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FACSIMILE TRANSMISSION

TO: Ms. Ruth Matchett, Acting Director-General

FAX NO: 221 8510

FROM: Mr. K.M. O'Shea, Crown Solicitor, Queensland

DATE: 19 January 1990

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TRANSMISSION REPORT

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Crown Solicitor,  
State Law Building,  
50 Ann Street,  
Brisbane, Queensland. 4000.

19 January 1990

Ms. Ruth Matchett,  
Acting Director-General,  
Department of Family Services and  
Aboriginal and Islander Affairs,  
FAX: 221 8510.

Dear Ms. Matchett,

I refer to my letter of advice faxed to you yesterday and to my subsequent telephone conversation wherein I referred to the fact that Regulation 63 specifically provides that the Chief Executive may only delegate his powers under that Regulation to a person who is "an officer", which term is defined in the Act as "an officer of the Public Service".

Section 34(3) specifically provides that a person appointed by a Chief Executive pursuant to that Section shall not thereby become an officer of the Public Service.

Obviously then any power Mr. Heiner has to conduct this inquiry cannot be found in Regulation 63 and resort must be had to the general power of delegation under Section 13 coupled with the power to appoint under Section 34.

I have not yet reached a final conclusion on the effect of these two Sections upon what has happened in this particular case.

The question of natural justice raised by the Solicitors is, of course, a very real and serious one and as I said to you yesterday, natural justice demands at the very least that any person who might be affected by this inquiry has the right to be fully informed of what is alleged against him and to be heard in his defence before the person conducting the inquiry.

The full extent of a person's rights under natural justice can vary from case to case, and whether the right extends to cross-examination of witnesses in this particular case is not possible for me to say at this stage, and it may be that further research will show that so long as Mr. Heiner, before he reports on his evidence, informs anyone adversely

affected as to what his conclusions are and gives them the right to lead evidence and address him with a view to a rebuttal of his proposed findings, then that could be sufficient.

I note that you are having conferences today with Mr. Heiner and with representatives of the Queensland State Service Union and Professional Officers Association and that you may be in touch with me again after that.

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

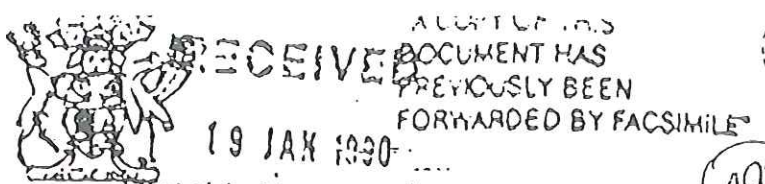
I confirm my telephone advice to your Mr. Walsh today that for the time being it would be better not to respond to the Solicitors' letter.

Mr. Barry Thomas of my Appeals and Advocacy Branch will be handling this matter should it become necessary for ongoing advice and I suggest you get in touch with him or Mr. Conrad Lohe, the Assistant Crown Solicitor in charge of that Branch.

Yours faithfully,



(K. M. O'Shea)  
Crown Solicitor.



Office of the Director-General  
Dept. of Family Services and  
Aboriginal and Islander Affairs  
Solicitor,  
State Law Building,  
50 Ann Street,  
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Yours faithfully,



(K. M. O'Shea)  
Crown Solicitor.

\* I confirm that I received  
this advice from Mr O'Shea.

From   
19/1/90.