resolve the matter one way or another in terms of it still left a cloud hanging over Peter Coyne's head, in effect. He didn't have any right to see what was against him and the staff didn't have an opportunity to air those complaints in a proper forum.

1

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Okay, I'll have that one returned. Were you at all responsible in 1989 for drafting press releases or media releases on behalf of the State Service Union?---No.

20

Do you know who would have been?---We had a media officer who was engaged with the union but quite often Janine or Laurie would provide material to the media officer and he would combine it to put out as a media release, so it would have only come through Laurie, Janine or through the media officer. I can't think of his name.

Could I just get you to look at this photocopy, please? There's some handwriting down the bottom?---Yes.

30

Do you recognise that handwriting?---Yes, that's Laurie Gillespie.

All right. Is that what he would do if he issued a media release, that he would put his signature on the bottom of it?---Yes. He possibly might have even done that just to authorise to our media officer that he was happy with the content and for it to be released, yes.

Perusing the content of that document, are you able to help us on this issue of whether or not it was actually sent out?---No, and in fact I would have - well, there should have been a - normally they went by fax, so we would have had a faxed - there would have been something to sort of indicate - like a faxed transmission record that it definitely went. So, no, I can't say that it actually went out.

40

All right, but if it did go out it went out on 24 November 1989 or thereabouts?---Yes. 1

It was a media release from the union seeking a commitment from the then minister Beryce Nelson about some changes to John Oxley?---Yes, and Laurie would have been quite concerned, because he had a background in the corrections area as - that was his area in early days, so he was very much committed to shift workers and people who worked in the youth centres and the correction centres.

The union wanted changes to improve security at JOYC? ---Yes. 10

It says that this union, your union, along with various other unions, was concerned that there was too high a ratio of children to staff and that that had been a factor in security problems, which have included assault and sexual abuse. Do you see that?---Yes.

And that the union was seeking to reduce the number of children in the centre from 30 to 24 and to abolish the position where three children shared a room?---Yes. I'm taking it that that was sexual activities between the children. 20

Well, I haven't asked you that question?---Sorry.

But seeing as you've raised it, you said before that you weren't aware of any sexual abuse issues from staff as a unionist?---No.

No, so you're not sure therefore what Mr Gillespie was referring to there?---No, and I - no, not at JOYC.

Okay?---I don't know if he means generally, but no, not in terms of staff. 30

Then it says that the union had made representations to Mrs Nelson who acknowledged that the triple occupancy rooms had been hard to manage and the union said that the problems associated with overcrowding had been exacerbated by the closing - the scaling back of operations at Sir Leslie Wilson and the closure of the Wirilda Youth Centre?---Yes.

Mr Commissioner, I tender for the sake of completeness that press release as an exhibit. 40

COMMISSIONER: The press release on 24 November 1989 will be exhibit 299.

ADMITTED AND MARKED: "EXHIBIT 299"

MR COPLEY: No further questions, thank you.

30/1/13

NEILSEN, S.E. XN

30012013 06 /RMO(BRIS) (Carmody CMR)

COMMISSIONER: Thank you. Yes, Mr Hanger?

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MR HANGER: No, thank you.

COMMISSIONER: Any questions, Mister - - -

MR HARRIS: No, thank you, commissioner.

COMMISSIONER: Mr Bosscher?

MR BOSSCHER: I have a couple of - thank you,
commissioner. I have some.

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Do you have a copy of your statement with you still?---Yes,
I do.

At paragraph 8 in that statement you refer to regular
meetings that took place involving a number of different
parties?---Sorry, which paragraph?

Paragraph 8?---Yes.

Is that something that occurred every month and you were
always in attendance at those meetings?---Yes, they did
occur pretty much every month. Sometimes they might have
been rescheduled to be every two months depending on
availability, and the majority of the time, yes, I was in
attendance.

20

They were formal, structured meetings with notes taken and
minutes et cetera?---Yes.

Were you responsible for taking the minutes at those
meetings?---Yes - well, from the point of view of my union,
not for the overall - the overall meeting was - the minutes
were taken by the personnel division.

30

You've also given us some evidence about the fact that
there was significant disquiet amongst the staff at the
John Oxley Youth Detention Centre and that was raised with
you by members of your union?---Yes.

Did you attend any meetings at members' private residences
in relation to this issue, that you recall?---No.

Do you recall attending any meetings with some of your
members and Anne Warner being present?---No.

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Commissioner, could exhibit 135 be returned, please, to the
witness?

COMMISSIONER: Yes.

MR BOSSCHER: That's a document my friend has already
asked you some questions about?---Yes.

30/1/13

NEILSEN, S.E. XXN

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I just want to go back to something he raised with you, the second paragraph, "Ms Matchett indicated that she had called this meeting with us separately to the POA as we stood on different ground"?---Yes. 1

He asked you if you had any recollection as to what Ms Matchett meant by that statement. Do you recall any difference - - -?---I don't remember Ms Matchett herself indicating it, but I would have already known what the different ground was. I didn't probably need her to elaborate. 10

What was that?---That the POA was representing Peter Coyne as the manager of the centre particularly around the issues the staff had been raising and our union was representing the youth workers.

But when you also gave evidence about some previous minutes you indicated that there was a meeting where Mr Lindeberg was present and that he indicated that he was keen for the Heiner inquiry to continue. Do you recall saying that? ---Yes.

Is that somewhat inconsistent with the separate ground that I'm referring you to in that particular minute?---No, because this is - time had then gone on and when - well, my memory is when Kevin Lindeberg became aware that maybe this - the material in the inquiry was not - or that the inquiry wasn't going to continue or maybe it hadn't been correctly set up, I think he had made it clear to myself that he had to represent the interests of his member in finding out what the allegations were against, I guess. 20

30

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So you were aware that there was an active pursuit by the POA and Mr Coyne for information that had been given to the Heiner inquiry?---Yes.

1

I assume that was common knowledge amongst the participants in this matter?---Yes.

You also indicated that Ms Matchett was very strong in relation to the Heiner inquiry and dealing with its ramifications?---Yes.

What do you mean by that?---I felt that my - the understanding that I had from meeting with her was that she felt that the department should have - when these matters were raised in the previous year, that they should have used more appropriate mechanisms in order to have investigated them than the way they had gone down in setting up this Heiner - engaging Mr Heiner.

10

So did she express to you that the engaging Mr Heiner was a mistake?---No, I do remember her saying that.

Did she express to you then something along the lines that the engaging of Mr Heiner was potentially a waste of time? ---No, I don't remember Ms Matchett saying that. I think if anything it would have been Sue Crook was the one talking about from the department's point of view. Ms Matchett was really more concerned about how the inquiry had been set up and whether it was able to - how they could use it and whether it was something that was properly done.

20

So her concern was about the lawfulness of its establishment?---Yes.

And the information they collected?---Yes.

30

And what she had inherited and what she was to do with it? ---Yes.

Is that your understanding?---That's my understanding.

You were asked the question about whether or not you were aware - or it had been made known to you - of any sexual abuse at John Oxley Youth Detention Centre?---Mm'hm.

And you indicated firstly in your statement and in your answer that no, you weren't aware of any?---No.

40

You then seemed to add a rider to that and the note I made was, "Not in terms of staff"?---Mm'hm.

What did you mean by that?---Well, I meant that - and it's hard because I also looked after Westbrook - but I know that the staff at the centres would have concerns about if the children were allowed to have too much contact with

each other and what activities they might get up to without appropriate supervision. So I just meant in terms of they had raised with me concerns about contact with the children with each other.

1

So when you say you're not aware of any sexual abuse occurring, what you mean by that - and please correct me if I'm wrong - is so far as staff and detainees are concerned? ---Yes.

But from time to time staff would raise with you matters - the concern about the interaction between the detainees themselves?---Don't remember it specifically in terms of JOYC; I do, however, at other centres, but this matter, not with JOYC.

10

Are you aware of an incident involving an inmate - were you ever made aware of an incident involving an inmate called Annette Harding? That doesn't ring any bells to you?---No.

Thank you, Commissioner.

COMMISSIONER: Thank you. Mr Copley.

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MR COPLEY: No further questions. May the witness be excused?

COMMISSIONER: Yes. Ms Ball, thank you very much for coming and giving your evidence. It's appreciated. You're formally excused from the obligation of your summons? ---Thank you.

WITNESS WITHDREW

MR COPLEY: Before I call the next witness, Mr Commissioner, I just wanted to perhaps put this on the record, that especially since Mr Walsh has been called, and indeed today when Ms Ball testified, there have been matters raised by each of those witnesses attributing words, conduct or behaviour to other people. I had in mind in particular Ms Crook and Ms Matchett.

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The commission has been proceeding on the understanding that all former employees of the Queensland government - all of those persons' interests are represented and cared for by the Crown Solicitor's office instructing Mr Hanger and that if that was ever not to be the case then there would be a communication from the Crown Solicitor or Mr Hanger to the commission. So I just want to put that on the record for the present and I'd invite Mr Hanger to make any statement he wishes to make if anything I've said is inaccurate in any respect at all.

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COMMISSIONER: Mr Hanger.

MR HANGER: I accept what my friend said.

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COMMISSIONER: That's what I thought it was, too.

MR COPLEY: Okay, I just want to make sure.

COMMISSIONER: Yes.

MR COPLEY: I call Brian George Mann.

MANN, BRIAN GEORGE sworn:

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ASSOCIATE: for recording purposes please state your full name and your occupation?--Brian George Mann; I'm now retired.

COMMISSIONER: Good morning, Mr Mann. Welcome?
---Thank you.

MR COPLEY: Mr Mann, could you have a look at the document that Mr Blumke is handing you and can you confirm that that is a statement that you signed on 18 January 2013?---Yes, that is my statement.

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I tender that statement.

COMMISSIONER: That will be exhibit 300, Mr Copley.

ADMITTED AND MARKED: "EXHIBIT 300"

MR COPLEY: Mr Mann, you seem to have worked the most of your adult life for the Queensland State Service Union?
---Yes, it was about 24 years.

Okay, thank you. And you were certainly working for them in 1988, 1989 and 1990?---Yes.

30

And one area that you did have some responsibility for was for those members of the union who were working in youth detention centres in Queensland at the time?---In the late 80s.

Yes?---1986.

Yes, okay. Now, you may have been present when the last witness testified, I don't know, or seen outside - - -?---I was outside, yes.

40

All right. And you may have seen from the television that she was shown a number of documents?---Yes.

The same exercise I'll undertake with you now. First of all I'll get you to have a look at exhibit 64. I want to know whether or not you wrote this document?---Yes, unfortunately that's my handwriting.

30/1/13

MANN, B.G. XN

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Okay, thank you. Well, as you say, it's in handwriting. And so that we know exactly what it says, would you be able to read into the record for the benefit of the transcript everything that appears on by those pages?---Yes. It's a memo to J. Walker DIS, which would have stood for director of industrial services. The heading is:

1

Persons who have recently expressed concern at alleged harassment by P. Coyne, manager, John Oxley Youth Centre. (1) Danny Lannen, probationary youth worker, refer file; (2) David Smith, JOYC SU rep at John Oxley Youth Centre, P. Coyne inquires about conversations between D. Smith and other youth workers; (3) Marianna Pearce, youth worker, currently on sick leave (stress) previously harassed by P.Coyne, emotionally abused, burst into tears; (4) allegedly all youth workers who are ex-employees at Wilson Youth Centre; (5) M. Roach (since resigned position) continually harassed by manager; (6) manager sets up officers against each other; (7) T. Clark and S. Crook (personnel) Department of Family Services are aware of union concerns and also received advice themselves; (8) no staff problems with previous manager (McDermott); (9) currently high turnover of staff; (10) allegation that Coyne deliberately sets out to harass individuals whom he doesn't like so that they resign; (11) -

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the subheading is My Opinion:

P. Coyne lacks management skills; QSSU at this point need to draw all the above to the attention of A. Pettigrew, director-general.

And I've signed it "B. Mann, 12/9/89".

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Okay, thank you. That can be returned. Would you look at exhibit 65, please? You will see there, Mr Mann, that it's a letter signed by Ms Walker - she has given that evidence - but that it bears your name in the top left-hand corner? ---Yes, I would have drafted the letter.

1

Okay?---In those days either the general secretary or director of industrial services would've signed all correspondence, union correspondence.

It's a letter to Mr Pettigrew and it's dated 12 September 1989, the same day as that handwritten note that you just read out before, and it seems to concern a complaint that had been made by Mr D.F. Lannen concerning the receipt of an unsatisfactory probation report. Would you agree? ---That's correct, yes.

10

It then says on the second page that this is not the first occasion that members of the union at JOYC have had cause to contact the union in regard to alleged harassment by the manager and it says in fact on 9 November 1988 a meeting of about 33 employees was held. Mr Ian Peers also attended the meeting and acted as chairman. Do you see that?---Yes.

20

All right. I will just get you to put that exhibit down for a second and I would like you to have a look at exhibit 87. The question that I wanted to ask you after you have had a chance to peruse that document was: is the meeting the subject of that note in exhibit 87 what you were referring to in the letter dated 12 September 1989?---Yes, I'm pretty sure it would have been.

Now, this document, exhibit 87, bears the initials - well, it bears your name at the end of it and, I assume, your signature?---Sorry, what document was that?

30

Exhibit 87?---Yes, yes, that's my signature; yes.

So do these purport to be your notes of the meeting that took place on 9 November 1988 between Mr Ian Peers and staff at John Oxley?---Yes.

We see there on the first page of exhibit 87 that Mr Roch addressed the meeting and had certain things to say?---Yes.

And that Mr Peers also spoke at the meeting and made some suggestions. There's no reference to Mr Pettigrew speaking at the meeting or being at the meeting. Do you recall now whether he was at the meeting at all?---I don't recall but I'd say there would be a good chance he wasn't. What would have happened - they would've sent out a senior officer of the department and Mr Peers would have filled that role.

40

All right. The reason I ask you is that Mr Roch gave evidence that he thought Mr Pettigrew was at the meeting and he also thought that if it wasn't Mr Pettigrew, then it certainly was Mr Peers who belittled or derided him at the meeting. Now, those files notes or those minutes that you have recorded there don't seem to make any reference to any speaker belittling or deriding anyone, let alone Mr Roch. Do you agree with that?---Yes; these notes certainly don't do that, no.

1

If someone like - let us assume it was Mr Pettigrew but perhaps more reliably Mr Peers because he was the senior man there. If the senior man from the department had belittled or derided one of your members at this meeting, is that the sort of thing that you would have recorded in the minutes?---Probably not necessarily, no, because my - the way I recorded minutes were more about accuracy of what transpired at the meeting from - yes, the main points that were raised and, as I said, they're quite extensive.

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Yes?---So I've probably been to plenty of meetings where there was heated debate, discussion between one party and another, so that wasn't necessarily uncommon.

20

Do you have a recollection of Mr Roch being singled out for adverse comment by, for example, Mr Peers?---Not particularly, no.

Do you have a recollection of that meeting being cordial as opposed to acrimonious or are you able to remember back and tell us what the mood of the meeting was like?---I can't remember the mood but just by looking at the list of the problems that I've listed and identified on page 2 which go the whole page so - a number of people would have spoken and no doubt the feeling of members was fairly - what's the word - would be heated at times because they were quite angry the way the centre was being run from the way it had previously been run.

30

Right. Would you look at exhibit 67, please? We will have back exhibit 87 and exhibit 65, I think it was. Is the writing on exhibit 67 your writing?---No.

Do you recognise the initials down the bottom?---I'd say it was Sue Ball.

All right, thank you. We will have that returned. I will get you to look at exhibit 69, please. It's a handwritten note. It's addressed to a man called "Brian". It's not your writing, is it?---It appears to be Sue Ball.

40

Can you read it to yourself, please, just all of it first?
---Yes.

Were you the only Brian at the State Service Union in 1989 who was involved in matters to do with John Oxley?---Yes, I was. 1

Does the name Fabiana mean anything to you now?---No.

You don't recall a Fabiana working there at the union? ---No.

All right. That can be returned, thank you. Mr Mann, would you have a look at exhibit 72, please? Now, this is a document Ms Walker said she signed but it appears that - your name is in the top left-hand corner, so can we assume you drafted it?---I would've drafted that letter, yes. 10

Do you want to read it before I ask you any questions? ---Yes, to refresh my memory?---Yes, I've read it.

Okay, thank you. The letter says that the union had received complaints about Peter Coyne but it also received letters supportive of Mr Coyne, doesn't it?---It does, yes.

And then it says that the union had obtained statements from youth workers and "The statements are now enclosed for your perusal"?---That's correct. 20

And then it says:

Certain of the enclosed statements contain serious allegations. For that reason they are supplied to you personally on the understanding that they will not be circulated widely but, as discussed in our meeting, they are supplied for the purpose of substantiating our concerns in relation to the management of the centre.

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So as the drafter of this letter can you explain to us what you had in mind when you said that they were to be provided on the understanding that they would not be circulated widely? Did you have in mind that they might be shown to somebody, at least?---I can't recall what that means in a broad context. I was aware from meetings out there that members had complained about the management style of Mr Coyne.

1

Yes?---But it was to do with harassment, with bullying, with - you know, there were a whole lot of allegations that appointments hadn't been made to positions, senior - we were waiting for senior positions to be - appointments to be made to senior positions. There were issues about favouritism, about giving or not giving overtime, all of those types of typical issues that employees have with management. Whether one might consider them to be serious or not, I don't know. I can't think of anything - I don't know what serious - I know what serious means, but I don't know that - - -

10

But, look, if we just focus on the caveat that you wrote in this letter that the statements were going to Mr Pettigrew personally but on the understanding that they would not be circulated widely, that suggests that you were happy for Mr Pettigrew to read these statements and you might have been happy enough for him to show them to someone else or some other people but not to a very wide circle of people. Is that a fair interpretation of what you're trying to convey there?---Well, at that stage we wanted the department to have some understanding of the seriousness of what was happening out there, bearing in mind this is written some 12 months after I'd gone out to the meeting with Mr Peers.

20

Yes?---Nothing seemed to have happened in that time, and often what happens in government departments is that you'd write to the D-G; that's our protocol to do that. The D-G would then send it out - or often would then send it out to, well, say, the manager of the centre, or the regional officer of the centre, to comment on. So therefore through that process it starts getting into a - a person who can - we wanted the director-general to have an understanding of the seriousness of these issues and then work out a way that somehow it was going to get managed from the director-general's point of view, not just sending out to Mr Coyne, "We've got these allegations about you, Peter. What do you think about those?", you know, "Comment."

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So you were effectively trying to convey that you didn't want Mr Pettigrew do leave it to Mr Coyne to manage the allegations against Mr Coyne?---That would be the intent, yes.

Could you just have a look now at exhibit 72B through to 72J? These are a series of letters. Some of them are typed, some of them are handwritten, but my suggestion to you is that they are the letters that went with that exhibit 72 that you've just read, that these are the letters that were sent to Mr Pettigrew?---I'm not sure that I ever read these at the time, to be quite honest.

1

Okay. Well, if that's the case then they're probably a fruitless exercise?---That would have been that I - I suppose we had encouraged our members to write these letters for the purposes of handing them to the department so it was a matter that the union would have taken a view that we don't have the capacity as a union to conduct this sort of investigation, particularly when it was, you know, quite a number of people, any number of people, that we would have just been the agency for gathering the thing to pass on, which is what we did, but just looking at - just reading Mr Smith and Mr Lang, just - that's the first two, but they - the broad outline of what they're saying, without reading the whole document, supports our understanding of the issues between employees and management that I've alluded to in one of those earlier exhibits that you showed me.

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All right. Well, we might - - -?---If you want me to see them all - but it's probably - - -

I don't think I'll make you see them all if you haven't seen them before. There's no point?---I don't recall seeing them.

Okay, thank you. Now, exhibit 87, could you look at exhibit - sorry, 84. Just looking at the formatting of that document and how it's typed, is that a document that was drafted by someone from the State Service Union, or can't you say? There's no signature on it?---I would say it was done by the department just because at the end it says copies to deputy director-general, et cetera.

30

Just looking at it, it refers as its first item, "Feedback from last meeting." Were these perhaps a record of a fairly regular type of meeting that was going on between the unions and the department?---I'm not sure. It wasn't uncommon for the union to have regular monthly meetings with departments.

Yes?---Particularly departments that had a lot issues.

40

It's just that it talks at the end about the next meeting will be on 15 December in town at the Family Services building and this one is on 17 November and there had been one preceding that and you're listed as one of the attendees at the meeting on 17 November. That's why I just wondered whether or not you could help us on the point of

30/1/13

MANN, B.G. XN

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whether or not this was simply the minutes of a fairly regular monthly meeting?---I don't recall having regular meetings with the Department of Family Services. At that time my main responsibility was for corrections, or prisons department, and I sort of picked up the youth detention centres as part of that. Yes, I can't recall. Yes, as I said, I can't recall having regular meetings with the department.

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Can you recall from looking at this document actually attending this meeting?---No, I can't. I accept that I was there because my name is at the end of it, but I can't recall being at the particular meeting.

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All right, I'll leave it at that. Could you look at exhibit 85, please? This seems to be a copy of a media - of a memorandum that went out from P.S. Ashton. Does that name mean anything to you?---Yes, he was a colleague of mine at the union.

In the State Service Union?---Yes.

In this memorandum it characterises the inquiry that was going to be conducted as an inquiry into security matters surrounding the John Oxley Centre, doesn't it?---Yes.

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Then it refers to the fact that Mr Heiner was going to be the person conducting the inquiry?---Yes.

Thank you. I'll just get you to have a look at - I'll just get you to look at exhibit 135. We've heard evidence from Ms Ball that she was the author of this document and that she made the notes typed in there. She says that you were present at the meeting that occurred with the acting director-general on Tuesday, 6 February 1990 at 1 o'clock. I'd just like you to peruse that document first and then I'll ask you some questions. Reading that, does that revived any recollection you may have had of that meeting? ---No, it doesn't.

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Okay. So if I was to ask you any question about what happened at the meeting and who said what, would you simply be answering me by reference to what is contained in the document?---It would, yes. I can't recall being at that meeting, having been with Ruth Matchett, but I accept that I was there because my name is there. What was happening at about that time, that we were transitioning responsibilities within the union, portfolio-type changes, and I've moved into health, so maybe I only went with Sue as the senior officer; the fact that she wrote the notes at that meeting, I'm not saying I sat there in sleep.

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Yes?---But my input would have been minimal.

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Do you attach any significance to the fact that in the list of those present it says, "Mrs S. Ball and Mr Mann?" Do you attach any significance to the fact she's put your name second when you were apparently, according to her evidence, the more senior of the two of you?---Possibly that she was the organiser - I don't know whether they were called organisers, industrial officers in those days - might have been that she was - it had transitioned to her area of responsibility and I may have gone long just for some support - - -

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Okay?--- - - - as a - because I don't know when she started with the union but she would have been relatively new, I would have thought, at that stage, and perhaps I was there to be of assistance, if anything, from a more senior officer point of view.

Thank you. I'll just get you now - I'll just get you to look at exhibit 162, which again is a minute made by Mrs Ball regarding a meeting at John Oxley on 16 February 1990 with about 20 members of staff, her and you. Could you just peruse that first. Do you have any recollection of attending that meeting?---No, but I accept that I was there. And again, it would have been in a supporting role for Sue.

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Okay. So if you don't have a recollection of attending it, I assume you don't have a recollection of what was discussed with any degree of specificity beyond what is contained in that right?---That's correct, yes.

Thank you. All right. Now, you just have a look at exhibit 299, please. Mr Mann, that's a document that a detective showed you in December or January, isn't it?---In January, yes.

40

In January, yes. And we've heard evidence from Ms Ball that it bears Mr Gillespie's signature at the bottom? ---That is Mr Gillespie's signature, yes.

And she's worked on the assumption that it was a media release issued by the union?---It is headed Media Release 24/11/89, yes.

1

Right, okay. In your statement you state that you did not assist in the preparation of this media release and that you have no knowledge of any allegations of sexual abuse? ---That's correct, yes.

Whatever that might mean?---Yes.

And you state, "In all of my dealings with John Oxley Youth Centre workers I never received any information regarding child sexual abuse"?---That's correct.

10

Okay. So can we assume that you had no input into the creation of this media release and the contents of it? ---No, I wouldn't have because it wasn't - it was generally more senior officers that wrote press releases. It was in our role to do that. They would have - we would have - they would have done that from information off the file, so yes - no.

All right. No further questions.

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MR HANGER: I have no questions.

COMMISSIONER: Mr Harris.

MR HARRIS: I have no questions, Commissioner.

MR BOSSCHER: No, thank you, Commissioner.

COMMISSIONER: Thanks, Mr Bosscher. Yes, Mr Copley.

MR COPLEY: Would that be a convenient time for a break?

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COMMISSIONER: It would. Will I excuse the witness first?

MR COPLEY: Sorry, yes.

COMMISSIONER: Thank you very much for coming and providing your evidence. You're formally excused from your obligations under the summons?---Thank you, Mr Commissioner.

WITNESS WITHDREW

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COMMISSIONER: Mr Hanger.

MR HANGER: Can I clarify something I said earlier? While I state that I do not act for ex-employees of the state unless they've asked us to act for them; we had no contact with Mr Walsh so I did not act for him yesterday. I will let my learned friend know about Ms Matchett or any other individual that he asks me for.

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MANN, B.G. XN

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COMMISSIONER: Okay. 1

MR HANGER: But Ms Matchett is an ex-employee as well.

COMMISSIONER: And another ex-employee brought his own lawyer.

MR HANGER: Sorry?

COMMISSIONER: And another, Mr Manitzky, brought his own lawyer. 10

MR HANGER: Yes, we - - -

COMMISSIONER: Do they know that, that they can ask for you to act for them?

MR HANGER: I can't answer that because we had no contact with the witness yesterday. Yes, it's only if there is some contact - - -

COMMISSIONER: Right.

MR HANGER: - - - that they'd be told. 20

COMMISSIONER: They would have paid (indistinct).

MR HANGER: Yes.

COMMISSIONER: But the Crown is still happy to act for former employees if they ask?

MR HANGER: Yes, those are the instructions.

COMMISSIONER: Right, okay. 30

MR HANGER: Thank you. And as I say, we'll let our learned friend know where we stand with Ms Matchett as to whether she asks us to act or doesn't ask us to act or retains her own - - -

COMMISSIONER: I gather she hasn't yet. You don't need to answer.

MR HANGER: No, I won't answer, Commissioner.

COMMISSIONER: No, fair enough. Now, apropos to that, when do we expect to be calling Ms Matchett? Do we expect to be calling Ms Matchett and when, if so? 40

MR COPLEY: Well, it is my intention to have the detectives serve a summons on her at the appropriate time.

COMMISSIONER: Right, okay. That's all under control.

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MANN, B.G. XN

MR COPLEY: Certainly, but my understanding was that unless I'd been advised to the contrary, that the counsel for the state was looking after the interests of all former state employees unless those employees indicated they didn't want Mr Hanger looking after their interests.

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COMMISSIONER: You thought it was the opposite.

MR COPLEY: I thought it was the opposite to what Mr Hanger said. And when I said that before Mr Hanger agreed with me. but now it's quite different; he's happy to look after their interests if they let him know that they want him to look after their interests, but otherwise it appears - - -

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COMMISSIONER: If they know who - - -

MR COPLEY: - - - nobody is looking after their interests.

COMMISSIONER: - - - if they know (indistinct). All right, that presents a little bit of a problem to us, doesn't it?

MR COPLEY: Well, it does, and I will have to go back to have a look at some exchange of emails that I have had over this matter and I might revisit the matter after lunch.

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COMMISSIONER: Right. Whatever comes out of that from now on we should work on the basis that a witness who may have an interest to protect - we will talk about this out of session. 1

MR COPLEY: Yes.

COMMISSIONER: Obviously whatever arrangements exist, the commission has to act fairly.

MR COPLEY: Yes.

COMMISSIONER: It has to be mindful that a person may have a reputational or other interest to protect who may not know that unless we tell them and therefore may not know that they need to contact the Crown even if they know that that is available to them. So there are lots of opportunities for them to fall through the cracks and the cracks seem to have got a bit wider. 10

MR COPLEY: It's just a bit strange that the crown sends a lawyer here to look after the interests of the crown and the interests of the crown presumably are inextricably tied up with the interests of former crown employees, yet there has been no communication to those former employees that "We the Crown Solicitor's Office and we, the barristers, are available to look after your interests unless you advise to the contrary". 20

I mean, for example, Mr Walsh has given his evidence and said what he said. He said things about Ms Crook and Ms Matchett. They may or may not be propositions that either of those ladies will accept. They not be in a position to dispute them, but I was certainly proceeding on the basis that Mr Hanger was looking after all these people's interests and, if that's not so now, then that - - - 30

COMMISSIONER: Or if it never was so.

MR COPLEY: If it never was so - well, if it's not so now, that has implications in relation to the next witness.

COMMISSIONER: Right.

MR COPLEY: If it never was so, then that may mean that ultimately we may need to recall some witnesses should some of these people - - - 40

COMMISSIONER: One of us, either the commission or the crown, need to advise some people.

MR COPLEY: Yes.

COMMISSIONER: I think you and Mr Hanger better have a chat.

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COPLEY, MR

MR COPLEY: I would like, I think on reflection, to have an adjournment to find those emails. 1

COMMISSIONER: Yes, you will need it if you have got a witness who falls into the category.

MR COPLEY: Yes, the next witness is Mr Barry Thomas who - - -

COMMISSIONER: Who falls into the category.

MR COPLEY: He falls into the category. 10

COMMISSIONER: He looks like he might be caught between two stools at the moment.

MR COPLEY: Yes.

COMMISSIONER: All right.

MR HANGER: No, we do act for Barry Thomas.

COMMISSIONER: Because he asked you to. 20

MR HANGER: Yes.

COMMISSIONER: There you go. The system works.

MR HANGER: I mean, I see the difficulty my learned friend has, but we had no idea, for example, that Mr Walsh was being called until a day beforehand, as I recall. That's the difficulty; didn't know he was interviewed; didn't know he's called. He's somebody who used to work for us and that's it.

COMMISSIONER: Yes, and that is the difficulty but it's one we share - - - 30

MR HANGER: Yes, we share it.

COMMISSIONER: - - - in the sense that sometimes - I will put it this one: somehow between us we have to make sure that nobody with a legitimate interest to protect is disadvantaged or doesn't get the opportunity to protect that interest.

MR HANGER: Quite so. 40

COMMISSIONER: We are the ones who make the arrangements between us and we have got to make sure that they actually work to protect people. All right. So we will take this outside.

MR HANGER: I'm sure we can sort it out, but I just thought, for example, if there is any suggestion that an adverse finding might be made against someone, then the

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HANGER, MR

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commission would be notifying those people precisely. I understand that has been done on one occasion. 1

COMMISSIONER: Again that might be the case, but it depends on the category of that person if we did do it. We would certainly do it if we didn't think anyone was looking after their interests and that they might want to get someone to do that for them or do it themselves, but if we thought somebody was looking after their interests and had statements and was aware of what was being said or likely to be said about that person, I think our basic assumption would be that the lawyers - that's what they are for - would do the contacting. In fact I think that's what we would have thought. 10

MR COPLEY: That's certainly the basis upon which I have worked because it's Mr Coyne that my learned friend is referring to and I proceeded - because of my understanding of the history of Mr Coyne's relationship with the Queensland government, I proceeded on the assumption that there was no way that Mr Coyne would have been happy to have the Crown Law Office act for him and in fact - - -

COMMISSIONER: That appeared to be right. 20

MR COPLEY: - - - that turned out to be the case. He was provided with 55 statements which were hand delivered to him and told, "Look, there may be matters in here that will upset you or concern you. Here they are. You might wish to discuss them with a lawyer," and, of course, he said he would discuss them with a particular lawyer and we understand he did and ultimately Mr Coyne didn't wish to have anyone here to represent him when any of those 55 people were called.

So that was the process I adopted for Mr Coyne because I understood clearly from nothing anybody had said but from just some commonsense that Mr Coyne wouldn't want the Crown Solicitor's Office acting for him, but I haven't followed that practice in relation to any other witness because I have been working on the assumption that Mr Hanger was looking after the interests of all former employees. 30

COMMISSIONER: Yes. Maybe we should tighten up our procedures between us so that nobody falls through the net.

MR COPLEY: Yes.

COMMISSIONER: I will leave that with you learned gentlemen. Can exhibit 300 be published, Mr Copley? 40

MR COPLEY: Yes, Mr Commissioner.

COMMISSIONER: Thank you. It will be published. We will have a break. You can have a chat. Mr Thomas, I gather, is the next witness.

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COPLEY, MR

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MR COPLEY: Yes, he is.

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COMMISSIONER: I will take him at quarter past 12.

MR COPLEY: Thank you.

COMMISSIONER: Thank you.

THE COMMISSION ADJOURNED AT 12.02 PM UNTIL 12.19 PM

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COPLEY, MR

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COMMISSIONER: Yes, Mr Copley? 1

MR COPLEY: Mr Commissioner, we've had some discussions but we've agreed to leave that matter in abeyance until we resume after lunch and then something more will be said about it, but in the meantime - - -

COMMISSIONER: All right. You've agreed to disagree then, have you?

MR HANGER: No, not really. 10

MR COPLEY: No, Mr Hanger says we've had fruitful settlement discussions, is the way he put it, in our context.

COMMISSIONER: Okay, a true mediator.

MR COPLEY: In the meantime he has agreed with me that there's no reason at all why we can't call the next witness. Mr Hanger is certainly acting for this witness, as he said, and there's no reason why we can't call him and start his evidence. 20

COMMISSIONER: Yes. I wonder if from now on we should adopt the practice - probably a bit late in the day, but of announcing appearances for each witness if they're going to change - no, it doesn't - - -

MR COPLEY: Well, I think perhaps if you start down that track you will provoke me into saying more about it and we'll end up in a discussion before lunch.

COMMISSIONER: I don't want to do that.

MR COPLEY: It would be better, I think, if we leave it till after lunch and we'll see - - - 30

COMMISSIONER: Okay.

MR HANGER: I think we can sort it out.

MR COPLEY: See what happens after lunch, Mr Commissioner.

COMMISSIONER: All right. Well, for the moment we'll follow the orthodoxy and we will work on the basis that Mr Thomas is ably represented by Mr Hanger. 40

MR COPLEY: Yes. I call Mr Barry Thomas.

THOMAS, BARRY JOSEPH sworn:

ASSOCIATE: For recording purposes, please state your full name and your occupation?---Barry Joseph Thomas. I'm the president of Queensland's Mental Health Review Tribunal.

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THOMAS, B.J. XN

Please be seated.

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COMMISSIONER: Good afternoon, Mr Thomas. Good to see you?---Good afternoon, Mr Commissioner.

MR COPLEY: Mr Commissioner, you know Mr Thomas.

COMMISSIONER: Yes.

MR COPLEY: You would know him from the fact that both you and he have been practising barristers for many years.

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COMMISSIONER: Him longer than me, obviously.

MR COPLEY: Yes, and you've had an association with him of a professional nature in various different ways over many years.

COMMISSIONER: Yes.

MR COPLEY: I'll just hand up to you, Mr Commissioner, a transcript of an interview that was conducted on 3 February 1997 between Mr Barry Thomas and yourself when you were one of the junior counsel assisting what is, I think, colloquially known as the Connolly-Ryan inquiry. I think Mr Hanger might have been senior counsel assisting that inquiry. This is a transcript that goes over two tapes concerning an interview that you had with Mr Thomas on that date and the only relevance of it to the present proceeding is to be found on pages 21 through to the end of it, and I've flagged where it starts at page 21 and invite you to have a look at it.

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COMMISSIONER: Okay.

MR COPLEY: Thank you.

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COMMISSIONER: Do you remember this, Mr Thomas?---Yes, Mr Commissioner.

Thank you. All right. Well, what do you want to do about that?

MR COPLEY: I think it's a matter that should be - that those with authority to appear should be made aware of.

COMMISSIONER: Yes, well, it should be disclosed. Previous conversations I've had with anybody, including Mr Thomas, about the Heiner - so-called Heiner affair, should be disclosed or available.

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MR COPLEY: Yes.

COMMISSIONER: But it looks like all that happened here was that I asked him if he had any involvement with Heiner right at the end of the interview and he said he was one of

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THOMAS, B.J. XN

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the first legal advisers involved in 1990 and then he left and passed it on to someone else and then it came back to him. I said, "Don't go into too much detail, but what was your brief, what was your role?" He said, "I was advising the director-general and I think you see my material mentioned in the Morris report," and that's it.

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MR COPLEY: Yes. So in my submission, if we could have a copy made of the entire interview and we'll have the pages from 21 - - -

COMMISSIONER: Well, preceding pages, are they innocuous now?

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MR COPLEY: My recollection is that there's nothing in there that's got anything to do with this inquiry at all in the preceding pages.

COMMISSIONER: Or what it does have to do with it's not going to embarrass anybody or isn't private or confidential or - - -

MR COPLEY: Perhaps, actually, I'd better go back. See, Mr Commissioner, that letter or that transcript came to light after I followed the procedure I the Crime and Misconduct Act to access records from the Connolly-Ryan inquiry.

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COMMISSIONER: Right, and they're the custodians of them.

MR COPLEY: No, they're not, the parliamentary commissioner for the Crime and Misconduct Committee is the custodian and he permitted me to have access to that on certain conditions.

COMMISSIONER: I see.

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MR COPLEY: So before giving it to anybody perhaps I'd better check the conditions on which he gave access to it, but my recollection certainly is that there's no impediment in it being revealed to everybody here that on that date you asked Mr Thomas some questions about the Heiner matter and he provided some answers, and that seems to be where the matter rested.

COMMISSIONER: Yes, and those questions and answers, they can be published subject to the conditions on which you got them.

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MR COPLEY: Yes.

COMMISSIONER: As to whether or not anything else needs to be or could be or should be - I don't see why they should unless it puts it in context.

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MR HANGER: Could I just remind you of this, that Thomas J 1
at the end of that inquiry ordered that the documents
be - - -

COMMISSIONER: Bound up and secreted away.

MR HANGER: - - - bound up and hidden - yes, secreted
away.

COMMISSIONER: Put in a nuclear - - -

MR HANGER: Yes. 10

MR COPLEY: That might be so, but legislation was then
passed - - -

MR HANGER: Yes, so that's - - -

MR COPLEY: - - - governing where they were to be kept and
who was to get access to them.

COMMISSIONER: So whoever has got them gave this to you.

MR COPLEY: He did, but I'm - - - 20

COMMISSIONER: Yes, and I think quite properly it should
be disclosed whatever conversation I've had with Mr Thomas
in the past about anything to do with Heiner.

MR COPLEY: Well, it's relevant from this point, that
those with authority to appear might wish to know about it
when they come to cross-examine Mr Thomas.

COMMISSIONER: Of course.

MR COPLEY: It just has another relevance, which is no 30
more than that it's just the sort of thing that should be
disclosed to those with authority to appear.

COMMISSIONER: Yes, and we'll disclose it.

MR COPLEY: Yes.

COMMISSIONER: But whether we disclose anything else I'll
leave it to you.

MR COPLEY: Okay, so I'll just ask - - -

COMMISSIONER: So as to the relevant passages dealing with 40
Heiner do you want it published now or do you want to think
about the conditions on which you got it?

MR COPLEY: I might just check the conditions on which I
got it over lunch.

COMMISSIONER: But somehow they will have to be published.

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THOMAS, B.J. XN

MR COPLEY: Yes. 1

COMMISSIONER: If the conditions don't currently allow it they will have to be changed.

MR COPLEY: Well, I'll have to write a letter if that's so, but I'll just check that over lunch as well.

COMMISSIONER: All right. Okay, but in the meantime no reason why we can't get going with Mr Thomas.

MR COPLEY: No, because I'll be a fair while with him before anyone needs to ask him any questions. 10

COMMISSIONER: Right.

MR COPLEY: Mr Thomas, prior to becoming the chairman - I think that was the expression you used---President.

President, sorry, of the Mental Health Review Tribunals, and perhaps even indeed whilst you were the president, you were also a member of the Queensland Bar?---Yes.

Are you still practising as a barrister?---No. No, the president is a full-time role. 20

Is it? Okay, sorry. Before you went to the private bar were you an employee of the Queensland government?---I was in the CJC for five years and before that I was in the Crown Law office.

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Okay; and you were employed in the Crown Law Office in the period certainly between December 1989 and April or May of 1990?---Yes, I think I finished at the end of May.

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In that period of time, whereabouts in the Crown Solicitor's Office, which is what the Crown Law Office is also known as, were you working?---I was a senior legal office in the appeals and advocacy branch.

Was there a deputy crown solicitor or a lawyer between you and the crown solicitor in that role that you were performing?---There was the deputy crown solicitor Conrad Lowe who was in charge of the appeals and advocacy branch and there was crown counsel Mr Dunphy who was around about that level between the deputy crown solicitor and the crown solicitor. Originally he was associated with the solicitor-general but that had all changed recently.

10

Now, the crown solicitor in December - in the periods that we're talking about was Mr Kenneth Michael O'Shea?---Yes.

And he is now dead?---Yes.

Now, what did the appeals and advocacy branch do?---When the director of prosecutions office was set up in 1984, much of the prosecution work that wasn't directly connected to criminal trials went across to appeals and advocacy so you had regulatory prosecutions under the Fisheries Act, workplace health and safety, things like that, Land Court appeals, workers' compensation appeals, coronial inquests, things of that nature, as well as appeals to the District Court and at that stage, I think, the Full Court.

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So it was primarily a unit set up to conduct appearance work in courts on behalf of the crown?---Yes.

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And that appearance work might have involved first-instance trials or hearings but also appeals arising from those matters to higher courts or tribunals?---Yes.

Did it also involve any advising work, opinion work?---Not a lot. There was a branch called "Advisory" that I had been in that did a lot of the advisory work. There would be obviously advice in relation to particular matters, whether they would support a complaint being laid and prosecution, but not as a general sense.

So, generally speaking, opinion work or work that required a legal opinion would go to the advisory branch, would it? ---Yes.

40

You can no doubt recall some of your involvement in providing advice to the crown solicitor regarding Mr Heiner's investigation, can't you?---Yes.

Was that involving, as it was, opinion work to the crown solicitor, something that ordinarily would have gone to the advisory branch?--Normally, yes, or to crown counsel. That was the first occasion I'd ever worked with the crown solicitor Ken O'Shea on a matter.

1

So you can't really enlighten us as to why this particular matter ended up at your door as opposed to anyone else's in the Crown Solicitor's Office?---I think that Barry Dunphy wasn't around. Crown Law was somewhat short of staff because some of its staff was still offline with the end of the Fitzgerald Inquiry and the start of the CJC. Some had been moved into the attorney-general's office, I think, with the change of government so it was one of those things where I was around and I got it.

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Okay; and it was fairly early in the year, wasn't it?
---Yes.

So did that have any impact on the number of people about?
---Well, as I say, I think Mr Dunphy might have been on Christmas leave or something like that.

All right. You have not provided a statement to the Commission of Inquiry, have you?---No.

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And you haven't been asked by the police to provide a statement, have you?---There were discussions about it, but I think time moved on and it didn't happen.

Eventually the view was taken that it would be easier for me just to call you as a witness and ask you questions here?---Yes.

I'm going to have to therefore show you a series of documents, some of which you may have seen before or indeed have written and we will just go through them one by one, if you don't mind?---Yes, Mr Copley.

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The first document that I want to show you is exhibit 110 which has effectively been photocopied about three times with varying degrees of success. So it's the same document really but there is about four pages of it. The question that I want to ask you is whether any of the writing in exhibit 110 is yours?---No, I have quite appalling writing.

That might clear up something shortly. Do you recognise the writing in exhibit 110 or any of it?---The initials at the bottom look like Ken O'Shea's. I'm not that familiar with his writing but I've certainly seen his initials at various times.

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All right; and on the second page of it there's a note dated 7/9/94. Do his initials appear under that note?
---Yes.

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THOMAS, B.J. XN

So we can be confident at least that this is a handwritten note that Mr Ken O'Shea initialled?---I believe so, yes.

1

All right. Now, your involvement with advising about the Heiner matter came about because Mr O'Shea asked you to be involved, didn't it?---Yes.

At the time Mr O'Shea asked you to be involved it stands to reason, doesn't it, that he must have had some communication from someone prior to that for him to know about the matter?---Yes.

10

Do you recall when it was that he first asked you to assist him with the advising about the Heiner investigation?---I believe it was 19 January that I spoke with him. I don't remember whether it was directly or by phone and it was a very brief, "Are you available next week? There's something happening that I want assistance on," and there's a letter that I've seen that nominates me or Conrad Lowe on that date.

Well, are you able to read Mr O'Shea's writing out there on exhibit 110?---First page:

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16/1/90 I rang Ruth Matchett back; in November 1989 inquiry John Oxley Youth Centre staff's complaints, QSSU -

Queensland State Service Union -

complaints; Noel Heiner retired SM; 13/11/89 brought terms of reference appointed by DG at the time by letter; question put to him whether he was having a sexual relationship with a member of the staff; POA up in arms. I advised her to write to Mr Heiner saying not clear on what basis he was appointed. Would he please advise.

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And then initialled Ken O'Shea.

Then on the next page from 1994?---"I discovered this today when I went through my diary file. No other papers on it relating to this matter," initials Ken O'Shea, 7/9/94 perhaps and then figures "0.03".

Thank you?---Then it looks like another copy of the first document.

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Yes?---Although one has got "02" on it and the other hasn't.

By that you're referring to a stamped number on the bottom right-hand side?---Page number, yes; page number at the bottom.

But the running writing, the handwriting, is the same, isn't it?---Yes, it appears to be. 1

And it reads as you have read it out from the first page of it?---Yes, and then the next page looks to be a photocopy of the document with what would have been a sticky note in the corner.

All right. Could you have a look at exhibit 115, please? Now, that's a letter from Ms Matchett to Mr O'Shea dated 18 January 1990. 10

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I take it from the answer you gave before that you did not see that letter on 18 January 1990?---No. 1

Did you ever see that letter in the days after 18 January 1990?---I think I've seen some of the attachments.

Right, and the - - -?---But I don't remember the first letter.

Okay?---Or the letter to the minister. At some stage I've seen the draft terms of reference or terms of reference. 10

Right. And what about the letter appointing Mr Heiner dated 13 November 1989? Have you seen that before?---I don't have any real memory of - I've seen it recently by looking at Crown Law documents, but I don't have any memory of seeing it before that.

So in preparation for giving evidence in these proceedings have you taken the step of perusing the Crown Law file relevant to this matter?---Yes.

Okay. And so there's a possibility that your recollection of what you saw and when you saw could be affected by what you might have seen in recent times?---Yes. 20

Is that what you're saying?---Yes.

Well, certainly the document makes no reference to you, does it?---No.

The letter from Ms Matchett. Okay. Could the witness see exhibit 116?---Thank you.

And you see that that's another letter dated 18 January 1990 to Mr O'Shea from Ms Matchett expressing gratitude for the opportunity to have a discussion on 17 January and attaching a draft copy of a letter to be sent to Mr Heiner together with the terms of reference. Did you see that letter from Ms Matchett in the days after 18 January 1990? ---I don't think so. 30

Okay. The next document I want to show you is a facsimile letter that was dated 18 January 1990, exhibit 117. You'll see that that is a letter to Ms Matchett from Mr O'Shea. There's more than one copy of it there. The question that I have for you is having regard to the date on it and the contents of it, did you play any part in assisting Mr O'Shea to compile that letter?---No. 40

In the days after 18 January 1990 when you came to assist Mr O'Shea with this matter did he give you a copy of that letter?---I believe he showed it to me on the Monday morning after the weekend. So the 19th was a Friday and

then the Monday was the 22nd. And he - I went up to his office and he showed me this and briefed me on a meeting that was about to occur that I was to attend.

1

Okay. Well, exhibit 213 would confirm that 19 January was indeed a Friday and the 22nd was indeed Monday. So we would tend to some (indistinct) there. So in this letter that you think Mr O'Shea showed you, Mr O'Shea canvassed, would you agree, three possible bases for the appointment of Mr Heiner to conduct his investigation?---Yes.

The first basis was under section 12 subsection (3) of the Public Service Management and Employment Act?---Mm'hm. Yes, that's correct.

10

The second was possibly under section 13 of that as a delegate?---That's so, yes.

And the third possibility was that Mr Heiner had been engaged under section 34 of the Public Service Management and Employment Act?---Yes.

And then on the third page of the letter Mr O'Shea summarised the matter that as long as there was an appropriate instrument of delegation in writing Mr Heiner could conduct his inquiry?---That's so.

20

And he then went on to consider what the ambit of his powers were, whether he had power to do something and power not to do something, and what the ambit of immunities or protections were, didn't he?---He did, yes.

And he thought it would be all right for Ms Matchett to send the draft letter to Mr Heiner asking him to explain how he was conducting the matter?---That is what's said there, yes.

30

Yes. Did Mr O'Shea explain to you why he canvassed in the letter Mr Heiner's powers and Mr Heiner's privileges and the privileges or lack thereof of witnesses in his inquiry? Did he explain to you why he canvassed that in this letter to Ms Matchett?---Not in that direct sense. It was more: there's been this situation; it's really unclear what happened; we're trying to sort out what has happened, what's the basis for it and where we can go from here.

Okay?---That it was becoming an issue in the Families department.

40

Now, I'll get you just to have a look at exhibit 122, please. This is a letter dated 19 January 1990 to Mr O'Shea from Ms Matchett enclosing copies of correspondence she'd received from Mr Coyne. The question that I wanted to ask you is: do you recall seeing that

letter from Ms Matchett on that date or in the days following when you were advising Mr O'Shea?---No. My memory is that the communications were more from Mr Coyne's solicitor than anything from Mr Coyne directly.

1

Okay. Well, I might go back a bit - - -?---I can't be absolute about - - -

About having seen that or not?---Yes.

I might just go back a bit. Could you have a look at exhibit 113, please. Now, this letter was sent before you were involved in the matter, but having regard to its content, if you'd like to read it, could you let me know whether or not you've seen that before?---Yes, I believe I have.

10

And I take it that you wouldn't have seen that letter from Mr Berry dated 17 January 1990 until after Mr O'Shea had asked you to assist him in advising on the matter?---Yes, that's correct. There was quite some delay in getting documents from Mr O'Shea.

Okay - to you?---Yes.

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If that could be returned and could the witness see exhibit 123.

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A letter the day that you first came into the matter but addressed to Mr O'Shea from Ms Matchett attaching correspondence you had received from Mr Heiner. Did you see that on the 19th or in the days following?---I think I saw it quite some time after the 19th. It does appear familiar, yes.

1

All right, that can be returned. Would you have a look, please, at exhibit 124? This letter actually contains a reference to both you and Mr Lowe at the end of it?---Yes.

Did you draft this letter for Mr O'Shea?---No.

10

Or assist him to compile it?---No.

But did Mr O'Shea give you a copy of it when he delegated to you the task of assisting?---No.

So have you seen it before today?---I've seen it recently.

Yes, but what about - - -?---And I think I would have seen it at some stage over the months that I was dealing with it, but perhaps I could explain.

20

Yes?---There was, I think, an advisory file that seems to have carried through from before my involvement to after my involvement and that's the one I've seen at Crown Law.

Right?---When I started in this Mr O'Shea showed me that letter of the 18th or 19th, whatever it was. I didn't get a copy of it. I went off to the meeting. At no stage did I get his file and ended up having to make an appeals and advocacy file, but that took some time for it to feed through the system, so some documents were coming to me and some were going to Mr O'Shea and we would discuss some, but I didn't get the file because he seemed to be involved in a number of other aspects to do with the matter.

30

So was that a practice of his in his office, that if he was personally required to advise some important person about a matter that his office, his secretary or he would open a file and keep it in the crown solicitor's personal filing area?---I don't know. That was the first time I'd ever worked with him in that close relationship.

All right?---Normally, before that, my reporting relationships, if they went up, would go to the solicitor-general.

40

Okay, and the solicitor-general in those days was and had been for many years a public servant barrister?---Yes.

The solicitor-general was the principal legal adviser to the government?---Yes.

Prior to, for example, the hiving off of the prosecution responsibility to the director of public prosecutions, the solicitor-general stood at the apex of the Crown Law office that was managed by the crown solicitor and his deputies, didn't he?---Yes. The prosecutions and I think advisory would report to the solicitor-general and common law, conveyancing and constitution and legislation might have been the other - would report to the solicitor-general - to the crown solicitor, and then just in the months, I think, before this event, Mr Ken Mackenzie had been made a Supreme Court judge and the solicitor-general's role moved out to, I think, Mr Geoff Davies.

1

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Yes?---So the solicitor-general was then outside the public service structure.

So your first awareness that Mr O'Shea was involved in trying to advise Ms Matchett about this issue was not seeing a document like the letter of 19 January but rather Mr O'Shea telling you, "This is a matter that you're going to be assisting me with"?---Yes.

Apart from perhaps providing you with a copy of the solicitor's letter dated 17 January 1990, he didn't give you any of this other correspondence I've shown you now at that time?---No.

20

Thank you. After being told by Mr O'Shea on 19 January that you had to assist him, did you take steps to assist Mr O'Shea?---Not on the 19th, because it was very much, "Are you available for next week?" and there was no discussion of really what the issue was. Then on the Monday I think I was called in to him. He said that he had been on the phone and in the office for four hours or more over the weekend working on this.

30

Yes?---He showed me a letter, explained what was happening. I was off to the conference.

So that's Monday, 22 January?---Yes.

You went off to a conference with who?---Ruth Matchett and Ms Crook, I think.

Could I get you to have a look at exhibit 126, please? Is this a - pretty poor writing here. Is that your writing?---Yes, indeed.

40

Did you make all of the notes on exhibit 126?---Yes.

Could you read it to yourself first and then read out to us what it contains - and then tell us what it is and then read out to us the contents of it, please?---It's notes to remind me of topics touched on at a meeting. "R. Matchett, S. Crook, B. Thomas, 11 am, 22/1/90. 55," and that's 55 people at the service.

30/1/13

THOMAS, B.J. XN

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All right, just pause there and we'll perhaps do it, I think, topic by topic, if we can. So it records who was present, the time and date of the meeting?---Yes.

1

Then you got to 55 and you were going to tell us what that meant?---Yes. I was informed there were 55 staff at the John Oxley Youth Centre; next, "Facts. No recommendation", which is talking about what Mr Heiner was going to do; "Not satisfy any union or managers" - or "management"; off to the side, "Alan," which I take it is a reference to Alan Pettigrew. There's a bit of difficulty with the next one.

10

Meaning the words below the word "Alan"?---Yes. "Moved to it before left," something like that, and then, "No cabinet approval."

All right, so just pausing there, the information that's contained in what you've read out so far, who did that come from?---Either Ms Crook or Ms Matchett.

So after the words "No cabinet approval" which are over on the right-hand side of the document can you read to me the next line, please?---"New appointment".

20

Is that a shortened word, "appointment"?---Yes.

It's shortened to what?---A-p-p-t.

Yes, and then there's two lines that go off that A-p-p-t. One line goes up, one line goes down, doesn't it?---Yes. "Inside" - I can't quite make out the next two at the moment, and underneath that, "From outside? Second," as in secondment.

Do you know what that means now, "New appointment from outside? Second"?---Talking about starting a new inquiry, having a new person to do it either as a - someone from inside the department who could be directed to do it or someone seconded from outside the department.

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Now, was that a suggestion you made to Ms Matchett and Ms Crook or was it something that one or other of them, and if so, which one, said to you?---I think that would have come from me in a discussion because it follows on from the crown solicitor's letter.

1

Okay. Then the next line?---"Terms of reference" - and a line - "union", as in involving the union; "Heiner reply" - line - "indemnity"; "grievance" something.

Do you know what the significance of those were, "Heiner reply", "indemnity" and then underneath that "grievance" meant now?---Do a reply or about a reply to Mr Heiner obtaining an indemnity. I don't quite understand why "grievance" is attached to "Heiner".

10

COMMISSIONER: Mr Copley, when it's appropriate?---And then something "heartache".

MR COPLEY: Does it say "Much heartache"? I don't know.

COMMISSIONER: Whose writing is this? Is that Mr Thomas's writing?

20

MR COPLEY: Yes?---Yes.

We would have said it was otherwise. Leaving aside the word - - -?---Then "destroy files"; "reply to solicitors".

So "destroy files"; "reply to solicitors". What is the significance of the words "destroy files"?---It's a topic that was discussed.

Do you remember now who raised the destruction of the files and, if so, which files they were talking about?---I believe it was Ms Matchett talking about what came out of Heiner and wanting advice on whether destruction was appropriate.

30

Now, you don't there have any notation about why the files should be destroyed, but divorcing yourself from anything that you might have heard, read, seen or noticed in the last 22 or 3 years, are you able to remember back to that 11 o'clock meeting to remember if she gave you any reason or reasons for why she wanted to destroy the files?---It was a series of staff had complained essentially about Mr Coyne's overbearing nature and they would be - she didn't wish them to be - the situation to get worse by the possibility of, I suppose, what would now be called "victimisation of complainants" or something like that, but it - that certainly wasn't the words being used. It was that, "This is a bad situation. Let's not make it worse."

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All right. Would that be an appropriate time?

30012013 16 /CES(BRIS) (Carmody CMR)

COMMISSIONER: It could. All right. We will resume at
quarter past 2 today, I think.

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WITNESS WITHDREW

THE COMMISSION ADJOURNED AT 1.03 PM UNTIL 2.15 PM

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30/1/13

THOMAS, B.J. XN

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18-60

THE COMMISSION RESUMED AT 2.19 PM

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COMMISSIONER: Yes, Mr Hanger.

MR HANGER: May I deal with the matter we were dealing with before lunch?

COMMISSIONER: Sure.

MR HANGER: My instructions are as follows regarding legal representation of state public servants: any present or former state government employee called to be interviewed or to provide evidence before the commission are entitled to be represented by the state's legal team unless it appears there is a divergence of interests of the employee and the state, and there's a protocol in place in which they can apply for the state to fund separate legal representation.

10

Of course, the employee can choose not to avail themselves of legal representation by the state's legal team if they want to. This position presupposes that the state's legal team is made aware of those current or former employees called to give evidence. The state's legal team and have agreed on a protocol whereby the commission of inquiry staff will notify the state's legal team that the commission of inquiry has either make contact with an employee or proposes to make contact with a view to interviewing the person or calling them to give evidence.

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The state's legal team would then make contact with the current or former employee in question and confirm whether or not they wish to be represented by the state's legal team. So I think that satisfactory to all concerned.

30

COMMISSIONER: Mr Copley, is that how we've been operating? I mean, has any - - -

MR COPLEY: Yes, that's how we've been operating - - -

MR HANGER: That's correct.

MR COPLEY: - - - on the assumption that the state would, unless and until advised to the contrary.

COMMISSIONER: All right. So the question of other witnesses, who they want to represent them, if anybody, is a matter for the Crown and them if they're former or current Crown employees.

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MR HANGER: Yes.

COMMISSIONER: And their - the interests that may need protection of other people are matter for us.

30/1/13

HANGER, MR

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30012013 17/ADH (BRIS) (Carmody CMR)

MR HANGER: Yes. 1

COMMISSIONER: Okay. Is that about it?

MR COPLEY: I think so, yes.

COMMISSIONER: Let's proceed accordingly. Mr Woodford.

MR COPLEY: Just one further matter. I've checked the terms upon which Mr Favell - - -

COMMISSIONER: Yes. 10

MR COPLEY: - - - this material to me.

COMMISSIONER: He's the parliamentary Commissioner?

MR COPLEY: Yes. And it is quite in order for me to make available pages 22 and following from that interview with Mr Thomas from years ago. But just for the record and a copy to you, Mr Commissioner, and ask you to mark it for identification.

COMMISSIONER: Okay. Excellent. I'll mark the three pages of transcript of the record of interview between myself and Mr Thomas - - - 20

MR COPLEY: Dated - - -

COMMISSIONER: Back in the Connolly-Ryan days.

MR COPLEY: Well, I'll just give you the date, 3 February 1997.

COMMISSIONER: - - - on 3 February 1997 as MFI 8. 30

ADMITTED AND MARKED: "MFI 8"

MR COPLEY: Thank you.

COMMISSIONER: And order its publication.

MR COPLEY: Sorry?

COMMISSIONER: Am I ordering its publication?

MR COPLEY: Well, you're permitting me to disseminate a copy of MFI 8 to Mr Hanger, Mr Harris and Mr Bosscher. 40

COMMISSIONER: Limited to those people, thank you; and no republication.

MR COPLEY: In my submission, no, no need for it at the moment.

30/1/13

COPLEY, MR

COMMISSIONER: Okay. If anybody thinks there is they'll let me know. Yes. Now, Mr Woodford. 1

MR WOODFORD: Yes. May we interpose a very brief witness?

COMMISSIONER: Sure.

MR WOODFORD: I call Trudy Notley.

NOTLEY, TRUDY affirmed:

ASSOCIATE: For recording purposes please state your full name and your occupation?---Trudy Notley; business owner. 10

COMMISSIONER: Good afternoon, Ms Notley. Welcome. Yes, Mr Woodford.

MR WOODFORD: May Ms Notley see the two-page document that she supplied to this commission of inquiry?---Yes, sorry.

Mrs Notley, I've had placed in front of you there a two-page document. Could you just confirm for us that that's the statement that you've supplied to this commission of inquiry?---Yes, it is. 20

A few brief questions for you this afternoon. From your statement is it correct that you worked at the John Oxley Youth Centre for about 12 months?---Yes.

Thereabouts?---Thereabouts, yes. It's a long time ago.

It was in around 1988, 1989?---Yes, I would have said, because I went overseas in 1990, so it was prior to that.

Your role was mainly to do with the alarms. Is that correct?---That's correct. 30

And monitoring those alarms?---That's correct.

You've seen the statement that you've supplied to the commission. You've supplied no other statement or evidence in relation to events at the John Oxley Youth Centre before?---Not that I have any recollection no, no.

During your time at the John Oxley Youth Centre you were never aware of any incidents of sexual abuse, were you - I'm referring to paragraph 7 -is that correct?---That is correct. 40

Yes, thank you. I don't have any further questions, Mr Commissioner.

COMMISSIONER: Okay. Yes, Mr Hanger.

MR HANGER: No questions. 1

MR HARRIS: No questions from us.

MR BOSSCHER: No, thank you, Mr Commissioner.

COMMISSIONER: Mr Bosscher, Mr Woodford.

MR WOODFORD: May Ms Notley be excused, please.

COMMISSIONER: Yes. Ms Notley, thank you very much for giving your evidence. We appreciate the inconvenience. You're formally excused from the terms of your summons. Thank you?---Thank you, Mr Commissioner. 10

WITNESS WITHDREW

COMMISSIONER: Yes, Mr Woodford. Has that been given a number?

MR WOODFORD: No, not yet. I'll tender that.

MR COPLEY: It was tendered months ago. 20

COMMISSIONER: What about - exhibit 39 can be published?

MR WOODFORD: Yes.

COMMISSIONER: I'll order exhibit 39 be published.

MR WOODFORD: Yes. Just if I could take you to paragraph 4 there, it just identifies one of the children detained.

COMMISSIONER: All right. I'll have exhibit 39 published without the name mentioned in paragraph 4. 30

MR WOODFORD: Thank you.

MR COPLEY: I recall Mr Thomas.

COMMISSIONER: Thank you.

THOMAS, BARRY JOSEPH on former oath:

MR COPLEY: Mr Thomas, during the lunch adjournment did you think further about some of the indecipherable or undecipherable words that you had been confronted with before lunch?---Yes, there was one word before the word heartache believe it is "members heartache". 40

All right. And so you're referring to exhibit 126 where you read out the word, "Heiner grievance something heartache," and you now think, upon thinking about it, that what you might have been writing was, "Heiner grievance members heartache"?---Yes.

30/1/13

THOMAS, B.J. XN

"Member heartache." All right, thank you. Now, I'd like you to look at exhibit 128, please. This is a document that's dated 23 January 1990 and it bears in your signature, doesn't it?---Yes, it does. 1

And in that document, Mr Thomas, you record in the first paragraph that you have already provided advice to the acting director general. That is a reference to the Crown Solicitor having provided some advice to her, isn't it? ---Yes, this is a memorandum to the Crown Solicitor.

Yes. And then in the second paragraph you state that on 22 January 1990 you had a meeting with her and Ms Crook and there were further discussions concerning the matter? 10
---That's so.

So this document must have been drafted sometime after that meeting and prior to - well, it must have been drafted on either 22 or 23 January 1990. Do you agree?---Yes.

Do you recall when you started the document?---Returned from the meeting; I had a meeting Mr O'Shea to discuss the information; he asked me to prepare a memorandum that could also be the basis for a letter going back to Ms Matchett. 20

So was it your understanding from that that Mr O'Shea was going to place reliance to a fair extent on your view of the fact and the law in settling the advice he was going to give to Ms Matchett?---Yes. I mean, we discussed the law and the options before I went and drafted this.

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40

All right. Well, it will take a little bit of time but it might be worth us going through it almost paragraph by paragraph, if you don't mind. You state in that second paragraph, "It appears that there is the prospect of a strike should this issue not be resolved speedily." Where did you derive that information from?---I think that was Ms Matchett. 1

Then you state in the next paragraph, "At the meeting I was informed that approximately 55 people are employed at the youth centre." Now, in exhibit 126 you had recorded the number 55 there?---Yes. 10

So that would presumably be something Ms Matchett had told you at that meeting?---She may have or she may have referred that sort of detail to Ms Crook.

Ms Crook to tell you?---Yes.

Right. Then you go on to state, "About 35 of those people had been interviewed by Mr Heiner." Where did you derive that understanding from?---I think that would've all been in that one conversation about how many people worked there, how many people Heiner had spoken to, so it may have been interplay between both of them for that. 20

So it wasn't information Mr O'Shea gave you, for example? ---No, no, it was out of the conversation or out of the conference.

Then you state:

It appears that he may have tape-recorded most of these interviews and there are other documents he has collected in relation to the matter. He supplied all of the material he has collected in a sealed envelope to Ms Matchett. 30

Is that information that you derived from either Ms Matchett or Ms Crook?---Yes.

Not from Mr O'Shea?---No.

Did Ms Matchett or Ms Crook provide you with that sealed envelope at the meeting on 22 January?---No, I never saw any of that material either in an envelope or in any other form. 40

So it wasn't as if they had it present in the room and pointed to it or held it up or anything of that nature? ---No.

Okay. Now, in the next paragraph you state that you were informed that Mr Heiner did not purport to exercise any powers whilst conducting the inquiry, that he did not

compel any person to attend or answer questions. Where did you derive that understanding from?---Again in the conversation with I think mostly Ms Matchett, but there may have been occasional bits of information interposed by Ms Crook.

1

Then you go on to state that it appeared that Mr Heiner approached his task on the basis that the first ground in his term of reference - and I'm paraphrasing here - governed or informed all the other grounds in his term of reference. Is that a fair summation of the sentences there?---Yes.

10

And that he viewed the inquiry as an inquiry into grievances by the staff and that he intended to make findings of fact but not recommendations in his report? ---Yes, that was the information.

Now, where did you derive those pieces of information from? ---In conversation and most of that would have come from Ms Matchett.

Does that paragraph there partly explain something in exhibit 126 where you have written "Fact - no recommend"? ---Yes.

20

You then go on to state:

That point of view -

meaning Mr Heiner's -

did not seem to accord with the view held by the union who had provided the various complaints, more as symptoms of the problems of management than individual matters to be investigated and adjudicated upon.

30

Again, where did you derive that information from?---In the same conversation with Ms Matchett and Ms Crook and the majority of it would've been from Ms Matchett.

And you state:

The current attitude of Ms Matchett is that this issue is a management problem rather than one of grievances.

Is that information you got from Ms Matchett again?---Yes.

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Then you say:

And therefore it would seem that the inquiry Mr Heiner was conducting has not addressed the needs or desires of any of the parties who appear to be affected by it.

Now, concentrating on that phrase there from "therefore" onwards, was that a conclusion of fact that you had reached or was that a conclusion of fact that Ms Matchett had reached and passed on to you? Do you remember which?---I think it's my conclusion of fact from what she said.

1

Okay. Then in the next paragraph you remind Mr O'Shea about the letter from Mr Heiner dated 19 January and then in the paragraph after that you tell Mr O'Shea that Ms Matchett's preferred option presently was that the inquiry not continue and that another totally independent inquiry be instigated?---That's information from her.

10

Indeed, does that find expression in exhibit 126 in the words "new appt" and the speculation about an inside or an outside inquiry?---Yes.

Thank you. Is that why you then wrote:

She has yet to decide whether this would be an officer from within the department or perhaps another officer seconded to the department or even through the use of an outside consultant familiar with the area?

20

---Yes.

So at the time you wrote this memorandum to Mr O'Shea, would you say that that was very much a live issue for Ms Matchett about the possibility of there being a second inquiry, the format of which and the form of which was yet to be determined?---Yes.

You then state, "Should there be a new inquiry, new terms of reference would be drawn up and the union may well be consulted in relation to that." Was that a conclusion you reached or was that something Ms Matchett had said?---No, it was something she said and I think there may be something in my notes that - - -

30

I will give you back 126. I will give you back exhibit 126. I probably should have let you have it off here, but if you can find something in those notes that supports that, please direct us to it?---Yes, "Terms of reference", line, "union".

I see, and that's above the words "Heiner reply"?---Yes.

Right, thank you. Now, you then state that Ms Matchett desires speedy advice upon two issues: first, whether the inquiry can or should continue - three issues, rather: first, whether the inquiry can or should continue, secondly, a reply to Mr Heiner regarding what further action he is to take and then, thirdly, what to do with the material supplied from Mr Heiner and, sorry, fourthly, a reply to the solicitor for Mr Coyne and Mrs Dutney?---Yes.

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30/1/13

THOMAS, B.J. XN

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Now, certainly the desire for advice regarding a reply for Mr Heiner finds some expression in exhibit 126, doesn't it, where you have written "Heiner reply"?---Yes. 1

Advice regarding what to do with the material, would you agree finds some expression in the notation "destroy files"?---Yes.

And a reply to the solicitors finds expression in the last line of exhibit 126 of "reply solicitors"?---Yes.

Now, the next paragraph records, amongst other things, that you tried to contact Mr Pettigrew but had not been successful in doing so. Can I ask you this: did you ask Ms Matchett or Ms Crook whether they had had any discussions with Mr Pettigrew with a view to finding out what action he had taken and why he had taken it? Do you remember?---I think the note in the top right-hand corner is about that, "Alan" - so they had some information from him but - - - 10

But you can't make out now what it is?---Well, the next line I can't make out and then "No cabinet approval". 20

Okay. You said, "I have tried to contact Mr Pettigrew"? ---Yes.

Is there a reason why you would have as a solicitor asked to advise - would have tried to get in touch with that gentleman yourself as opposed to, for example, just saying, "Have you ladies talked to this man or not?" Is there any reason why you took the initiative there to try to contact him?---To move things along quickly. I would normally ask them to organise that as well, but perhaps the - I'm not clear whether they were unable to assist me or they were doing their things and there was a state government switch that you could basically ring up and get any public servant's phone number. 30

40

Okay, but in any event, you certainly did not prior to finishing this memo speak with Mr Pettigrew?--No. 1

Just jumping forward, at any time in the days and weeks that followed did you ever speak with Mr Pettigrew?---I don't think so. I think I drew a conclusion of where he'd been sent.

You drew a conclusion from where he had been sent. Where did you understand he had been sent?---There was a place nicknamed "the orphanage" where D-Gs who had been displaced after the change of government were sent and given no work. 10

What conclusion did you draw from the fact that you understood Mr Pettigrew had been sent to the orphanage? ---That he was relatively - well, he was given no work and relatively inaccessible.

I see, okay. You went on to state - - -

COMMISSIONER: He wasn't coming back.

MR COPLEY: You stated in that sentence that not only had you tried to contact Mr Pettigrew but you had contacted the department who was unable to supply information additional to that contained in the documents that had already been supplied?---Yes. 20

Were you there referring to the documents that had already been supplied to Mr O'Shea or to some documents that had already been supplied to you?---No, to documents that went to Mr O'Shea.

Thank you. You then turned in the next paragraph down to the last big paragraph on page 3 to canvass the basis upon which Mr Heiner had been appointed?---Yes. 30

It seems as though to do that you considered and put to one side or brought into play various provisions of the Public Service Management and Employment Act. May I ask you this, was it necessary to speculate about and wonder about whether it was this provision or that provision because you could not get any information from anyone as to what provision had in fact been used?---Yes, at that stage there was no knowledge within the currently accessible D-G or other people as to how it occurred and there was no access to the person who had done it so I had to look for where the lawful authority was, knowing that it hadn't come from cabinet as a commission of inquiry. 40

Right, but can I just ask you that? You might be able to help us out on this. You say, "Knowing that it hadn't come from cabinet." What power did you have in mind that cabinet could employ to establish or to constitute an inquiry like Mr Heiner's which wasn't one done under the

Commissions of Inquiry Act because there was no order in council about saying that it had been done under that act? What power of cabinet did you have in mind that might have authorised it?---It's feeding back to there was no commission of inquiry.

1

I see?---That was as much as we knew, that cabinet hadn't approved a commission of inquiry.

Because was it your understanding that if cabinet had approved a commission of inquiry someone would have been able to produce to you an order in council promulgating the establishment of such an inquiry?---Yes, there would have been a much clearer record trail.

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COMMISSIONER: Well, it would have been in the gazette? ---That too.

MR COPLEY: Yes. So anyway, your conclusion on page 3 in the last big paragraph that starts "In summary" was that Mr Heiner was probably and could have been lawfully appointed pursuant to section 12 of the Public Service Management and Employment Act?---Yes.

20

Now, of course, the consequence of that is, would you agree, that if that was the provision pursuant to which Mr Heiner was acting then in law Mr Heiner didn't have the power to compel anybody to appear before him and answer questions?---That's so.

Similarly, anybody who did appear before him and answer questions, and he himself in preparing a report, whatever other protections he and those people might have had under some law, be it common law or statute, they certainly didn't have the protection provided for in the Commissions of Inquiry Act?---That's so.

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You then go on to state in that paragraph:

It would appear that the services that he was providing or may provide were no longer in keeping with the wishes of the chief executive and in fact there might well have been a misunderstanding underlying the basic inquiry from its very inception.

Now, I'd like you just to focus on that part of your sentence, that there may well have been a misunderstanding underlying the inquiry from its very inception, and ask you what it was that you had in mind or were alluding to in that sentence to Mr O'Shea?---The comments from Ms Matchett that she saw that as a management issue, that they were looking at the management of the whole John Oxley Youth Centre, whereas Mr Heiner appeared to be seeing the first of his terms of reference as encompassing everything else

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and really a concentration on complaints against Mr Coyne. So he wasn't going to make findings of fact, he was just going to gather evidence and say, "I find (a), (b), (c)," which wasn't going to solve the management issue that was developing at the centre.

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You then said in this letter to Mr O'Shea in that paragraph that therefore your view was that the most appropriate course was to tell Mr Heiner that the chief executive didn't wish him to carry the investigation on any longer and that his services were terminated?---Yes.

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Okay, and although it would be possible to redraft his term of reference, you didn't believe that would be appropriate given the delicate state of affairs. By redrafting did you have in mind in which direction or in what manner the terms of reference would be redrafted? Did you have in mind redrafting them to suit the purposes that - - -?
---Ms Matchett - - -

- - - Ms Matchett had?---The people who engaged him - well, sorry, not engaged him, but were going to receive the report, wanted one that was useful to the issues that they felt needed to be addressed.

20

So you contemplated the idea of redirecting Mr Heiner's attention down a different path. You contemplated it but rejected it as being a satisfactory solution?---Yes.

You said that naturally as some of the material that Mr Heiner had received was of a defamatory nature he, Mr Heiner, was concerned about his legal position and you thought it reasonable that an approach be made to cabinet seeking an indemnity to cover any legal costs that Mr Heiner might later confront. Now, where did you derive the understanding that there was material that he had gathered that was defamatory?---Really, I suppose, from the fact that complaints were made against Mr Coyne and he had interviewed those complaints, so that one can assume that they were imputations against him.

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Right?---Whether they were ultimately found to be justified or not, in the scope of what you have to consider defamation is the most obvious one facing them.

Because you didn't see the complaints that had been made about Mr Coyne, did you?---No.

40

Then you, I suppose, speculated about the prospects of Mr Heiner ever actually being the subject of legal action?
---Yes.

You talked about the possibility that there would be a qualified privilege available to Mr Heiner should he be sued for defamation?---Yes.

The next paragraph deals with the fate of the documents, doesn't it?---It does. 1

You distinguish there between the documents that were originally in the possession of the department and those which Mr Heiner had created?---That's so.

What was the significance of the distinction between the two sources of documents to you?---Well, the material in the department's hands is more likely to be departmental records about John Oxley, things of that nature. The material that Mr Heiner himself collected - he was effectively a consultant and what he collected at that point were, in my view, equivalent to his working notes. He was being retained to deliver a report, not to gather a box full of material to deliver to somebody. 10

Right?---So what he did with his working notes was really up to him. It was not what he was retained for.

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You said, "If the inquiry was ended, the new documents become unnecessary." Do you mean to say that the documents that Mr Heiner had created?---Yes. 1

And you said "may well contain defamatory matter". Now, is that a reference back to a supposition or an assumption you made that if he was investigating people's complaints about another person, they might contain statements adverse to the person those people were complaining about?---Indeed.

You said, "As no legal action has been commenced concerning these documents, I believed the safest course would be the immediate destruction of them." Now, your understanding that no legal action had been commenced by the documents - where did you derive that understanding from?---The meeting with Ms Matchett and Ms Crook. 10

But by that time you had seen exhibit 113 which was the letter dated 17 January 1990 from Ian Berry to Ms Matchett calling on her to take steps to ensure that natural justice was accorded to both Mr Coyne and Ms Dutney, hadn't you? ---Could I see that one again?

Sure, sure, if you could have a look at exhibit - I will just check. I'm sure it's 113. 20

COMMISSIONER: Yes.

MR COPLEY: Yes, it was, I'm told. Perhaps to make it a little clearer as to where I'm going, I'm really perhaps alluding to the contents of the two paragraphs that appear on page 4 of your advice to Mr O'Shea which are the fourth-last and third-last paragraphs on page 4?---Yes; yes, I had seen this letter.

Right. I suggest to you that a reading of your memo to Mr O'Shea those paragraphs - fourth and third-last paragraphs on page 4 would suggest that you didn't regard the letter of 17 January as a commencement of legal action or relevantly - rather as a threat to commence any relevant legal action in the circumstances. Is that a fair summation of the position?---Yes; yes, the process was in relation to a continuing inquiry. If the inquiry was stopped, then the writ of prohibition has no relevance because it is to do that very purpose, stop the inquiry until something proceeds. 30

All right. You hang onto exhibit 113 for the moment. It might raise its head again. Getting back to that paragraph on page 4, the second one, are the words, "As no legal action has been commenced, I believed the safest course would be the immediate destruction of those documents to ensure confidentiality and to overcome any claim of bias if such documents somehow became available to any new investigation"?---Yes. 40

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THOMAS, B.J. XN

Now, in connection with "to ensure confidentiality", in whose interests did you believe it was necessary to ensure confidentiality?--The workers who had given information in good faith; that there was the potential for, I suppose, retaliation towards them if that information got out to Mr Coyne, yes.

1

You say "to overcome any claim of bias if the documents somehow became available to a new investigation". What did you have in mind there?---Well, you'd be placing material before a new investigator that hadn't been subject to the processes of natural justice. The information hadn't been tested or the propositions been put to Mr Coyne so that - you've already stopped one inquiry because it's gone off the tracks and then to carry that information forward stands the chance of polluting anything else.

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That you put in in its place?---Yes.

So you would have regarded the possibility that a new inquirer had - I will start again. The possibility that a new inquisitor might start work with the suspicion that he has had access to the material generated by Mr Heiner was an unsatisfactory possibility as far as you were concerned? ---Yes, it would undermine the credibility of a new inquiry and potentially give people an apprehension that it started from a biased basis.

20

In the next paragraph you speak about how Mr Heiner might feel and you speak about what he could be told. We needn't perhaps delay on that. Then you state perhaps what you have already explained to me here that ending the inquiry immediately and destruction of the material wouldn't be improper from the point of view of the interests of Mr Coyne and Ms Dutney because the inquiry had therefore been ended?---Yes.

30

And you say, "I believe the solicitors should be advised that the inquiry has been terminated and the material collected at the inquiry has been destroyed." Why did you think it proper that the solicitor be advised not only the inquiry had been ended but that the material had been destroyed?---So that any concerns that Mr Coyne or Ms Dutney had that this potentially negative information was floating around or could be used in career decisions for them, whatever it was, could be put to rest. They could know that it had been heard by Mr Heiner, sealed by Mr Heiner and destroyed so it didn't have any cogency or ability to further affect them.

40

Okay, thank you. You then canvassed another option which was that Mr Berry be told that the inquiry had been ended but that the material would be destroyed, you say, within a limited time. Do you mean by that that it would be destroyed by a certain date in the future?---Yes.

But you said you didn't favour that because it could only generate further problems in an already confused situation. What problems did you foresee the flagging of destruction but not to occur for a week or two or a month or days? ---Then you may well find that the people who had given the information had concerns. There was talk about industrial problems. There would be a loss of faith by the employees in the system. Morale had already been compromised so the chance that the whole situation would become inflamed was much higher by people saying, "Oh, there's this sitting over there and you've all got a chance to try and get at it for a while."

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Okay. You then talk about the wisdom or otherwise of the new appointment and who that new appointee might be in terms of whether he would be an officer internal to the department or a person outside the department. You then speak about the terms of reference for a new inquiry but you don't develop any further those thoughts?---No. I didn't have anything like enough information to deal with it and it didn't seem the right time to be dealing with it anyway. That was the next step in the problem, if I can call it that.

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You said to Mr O'Shea that you had drafted some letters to Mr Heiner, Ms Matchett and Mr Berry which I assume were letters consistent with the advice that you'd given to Mr O'Shea all the way through in this document?---Yes. 1

Was that a normal thing for the crown solicitor's office to do, to not only advise these government people about what they could or couldn't do but to actually draft for them a letter that reflected the advice that you were giving?---It wasn't usual for me to do in my area. As I said, this was the first time I'd worked with Mr O'Shea and he asked me to do it in the process of doing it. 10

I see. So that was a requirement Mr O'Shea imposed upon you, to actually have a go at doing a letter for them that they could perhaps use themselves?---Well, it wouldn't be unusual for people to prepare things for the crown solicitor. He didn't - - -

Okay?---For all his - if I can call it, day-to-day work, at this level.

We see then two handwritten notes on there. One would seem to be signed by you. Agreed?---That's so. 20

All right. The shorter one addressed to you was signed by?---Mr O'Shea.

So which note came first, the handwritten note from you or the handwritten note from Mr O'Shea?---The one from me.

Because it's in handwriting and so we don't have a debate in a few weeks' time about what it means, could you please read it into the record - what it actually reads, rather? ---Thank you. "BC crown solicitor." 30

What does that mean, "BC"?---"Brief communication."

Because it could also mean "blind copy" but that wouldn't make sense, would it?---No.

Okay?---We didn't have email then.

That's true.

COMMISSIONER: Didn't you use "BC" and "CC" back in the days when you had typewriters?---Yes, but "BC" I think was "brief communication" and "CC" was - - - 40

I thought "BC" was "blind copy" and "CC" was "closed copy."

MR COPLEY: I thought "CC" was "carbon copy."

COMMISSIONER: Okay?---Yes, so did I.

Well, there you go. I'll defer - - -

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MR COPLEY: So "BC" meant "brief communication" to the crown solicitor, and read out what you wrote there, please, Mr Thomas?

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---Re our discussion concerning the Libraries and Archives Act. I have examined the legislation and am of the opinion that it contains no prohibition on destruction of any tapes, transcripts or documents created by Mr Heiner as part of his investigation. If he had progressed to submitting a report, that would be a "public record", but I do not believe his working papers, no matter how comprehensive, fall within the meaning of "public record" in section 5 subsection (2) of the act.

10

Signed B. Thomas, 23/1/90.

Okay, and then he wrote to you on the same date, and what did he say?---"Mr Thomas, I agree generally with your views. Proceed as discussed."

So did, "Proceed as discussed" - "discussed" with a D - mean that he wanted you to then draft a letter from him to go to Ms Matchett, because I'd suggest to you there's nothing else for you to do. You've given him the advice? ---No, I had already drafted the letter.

20

Had you? Okay?---You will see in the last paragraph. So we had a discussion when I got back from the meeting.

Yes?---We I suppose generally formed the view that he thought would be acceptable in terms of his input and my input, the only difference being I had suggested returning the documents to Mr Heiner, but he didn't favour that view. So the opinion was done and the letters drafted on the basis of that and then he ultimately looked at the letters and was either happy with them or changed them to whatever extent he wanted.

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Now, because these handwritten notes are on this document which is otherwise typed, can we take it that when you presented Mr O'Shea with the typed memo some discussion arose between the two of you about the possible application of the Libraries and Archives Act?---Yes, I think there had been a - in the process of this getting typed up, which would have started on the Monday afternoon and then gone into the Tuesday, I think I got either another meeting or a phone call with Ruth Matchett which related to the Libraries and Archives Act.

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So are you therefore saying that the possible application of the Libraries and Archives Act was a matter that she had raised for your consideration?---Yes.

Rather than either you or Mr O'Shea raising it with each other?---She raised it with me.

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Yes?---I'm not certain whether it was the first or second meeting. My memory was there was only one meeting, but when I looked at the notes there seems to have been two. 1

Anyway, to cut a long story short there, you had a look at the legislation and your view at that time was that the material gathered by Mr Heiner did not fall within the ambit of that act because it wasn't in your view a public record?---That's so.

Mr O'Shea, perhaps, wasn't going to be nailed down to any definitive view that day, because he said, "I agree generally with your views. Proceed as discussed"?---Yes. 10

So now would you have a look at exhibit 129, please, and its attachments? This is a letter dated 23 January and there are two versions of this, Mr Thomas. There's one that has an initial under Mr O'Shea's signature block and then there's another - - -?---That's my initials.

- - - poorer photocopy of it later in the exhibit that actually has a signature K.M. O'Shea, or it could even be somebody has signed it for K.M. O'Shea?---That's me. 20

That's you?---That's my writing.

Now, your name is on the top left-hand corner under "Reference", isn't it?---Yes.

The initials "BJT" means "Barry John - - -"?---Joseph Thomas.

"Joseph Thomas", and "LJP" perhaps means the typist, does it?---That's the process that was in place at that time, yes. 30

Because when you wrote your advice to Mr O'Shea did you write it out in longhand on pen and paper?---No, I think I would have dictated - - -

Dictated, all right, and therefore the typist - - -?---My writing is too hard for people to read.

Okay, so therefore the typist would have had to type up from a tape?---Yes.

So this letter that Mr O'Shea - that you may have signed for Mr O'Shea: did you draft this letter?---Yes. 40

Is it fair to say that this letter is effectively a reproduction of your advice to Mr O'Shea but devoid of the musings about possibilities and contingencies?---Yes.

All right, so you tell Ms Matchett that in your view - or in Mr O'Shea - it was the view of you and Mr O'Shea that Mr Heiner was lawfully appointed under section 12 of the Public Service Management and Employment Act?---Yes.

1

That was firmly your view?---Yes.

Did you ever, in any subsequent conversations with her, retreat from that or say, "Look, I put that in the letter but I'm not really 100 per cent sure on that"?---No.

That was a view you firmly held?---Yes.

10

Okay, fair enough. You then canvass with her the possibility that the Children's Services Act or the Family and Youth Services Act might have justified the appointment, but they didn't?---That's so.

You then said that there was no legal impediment to the continuation of the inquiry but there were other considerations which arose which may well cause her to conclude that no useful purpose would be served by continuing the inquiry?---That's so.

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Can I suggest to you - and you then go on to talk about what those things might be in the next paragraph. You know, you say there, "And the whole matter seems to have gone astray"?---Yes.

Can I suggest to you that you were doing two things there: you advised her that legally there was no impediment to continuation, but then you rather trespassed into an area that wasn't really a legal matter, that was perhaps more a policy or a practical matter? Would you concede that? ---Yes.

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Because you could have legitimately just said, "Well, there's no legal impediment to the continuation of the inquiry, full stop." What did you - do you agree? You nodded?---Yes, yes, I did.

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Why did you proffer in the paragraphs that followed, policy reasons or practical reasons why she mightn't wish to continue an inquiry that lawfully could continue?---I suppose because of the other questions that she wanted advice on, they linked through, if I can call it that, that giving legal advice on whether the - yes, the inquiry has been lawfully constituted, then to me and it seemed that you would say: well, even though it is lawful, other considerations that arise that you want to change it, so I trespassed into that policy area to transition across to the other considerations.

1

Okay. In the next paragraph at the top of page 2 you observe that it was natural for Mr Heiner to be concerned about the risk of legal action and that it was appropriate that cabinet be approached to see if they would effectively indemnify him?---Yes.

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Or indemnify his costs should he be the subject of legal action?---Mm'hm.

Okay?---That's so.

Was there anything so far as you were concerned innovative or novel in your view that cabinet be approached to indemnify him for costs?---No, it was, I suppose, standard for all public servants to be indemnified their work, and he had been working on behalf of the public service.

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Okay. In the next paragraph you state that:

Mr Heiner's informants had no statutory immunity from suit or action for defamation but that they might have a qualifying privilege?

---Yes.

30

Can you explain to us what in your mind at that time was the difference between an immunity and a qualified privilege?---Well, for a commission of inquiry then a witness at a commission, their statements can't be used against them to launch any action against them for what they said in the inquiry except for contempt. So they're immune from action on the basis of the information they gave the commission of inquiry.

Yes?---In relation to Mr Heiner, who didn't have that protection, people could still start an action such as a defamation because they had made imputations against them, but there are provisions in the Criminal Code at that time for fair comment or for qualified privilege that they were making a statement about something that was affecting them and they were reporting that to protect their interests. So that's a qualified privilege which then can relieve the informant.

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THOMAS, B.J. XN

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COMMISSIONER: Was this - - -?---So they can be sued but they won't - they will have a defence. 1

So before they had protection, and then secondly they had defence. This is before whistle-blower legislation, presumably?---Yes, about four years before.

MR COPLEY: So to put it into layman's terms, an immunity would be effective to basically plead to knock an action out right from the very start?---Yes.

Whereas a privilege or a qualified privilege was something that a person could deploy to avoid civil responsibility in a defamation action at the appropriate stage as the action unfolded?---Yes, you have to go through the pain of the action to avoid it at the end. 10

All right. Okay. You then said in the letter that:

Some of the material might be defamatory but that material was now in her hands, and that if she decided to discontinue the inquiry you would recommend that as that material related to an inquiry that had no further purpose, the material should be destroyed to remove any doubt in the minds of persons concerned that it remains accessible or could possibly affect any future deliberations concerning the management of the centre or the treatment of any staff at the centre. 20

So is it to be summarised this way: that in your view, the material should be destroyed so that the providers of it need not be concerned about where it might end up?---In part.

That in part it not be available to taint any subsequent investigation that was launched?---Yes. 30

And in part that it alleviate the concerns of Mr Coyne and Ms Dutney, who'd never seen it, that it might be left floating around on the government file somewhere to be deployed against the Indies months or years down the track?---Yes.

Okay. You then said:

You didn't see any difficulty in destruction of the material supplied to Mr Heiner but that naturally any material removed from official files should be returned thereto, but that the tape recordings of interviews and the notes or drafts made by Mr Heiner should be destroyed? 40

---Yes.

So again you were distinguishing between material that the government or someone in government had given to Mr Heiner in the first place and the material he gathered?---Yes. 1

Okay. You state this, that, "This advice is predicated on" - that means it proceeds on - it proceeds on or is based on, doesn't it?---Yes.

Two things: the fact that no legal action had been commenced which required the production of the files; and secondly, that you decided to discontinue the inquiry. So dealing with the first one second - sorry, dealing with the second one first - - -?---Yes. 10

- - - why was the advice predicated on the assumption that she was going to discontinue the inquiry?---Well, if you didn't discontinue the inquiry you wouldn't destroy the records of that inquiry while the person still had to report.

Okay. And why was the advice predicated on a consideration that no legal action had been commenced which required disclosure of the material? What would have been the significance, in other words, of a legal action having been commenced in terms of the advice you were giving about destruction?---For a pending action then the documents have to be kept and produced to the court. 20

And what do you mean by "a pending action"?---One where the writs had been issued or something of that nature had commenced the action.

Okay. And you then go on to refer to the fact that the letter of January 17 had requested copies of the documents but as it related to the continuation of the inquiry, which was to be stopped, your recommendation simply was that the solicitor be advised that the inquiry had been terminated, no report prepared and all documentation relating to it had been destroyed?---Yes. 30

And you enclosed a draft letter to that effect?---That's so.

And then you turn to the possibility of another inquiry being instituted in the future?---Yes, to address the initial concerns.

Now, if you turn over the page we see a letter that's not signed but it's addressed to Mr Heiner, dated 22 January 1990, from Mrs Matchett?---Mm'hm. 40

Is that the letter that you drafted for her to send to Mr Heiner?---It should be, but the only thing that causes me concern is the "Mrs R. Matchett - - -"

Yes?--- - - - is different to every other way of done it and I would normally picked that up. 1

She was a Ms, was she?---It was my habit to write to everyone as Ms.

Okay. Even in those days?

MR: You were very modern.

MR COPLEY: I'll let that one go. Well - - - 10

COMMISSIONER: It's a comment, Mr Copley.

MR COPLEY: Yes. Leaving aside the business about Ms or Mrs, is the actual content of the document consistent with your recollection of what you drafted?---Yes.

Okay. And then the next page contains a letter in draft form to Rose Berry Jensen, again with the name Mrs R. Matchett on the bottom?---Yes. I notice that the first letter is also dated 22 January, whereas everything else is 23 January. 20

Yes?---So I can't explain.

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Okay, but insofar as the content of the letter to Rose Berry Jensen is concerned, does that accord with your recollection of what you suggested she say to those solicitors?---Yes. 1

And in fact your intention was that this draft letter would effectively be the reply to the letter of 17 January?
---That's so, yes.

Now, jumping forward a little bit in time, do you know that those letters were not signed and sent on 23 or 24 January?
---Lots of things took a lot of time to progress and then got derailed or something else happened. 10

I see, okay. I just want to get you to have a look at exhibit 131. That is three photocopies in different reproductive sizes of a memo that Mr Ian Peers said that he wrote to the director-general on the date that is down the bottom, 24 January 1990. We have heard some evidence from a Mr Walsh that it would have been given to Ms Matchett. Can I get you to read it, please, to yourself?---Yes.

Now, you actually had a discussion or a meeting, I would suggest, with Ms Matchett on 24 January 1990. Are you in a position to agree or disagree or would you rather see a document?---I'd rather see - I've seen some notes that go across those few days. I don't recall the particular date. 20

Could I get the witness to see exhibit 133?

Mr Thomas, does this document contain your handwriting?
---Yes.

I would suggest to you at the very top it says, "R. Matchett, 9" - would it be "30"?---"9.30". 30
"24/1/1990"?---That's so.

Can you please read out to us what it says after that?
---"POA" - which was the Professional Officers Association - "hotting up; staff very committed to going through; minister not prepared to make statement indemnity" - I take it a statement about an indemnity - "till briefed and discussed AG and premier."

All right. Just pausing there, "POA letting (sic) up; staff very committed to going through"?---"POA hotting up." 40

"Hotting up", sorry; "staff very committed to going through". Are you able to help us with what that means?
---That the union was pursuing the matter and the staff were committed to following their complaints up, the basis for the inquiry.

30/1/13

THOMAS, B.J. XN

Do you know or do you remember which staff you had in mind when you wrote that note or which staff you were being told about when you wrote that note?---The staff who lodged the complaints.

1

And then "minister not prepared to make statement indemnity till briefed and discussed AG and premier"?---Yes.

Now, presumably all of that information so far has come from Ms Matchett, has it?---Yes. She's the only one referred to it.

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Right. Then read the next line, please?---"Union want off-record discussion Matchett and" - it looks like "party" - "parties".

Right?---"Destruction of documents; cabinet approval; backlash from union".

Right?---"Need get consent of archives at least". It may be "pre discuss manager's solicitor".

All right, and then there are your initials, aren't there? ---Which I take it would be "previous", yes, "BT."

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So "previous discussion manager's solicitor" and then "BT"? ---Yes.

So was it Ms Matchett who said words to the effect that the union want an off-the-record discussion?---Yes.

Who spoke about "destruction of documents; cabinet approval; backlash union"?---Ms Matchett.

Who said "need get consent or archives at least"?---I honestly don't know.

30

Did you have a view about whether cabinet approval was necessary to destroy the documents?---I didn't think it was.

I beg your pardon?---No, I didn't think it was.

So if you didn't think it was, was that a view that you would say Ms Matchett had, that it was because it's in this file note?---Yes. I'm unclear of the time the documents got sent to cabinet at some stage.

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Yes?---And that was a surprise to me and useless, as far as I could see.

It was both a surprise and useless. Could you explain why you considered it not only surprising but actually useless to be sending them to the cabinet?---They were not cabinet

documents. They hadn't been created for any purpose to inform cabinet of anything. They were just being deposited there because someone believed it might give them a protection, but there was no basis for them to be protected by cabinet.

1

So there was no basis for cabinet to protect them, okay. Would you have, thinking back on it now looking at this note, conveyed to Ms Matchett that it was both unnecessary and useless to be linking the future of the fate of the documents to a cabinet determination?---It's slightly different to sending them to cabinet and I'm trying to think whether if someone had said, "We want to ask the archivist but first cabinet has to decide to let us to ask the archivist," but I don't think that was the nature of the conversation.

10

Okay?---I can't remember any reason why I would think cabinet should have been involved in the decision about the documents at this point.

Right, but your view was that cabinet needed to be involved in the decision to give Mr Heiner the indemnification? ---Yes.

20

Then it seems as though, according to the note after your signature, there's another entry on that page, isn't there? ---Yes.

Are you able to read that out, including the numbers?---So "10.10 am, 24th of the 1st, R. Matchett, second-hand advice that Coyne withdrawing letter; still proceed with reply."

Okay?---"BT".

Now, what does that mean, "second-hand advice that Coyne withdrawing letter"?---I take it that's that letter that you drew to my attention before, the solicitor's request in relation to access to the material.

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"Second-hand advice": does that mean to say that - does the note mean to say that Ms Matchett had had second-hand advice that Coyne was withdrawing the letter?---Yes.

1

Did Ms Matchett tell you in either of these calls about the file note, or the information contained in that file note, from Ian Peers? Even without saying it came from Ian Peers, perhaps, did she tell you about Coyne apparently ringing up, saying he was going to continue one action but discontinue another action?---No.

The words "still proceed with reply", what does that mean? ---Drafting a reply to the solicitor's letter, I take it.

10

Thank you. That can be returned. I would like you to have a look at exhibits 142, 143 and 144. This is some correspondence that a Mr B.A. Stewart, director-general, presumably attorney-general, wrote to Mr O'Shea?---Yes.

Then two letters that Mr O'Shea wrote back to Mr Stewart, and I want to know whether or not Mr O'Shea showed you first of all the memorandum dated 8 February 1990 from B.A. Stewart to Mr O'Shea. Was that shown to you?---I don't remember it, no. My connection was very much with the Department of Families, except I think in relation to one letter which was an amalgamation of a number of people's things to Mr Tait.

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Okay?---So, no, I don't remember seeing this one.

Right, and if you look at 143, that's a letter dated 8 February 1990 to Mr Stewart from Mr O'Shea. Did you compose that for Mr O'Shea or did he discuss its contents with you? The reason I ask is that on page 2, Mr O'Shea refers to the conference that occurred on Monday, 22 January and he then states:

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Since that time further discussions have taken place between my officers and those of the department and it appears that the decision whether to destroy any material is to be referred to cabinet on 12 February. Likewise the issue of an indemnity for Mr Heiner is to be addressed on that day.

Is that information that you gave to Mr O'Shea, or don't you remember now?---I don't really have any memory of a set date for destruction.

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But putting that to one side, do you remember becoming aware that they were going to - well, it seems from the note you've read out previously that you knew that there was a belief that they needed to take these documents to cabinet to have them considered?---No, I think I found out after they had gone to cabinet that they had done it.

30/1/13

THOMAS, B.J. XN

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I see, okay?---I think I spoke with Mr Walsh for that purpose. 1

Right?---I'd seen a note about that somewhere.

Well, would you agree with this proposition, that this letter to Mr Stewart, the director-general, is not in the nature of legal advice; rather, it just sets out a chronology of events as far as the crown solicitor understood them?---Yes, that's so.

So then if we turn to 144, exhibit 144, this letter is one sent the next day by Mr O'Shea, on 9 February, to Mr Stewart, isn't it?---Yes. 10

If you'd just peruse the contents of it and then answer this question, whether or not you composed it for Mr O'Shea or assisted him to compose it?---Yes, I think I would have drafted that up.

Right, because it does reflect the view that you had previously expressed, that the documents that Mr Heiner had created were not public records within the meaning of the Libraries and Archives Act, doesn't it?---Yes. 20

You know that ultimately Mr O'Shea and you had a divergence of opinion on that point, didn't you?---Yes.

He took the view they were public records eventually?---I think Barry Dunphy as crown counsel came along, took the view and Mr O'Shea adopted Mr Dunphy's advice on that.

Mr Dunphy was senior to you in the hierarchy - - -?---Yes, he was crown counsel.

- - - and in years of experience, was he, or not?---I suspect he was younger than me. 30

Younger than you but higher up - - -?---But he was brighter.

Okay, but certainly he occupied a higher position in the office than you did?---Yes.

So to get back to this letter, you think you may have composed this for Mr O'Shea?---Yes, and the fax has got my handwriting on it? 40

Has it? Okay, so the first page of exhibit 144 contains your handwriting?---Yes.

So apart from containing Mr O'Shea's - or a view that Mr O'Shea was content at the time that these records were not public records, the document doesn't really deal with anything else, does it?---No.

30/1/13

THOMAS, B.J. XN

Is that Mr O'Shea's signature on it or is it your handwriting on his behalf?---No, that's his signature. 1

Thank you. I think we can get back 142 to 144 from you. Just to be clear about this, I just want to show you exhibit 151 which contains a cabinet decision about the indemnity and annexed thereto are two documents called a cabinet cover sheet and a cabinet submission. After you've read them I want to ask you whether or not you drafted or assisted in drafting either the cover sheet, which is the first three pages after the first page, or the submission, which is pages 4 onwards?---I think I never drafted a cabinet cover sheet or anything like that whilst in Crown Law. 10

Thank you. Would you look at exhibit 153, and if the witness could also see exhibit 141 at the same time, because it would seem these two documents are to be understood together.

So if you look at 153 first, can I suggest to you, Mr Thomas, that you saw that document on 14 February 1990? ---Yes, that's my note and initials at the bottom. 20

It says "Received 14/2/1990, BT"?---Yes.

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Yes, and can I suggest to you that that letter, exhibit 153, although the exhibit - probably I made it unduly complicated for you but, nevertheless, the photocopy attached to exhibit 153 is a copy of exhibit 141?---Yes.

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And so this is a letter that Ms Matchett sent to Mr O'Shea saying, "Look, here's a letter that Rose Berry Jensen sent on 8 February in which they have requested copies of the statements of allegations made against Coyne and Dutney and in which they have requested transcripts of any evidence that Mr Heiner obtained from people that he interviewed"? ---Yes.

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And Ms Matchett was seeking advice to what action she should take in connection with that letter, wasn't she? ---Yes.

Do you remember what Mr O'Shea said to you? Did Mr O'Shea give you exhibit 153? I would suggest to you he would have because it was addressed to him in the first place?---Yes, either it came to him or because it had attention my name on it, it came directly to me.

All right. We might just stick to the order that I have got here?---Yes.

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So it's agreed that you received a copy of the letter of 8 February?---Yes.

And Mr O'Shea left it with you to try to compose a reply to Mr Berry?---I would take it that way, yes.

We may find that reply shortly. I just can't remember, I'm sorry. Could you have a look at exhibit 158, please? Now, this is a letter that S.P. Tait, the acting secretary of cabinet, wrote to Mr O'Shea and, it appears, faxed to him on or about 13 February 1990. Did Mr O'Shea bring this to your attention on or about that date?---No.

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There's a handwritten note over on the side that has a signature and the numbers "13/2/1990" beside it?---Yes, Mr O'Shea's.

Mr O'Shea's writing?---Yes.

Can you read out to us what Mr O'Shea has written there, please?---"I rang Ken Littleboy. They (cabinet secretariat) have large sealed box containing all Noel Heiner's" - I can't make out what that word is.

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Is it "pages et cetera"?---"Pages et cetera," yes, "Wants 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," it looks like, then initials "Ken O'Shea, 13/2/90".

30/1/13

THOMAS, B.J. XN

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Would you just have a look now at exhibit 163, please? 1
I'm just going to ask you to consider whether or not
exhibit 163, although signed by someone on Ms Matchett's
behalf, wasn't drafted by you. If you look at the second
page of the document, including the running writing on
there, that might help you accept or reject the suggestion
that I have made?---The writing says - I can't make out the
first few words - "cleared by the Thomas Crown Solicitor's
Office."

Does it say, "Contents of letter cleared by the 10
Thomas - - -"?---Yes, okay, "Contents of letter cleared
by the Thomas Crown Solicitor's Office."

Does that suggest you didn't actually write it but they
read it out to you?---Yes, something in that nature.

Would you, as at 16 February 1990, have been in a position
to say what had been on the file of Mr Coyne or Ms Dutney,
their personal files in Family Services?---No. I never saw
any officer's file.

All right. That can be returned. Now, in relation to 20
Mr Tait's letter of the 13th, I want to show you this
letter to Mr S.P. Tait from Mr O'Shea which is dated
16 February and is exhibit 164. That's a fairly lengthy
letter responding to Mr Tait's request for advice?---I
think this is that letter I referred to previously which
was an amalgamation of about three people's work.

And who were the three people whose work finds expression
in this letter?---Myself, I think Barry Dunphy and someone
from advisory; I think perhaps Robert Campbell.

All right?---I'm not confident of that. 30

Not confident it was Robert Campbell though?---No.

Now, it's clear from this letter, if nothing else, that
your views about Mr Heiner's documents not being public
records didn't carry the day with Mr O'Shea?---No. I've
seen a draft of this letter which has what I originally put
in about that.

I see, and was the draft different from what was ultimately
sent?---Yes.

So Mr O'Shea preferred the view of Mr Dunphy on that point? 40
---Yes.

So whatever you contributed to this letter, it's not the
opinion about whether they were public records or not?
---That's so, and I was suggesting still the option of
returning it to Mr Heiner.

Yes, and that doesn't get in the letter?---No.

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So what part or parts of it do you say you contributed to, if any?---It might be easier if that other draft - I think I saw it on the Crown Law file, the advisory file.

It may be that Mr Hanger's in a position to make that file available to you because I am pretty confident I have not tendered or seen such a document?---There's an advisory file with a yellow stripe across the top of it. I saw it in there when I was going through the documents.

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Was this when you met with officers from Crown Law recently?---Yes, a week or so ago.

Neither I nor any member of the Commission of Inquiry was present for that meeting, were we?---No.

I'm not pressing for you to rush into it and take a guess. If there are accessible documents that will show which parts of this you actually composed and which parts you didn't, then in fairness to you you're entitled to perhaps have this matter stood down for a few minutes until the file is brought over, Mr Commissioner.

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COMMISSIONER: Yes.

MR HANGER: We're happy to do that.

COMMISSIONER: We will stand down.

MR COPLEY: Can we stand down for probably 10 minutes?

COMMISSIONER: Yes, sure.

MR HANGER: Can we let you know?

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MR COPLEY: Mr Hanger would prefer to stand down to a time to be fixed.

MR HANGER: We can let the associate know as soon as they're here.

COMMISSIONER: Yes, all right, no problem.

THE COMMISSION ADJOURNED AT 3.50 PM UNTIL 4.02 PM

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THE COMMISSION RESUMED AT 4.02 PM

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COMMISSIONER: Have we got the file yet? No.

MR COPLEY: The Crown Solicitor's officer isn't back with it yet.

COMMISSIONER: Yes. Look, if Mr Thomas has to come back tomorrow anyway.

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MR COPLEY: Well, he does. He will have to.

COMMISSIONER: All right. Well, then, I've decided that we'll adjourn for the day.

MR COPLEY: Okay.

COMMISSIONER: And we'll resume tomorrow morning at 10 o'clock. We've got an early day tomorrow.

MR COPLEY: What do you think about starting a bit earlier?

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COMMISSIONER: I think it's a great idea. I was just about to say that. How much earlier were you thinking?

MR COPLEY: I was thinking - - -

COMMISSIONER: 5.00?

MR COPLEY: I was thinking 9.30 of 9.15.

COMMISSIONER: Early afternoon. All right. 9.30 suit everybody?

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MR COPLEY: Yes.

COMMISSIONER: Excellent All right. We'll do that. Will that suit you, Mr Thomas, more importantly?---Yes, Mr Commissioner, thank you.

Thank you. See you tomorrow at 9.30.

WITNESS WITHDREW

THE COMMISSION ADJOURNED AT 4.03 PM UNTIL THURSDAY, 31 JANUARY 2013

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THOMAS, B.J. XXN

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