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THE HONOURABLE TIMOTHY FRANCIS CARMODY SC, Commissioner

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

BRISBANE

..DATE 18/02/2013

Continued from 14/02/13

DAY 24

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THE COMMISSION COMMENCED AT 10.10 AM

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COMMISSIONER: Good morning, everyone. Mr Copley.

MR COPLEY: Good morning, Mr Commissioner.

WARNER, ANNE MARIE:

COMMISSIONER: I might take appearances as well.

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MR COPLEY: Yes, very well. Well, things remain the same in terms of counsel assisting, except that Mr Woodford is unwell and is not anticipated to be here for most of this week. So I'll just keep appearing on my own.

COMMISSIONER: Okay.

MR COPLEY: Thank you.

COMMISSIONER: Thanks, Mr Copley. Mr Hanger.

MR HANGER: I continue to appear with Mr Selfridge.

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COMMISSIONER: Thank you. Mr Byrne.

MR BYRNE: Your Honour, I appear in accordance with the authority your Honour granted on Thursday for Ms Warner and otherwise.

COMMISSIONER: Thank you. Mr Harris.

MR HARRIS: Good morning, Commissioner. If it pleases the commission, my name is Harris, initials G.L. I'm a solicitor with Keyworth Harris and Low, and I appear for Ms McIntosh and Ms Neil in respect of this matter.

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COMMISSIONER: Thank you. Mr Lindeberg.

MR LINDEBERG: Good morning, Mr Commissioner. Kevin Lindeberg is my name. You've given me authority to appear today. Mr Bosscher has been unable to continue.

COMMISSIONER: Yes. Thanks, Mr Lindeberg. I'll grant you leave for today. Yes, Mr Copley - did you have something? No, you're all right. Okay. Yes, Mr Copley.

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MR COPLEY: The position we'd reached was that the cross-examination of Mrs Warner was not completed by Mr Bosscher.

COMMISSIONER: Yes. So Mr Lindeberg can take over. Good morning, Ms Warner?---Good morning.

Yes, Mr Lindeberg.

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MR LINDEBERG: Thank you. Good morning, Ms Warner?
---Good morning.

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Ms Warner, I want to take you through a range of questions flowing from your statement and from certain exhibits that have been put before the Commissioner so the Commissioner can understand what you knew about matters associated with the Heiner affair or the shredding. Can you tell me whose idea was it to transfer the Heiner inquiry documents from the department across to the office of cabinet?---I'm sorry, I don't know.

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You don't know?---I don't know.

So Ms Matchett never told you?---No. I'm barely aware that that happened.

Now, at point 4 you speak about Ms Matchett being appointed as your DG and she was your DG throughout the period of your reign, shall we say, of that portfolio?---That's right.

Now, when you say, "We later appointed Ruth Matchett as DG," who is we?---I think there was a process of interview and I can't remember who was on the panel, but she was appointed as an acting director-general and then there was a process for the permanent appointment of all DGs and through - when I say "we", I mean the government.

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I'm talking about personalities. Who's "we"? And to be clear, are you saying - let me put it this way: Ms Matchett has said she was sitting in the office on or about 11 December, she got a phone call from the director-general of the Premier's Department and said, "Would you like the job?" and she said - - -?---No, that was the acting position.

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- - - "Yes, I'll have a go"?---That was the acting position.

I know, but there was no interview process for that?---No.

So when you say - well, who decided that she should have the job?---There was a recommendation that went to the government; I'm not sure who in the government. I think it was Eric Finger, wasn't it?

Well, with respect, I suggest that Mr Finger had no authority to appoint who the director-general was.

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MR COPLEY: Well, perhaps Mr Lindeberg needs to consider the relevance of this line of questioning. At the moment it hasn't been established whether the appointment occurred before, during or after any matters that are relevant to this term of reference. And then even so, the next question is what does it matter who appointed her?

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COMMISSIONER: Mr Lindeberg, is - - -

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MR LINDEBERG: I'll answer that.

COMMISSIONER: Yes.

MR LINDEBERG: It matters to the extent that the appearance is that Ms Matchett was sitting, doing her job, then suddenly out of the blue she got a phone call to do it. What I'm trying to suggest is that there was a foreknowledge that she was going to get the job and that Ms Warner may have been aware of that.

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COMMISSIONER: Okay. Ms Warner, would you mind directing - - -?---Well, I think I probably was aware of it, but exactly what the process was, I can't recall.

MR LINDEBERG: But when were you - - -

COMMISSIONER: Mr Lindeberg, are you suggesting that there's something faulty in the process or that the way Ms Matchett was appointed is suggestive of something that is a matter of concern or should be?

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MR LINDEBERG: I'm not necessarily suggesting it's a matter of concern. I'm just looking at the process in the sense that I know these things, when governments change, oftentimes directors general change.

COMMISSIONER: Yes.

MR LINDEBERG: And it has been suggested - produced in evidence here that George Nix, for instance, suddenly found a person who was junior to him elevated above.

COMMISSIONER: Okay. Now, that might strike someone as interesting, suspicions, dubious. If you want to suggest any of those things, then I would get straight to the point; if you don't, I would leave the point.

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MR LINDEBERG: All right.

COMMISSIONER: And could I just say this, Mr Lindeberg, it's really important - really important that you understand two things: you can't put a question based on an unproven fact. Right? If you want to present something as a fact, make sure it's already been established as that, rather than what you would like to be the fact. And the other thing is if you're willing to (indistinct) you have to be prepared to strike. By that I mean you can't leave things open to interpretation or misinterpretation or mischievous construction. If you have something to put to Ms Warner that goes to either a relevant fact, or a fact that's relevant to a fact that's relevant, or goes to Ms Warner's credit as to whether or not I should believe

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what she says, put it directly. Don't be ambiguous, put it directly. If you have nothing to put then don't beat around the bush. 1

MR LINDEBERG: I'll put one more question.

COMMISSIONER: Okay.

MR LINDEBERG: Did you know that Ms Matchett was going to be your director-general perchance you won the election on 2 December?---No.

You did not?---Not before the election, no. I didn't know Ms Matchett - - - 10

Thank you very much, that's good. Now, Ms Warner, you became the Family Services Spokesperson on or about 29 June 1988. Would that be correct?---I don't know, but probably.

Yes. And you were appointed by Mr Wayne Goss to the position?---Yes.

Now, would it be fair to say that as a politician you were a grass-roots politician insofar as you were always willing to meet the workers?---Yes, I would be. 20

Now, on that basis was that the reason why you attended a meeting at River Hills and met some of the aggrieved staff at the John Oxley Youth Centre before you became minister? ---I have no recollection of that.

COMMISSIONER: Now, see, Mr Lindeberg, there's a good example. See, Ms Warner is not accepting the fact that she ever went there. And unless it's been established already in evidence that she did, you can't put the question as if she did. 30

MR LINDEBERG: Okay.

COMMISSIONER: You know what I mean?

MR LINDEBERG: Okay, fair enough.

Then you are saying you did not attend any meeting - - -? ---No, I'm saying I have no - no, I'm saying I have no recollection of attending such a meeting.

COMMISSIONER: No, Mr Lindeberg, again the process is if you suggest she did, put the proposition to her that she did and tell her when. If you don't know or you only think she might have, make that plain as well so I know the difference. 40

MR LINDEBERG: You are saying you do not recall attending any meeting at River View with that staff?---I do not recall attending a meeting in River View.

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COMMISSIONER: But you don't deny that you did?---I don't know. 1

MR LINDEBERG: Okay, thank you.

COMMISSIONER: Now, because that's the state of the evidence, Mr Lindeberg, there's no evidence that Ms Warner ever did because you haven't put you did, she can't remember whether she did or she didn't, and there's no independent evidence that she did. So you know that that's the state of the evidence. 10

MR LINDEBERG: But you may have?---It's conceivable.

It's conceivable. Now, Ms Warner, point 33 of your statement - - -

MR COPLEY: Well, just before we leave that point, this question has been asked - a question of this nature has been asked a number of times of union witnesses about Ms Warner attending a meeting of unionists.

COMMISSIONER: Yes. 20

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MR COPLEY: The proposition seems to be based upon, as far as one can discern from Mr Lindeberg's previous questioning, a paragraph or paragraphs in the state of Fred Feige. So if Mr Lindeberg wishes to explore the matter properly and explore the matter to the extent that he's done with witnesses other than the witness who is alleged to have attended the meeting, would it not be proper for him to put to her the precise allegation that he's been putting to other witnesses from the statement of Fred Feige, because otherwise the matter is just left now that the lady has got no recollection of going to the meeting and yet Mr Lindeberg from his previous questioning, it can be discerned, seems to want to proceed on the basis that Mr Feige's statement is correct that she did. 1 10

COMMISSIONER: Yes, but he doesn't really have to pick Mr Feige over Ms Warner, does he, I mean, because he's not representing Feige? He might be representing the proposition that Feige stands for but - I'll talk to Mr Lindeberg, if I may, Mr Copley.

MR COPLEY: All right.

COMMISSIONER: Mr Lindeberg, what Mr Copley is saying is that it wouldn't sit well in your mouth at the end of the day to suggest on the state of play as it is that Ms Warner attended a meeting that she can't remember every having attended and has conceded the mere possibility of it and said something or did something relevant to the inquiry unless you actually take her to it and suggest that she did that. You can't - that's what I meant before about if you're willing to wound you've got to be prepared to strike. 20

MR LINDEBERG: I thought I did put that and she said it was conceivable that she had attended. 30

COMMISSIONER: Yes, but you can't then later on come back and say, okay, Ms Warner said it was conceivable. Fred Feige says this happened. Ms Warner couldn't remember enough to deny it so I should accept what Fred Feige says.

MR LINDEBERG: I understand.

COMMISSIONER: Yes.

MR LINDEBERG: I mean, it's left where it's - - -

COMMISSIONER: It is. It's a possibility, like many other things. 40

MR LINDEBERG: It's not clear. It's possible. That's as far as I can take the thing.

COMMISSIONER: Yes, and that's as far as you can ever take it.

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MR LINDEBERG: I understand that, commissioner. 1

COMMISSIONER: Good, okay.

MR LINDEBERG: I understand that. Could I ask the witness to look at these two items, please?

COMMISSIONER: I don't know. I'll have to have a look at them myself to tell you. I'll have a look first, Mr Byrne.

MR BYRNE: Thank you, Mr Commissioner. 10

COMMISSIONER: Okay. I'm going to show Mr Byrne these articles and while he's having a look at them, Mr Lindeberg, can you tell him and me what you want to do with those documents with this witness?

MR LINDEBERG: I want to establish whether or not the witness is aware of these things.

COMMISSIONER: What, that she ever read it?

MR LINDEBERG: That she ever read or perhaps she ever kept a copy. 20

COMMISSIONER: Ms Warner, in March of 1989 what was your - - -?---In March of 89?

Yes?---I'm sorry - - -

Were you in opposition then?---I was in opposition. I just can't remember whether I was corrective services or family services at that point.

Right?---I may very well have been family services but I can't remember the date. 30

Okay, thanks. Mr Byrne, I gather Mr Lindeberg wants to show the articles to Ms Warner and then ask her if she read them at the time or ever kept a copy of the articles. I'm not quite sure where that goes but I'm inclined to let him do that subject to you - - -

MR BYRNE: I'm happy for that question to be asked. If it goes further then there are issues, of course.

COMMISSIONER: Yes. Mr Lindeberg, can you go one ball at a time, thanks, so we can just keep a check on how the questioning proceeds? Mr Lindeberg, can you identify the documents you've given to Ms Warner for the record so that we all know later on what she was being shown now? 40

MR LINDEBERG: They are two articles from The Courier Mail, one dated 17 March and another dated 18 March.

COMMISSIONER: Yes, Mr Lindeberg.

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MR LINDEBERG: Can I - - -

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COMMISSIONER: Do you want to have - - -?---Can I read them?

Yes, please?---Thanks. Both of them. I've glanced through them.

MR LINDEBERG: Do you recall reading those - - -?---I don't recall reading them at the time, no.

Is it fair to suggest that given the significance of it that you may have read them?---I may have read them.

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COMMISSIONER: No, well, sorry, the significance of them might determine one way or the other whether she read them.

MR LINDEBERG: Okay.

COMMISSIONER: They could be totally insignificant and she would have read them, they could be very, very significant and she might not have read them. The significance of what's said in there has got nothing to do with Ms Warner's likelihood of having read them before. Do you see what I mean? That's just not a logical proposition. The significance has got nothing to do with whether or not Ms Warner read them.

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MR LINDEBERG: Can I advance this proposition?

COMMISSIONER: Yes.

MR LINDEBERG: To the extent that in reading this, if she did, she would have gained a state of knowledge of what was purportedly happening at the centre at the time.

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COMMISSIONER: Sure. I understand. If she read them she would have known what they said, but just because what they say was really important doesn't mean that she's more likely than not to have read them.

MR LINDEBERG: Okay, yes.

COMMISSIONER: Do you understand what I'm saying? What you can put to her is, if you want to, if you're pretty sure that she would have read them and that she would have known what was in them at a particular point in time, to suggest that to her.

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MR LINDEBERG: Yes. Ms Warner, I suggest that as an opposition spokesperson for family services, which you were at the time, you would have noted those contents because it affected your portfolio?---Mm'hm.

COMMISSIONER: That is, because you were the opposition - - -?---Yes, I would have.

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You were in parliament. You probably would have read
The Courier Mail - - -?---I probably would have. **1**

- - - every day of your life and you wouldn't have missed
that one and you would have known what was said as at March
1989?---Yes.

Do you agree with that?---I do agree with that.

MR LINDEBERG: There is also the prospect, if I can put it
like that, that you would have taken a cutting of that for
your file as part - to assist you in your portfolio? **10**
---Well, I may have done then but I certainly don't have it
now.

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No, I understand that. I'm talking about at the time because it is stated in your - "if this is the same event at point 33, I make comment about it in the media"?---Yes, you see, I'm not sure whether this is the same event.

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Yes?---Whether the event that I recall making a comment in the media is the same as this event.

Well, do you know of any other riot that had happened? ---No, but there was an ongoing dispute, as you know. There was an ongoing dispute at John Oxley.

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I appreciate that, but there wasn't a riot every day of the week?---Yes; yes, I may have made a comment about the riot.

COMMISSIONER: Is there one reported in the same newspapers as - - -?---Yes. Are you leading up to another one?

MR LINDBERG: No, there's no other one.

COMMISSIONER: You would expect that too, wouldn't you? I mean, as a matter of logic if Ms Warner did say something about the riot, you think the Courier-Mail would report it, otherwise there's not a lot of point of making comment if you're an opposition party - - -

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MR LINDBERG: Well, commissioner, I haven't had a think about the processes of how one goes about it, but in relation to the March riot, it is a matter of fact that Ms Warner appeared on ABC News.

COMMISSIONER: Can you just tell me why this should be so interesting to me?

MR LINDBERG: To the extent that this was the lead-up to the Heiner inquiry.

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COMMISSIONER: What happened in March 1989 was part of the prelude to establishing Mr Heiner's inquiry, right. I don't think that's contentious, is it?

MR LINDBERG: To the extent it is contentious with this person insofar as her state of knowledge which then goes into the cabinet about what they knew at a particular point in time.

COMMISSIONER: Right.

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MR LINDBERG: Because the issue that has been said was that everybody knew the evidence was defamatory but nobody knew what was in it.

COMMISSIONER: Right, okay. Now you are getting somewhere. That is exactly where you want to be going to.

MR LINDEBERG: Well, I was moving my way in the direction. 1
I mean, you're pre-empting, Mr Commissioner.

COMMISSIONER: I don't know.

MR LINDEBERG: It's a rough road.

COMMISSIONER: You're doing the Perry Mason, are you?

MR LINDEBERG: Anyway, I want to advance - I seek to
tender these documents, commissioner. 10

COMMISSIONER: I don't think the witness has adopted them
enough to justify their tender, Mr Lindeberg, but I will
tell you what I take out of it. I take out of it that
there were two reports in March 1989 about the riots.
Ms Warner, given her position then, probably would have
read it and knew the contents of those reports and on that
basis I will accept the tender to show me later on what
the reports said and what she probably read.

MR LINDEBERG: Thank you, Mr Commissioner.

COMMISSIONER: Then you want to argue that because she 20
read it in March 1989 when the Heiner documents were
destroyed, she would have remembered what she read back
in March 1989 in the Courier-Mail.

MR LINDEBERG: Well, it's a build-up.

COMMISSIONER: Yes. That's part of her fund of
information.

MR LINDEBERG: Yes, that's precisely right.

Ms Warner, again, as you were the opposition Labor 30
spokesperson for Family Services, it would not have been
unusual for you to talk to trade union officials?---No.

Indeed, I put it to you that I have spoken to you in that
capacity?---Yes.

Did you also speak to Janine Walker?---No; no.

You've never spoken to Janine - - -?---Not on this
occasion.

Not on this - - -?---I have no memory of talking to Janine 40
Walker about this issue.

Okay. Are you aware of which unions represent the youth
workers at the centre?---Yes.

Which are they?---There was the POA, the State Service
Public Union, whatever it was called at that time, and the
AWU.

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Can I assist you? I said the "youth workers". I can tell you that the POA did not have any youth workers?---I was talking about the three unions that were representing staff at the centre. I was talking specifically about the youth workers. I was talking about the youth workers.

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COMMISSIONER: You did ask about the youth workers. Does it matter though?

MR LINDEBERG: To the extent that they belonged to unions and Janine Walker represented the State Service Union who had the majority of members at the centre.

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COMMISSIONER: So you want to put to Ms Warner that it's unlikely that she didn't talk to Ms Walker.

MR LINDEBERG: The witness has said in fact, "No, I don't think I would have"?---At that time I didn't speak to Janine that I can recall.

But you may have?---At that time - at that time I did not talk to her that I can recall.

Did you talk to Laurie Gillespie?---Again I don't recall talking to him about this.

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COMMISSIONER: Mr Lindeberg, those two Courier-Mail articles are going to be admitted and marked exhibit 326.

ADMITTED AND MARKED: "EXHIBIT 326"

MR LINDEBERG: Thank you. Can the witness look at exhibit 299, please?

Have you seen that - - -

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COMMISSIONER: No; no, she hasn't got it yet.

MR LINDEBERG: I'm sorry.

COMMISSIONER: She hasn't even seen it today yet.

MR LINDEBERG: Sorry, commissioner?---Yes.

Have you seen that document before?---Not that I recall, no.

Are you aware of its content? Do you have any knowledge of its content at all?---It looks like the sort of issues that unions would raise about the conduct at the centre.

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Do you note the date?---Yes, it's 24 November 1989.

Do you note the mention of what Mr Gillespie is concerned about at the centre?---Yes, I'm aware that he had some concerns; yes.

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Does it mention child sexual abuse? 1

MR COPLEY: It doesn't, does it?---Yes, it does.

Well, read it out. He should read it out correctly.

COMMISSIONER: Okay. Just read out the part that you want Ms Warner to confirm is in the article, please, Mr Lindeberg.

MR LINDEBERG: Mr Commissioner, I haven't got the document from my computer last night. 10

COMMISSIONER: You haven't got it?---Do you want me to read it?

Yes, please?

---The union, along with the QPA -

sorry -

the POA and the Queensland Teachers Union and the Australian Workers' Union, all of whom have members employed at the centre, is concerned that there is too high a ratio of children to staff and this has been a factor in security problems which have included assault and sexual abuse. 20

Is that the part?

MR LINDEBERG: That's right.

COMMISSIONER: Right.

MR LINDEBERG: So there is a concern there about staffing matters which links into child sexual abuse. 30

MR COPLEY: It says "sexual abuse". Child sexual abuse conjures up, as people well know, the idea that adults are running around interfering with the children.

COMMISSIONER: Yes.

MR COPLEY: It doesn't say that.

MR LINDEBERG: Well, the inference that I have taken - well, what inference do you take from the words "sexual abuse"? 40

COMMISSIONER: Did you read that article at the time?---I don't recall reading it.

Do you remember at that time being aware in some way from - it doesn't matter what source - that the unions representing the people at the John Oxley Centre were

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concerned about, among other things, sexual abuse?---I
wasn't aware that they were concerned about sexual abuse.

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MR LINDEBERG: I have finished with that exhibit,
Ms Warner. When did you first hear of the Harding
incident?---I think it was in 1999.

Do you remember where that happened?---I think it was on a
television program.

Well, I put it to you that that's not correct, 1999?
---Well, it may not be.

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But you're not sure when you first - - -?---Look, it was a
very long time after the whole John Oxley, Heiner incident
from 1990.

COMMISSIONER: Was it after the shredding?---Well after.
It was after I was out of government.

Now, do you want to contradict that?

MR LINDEBERG: No; no, the witness has said she believed
it was 1999.

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I put it to you - - -?---Can I clarify for a moment?

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COMMISSIONER: Yes, and then you can put - - -?---The issue about sexual abuse in institutions was not unknown to me. The question about whether or not that had been a matter before Mr Heiner was something that I believe was not in front of Mr Heiner. That information about sexual abuse being matters that were before Heiner was not brought to my attention until about 1999.

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Okay, thank you.

MR LINDEBERG: Can I put it to you that it may have been 2001?---Was it?

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COMMISSIONER: It may have been later than 2001, about 1999.

MR LINDEBERG: It may have been later than 1999?---Okay. Well, I mean, if that's when you brought it to the attention of the media then that's when it would have been.

COMMISSIONER: Can you link it to an event rather than a date?---It was a television program that I saw that indicated that some people were saying that the Heiner inquiry was looking into sexual abuse, and that's why the documents were shredded. That was the allegation.

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Which program was that?---I thought it was the Sunday Program but my memory might be wrong.

Was Mr Lindeberg on it?---No, he never appears on television.

Okay.

MR LINDEBERG: Well, may I assist. I'd put it to you that if you were referring to the Sunday Program, it was not about child sexual abuse, it was about child abuse. I was on that program and so were you?---Yes, but - okay, well then at some point somebody said that it was about sexual abuse and - - -

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Okay?--- - - - I thought it was about the Forde inquiry time because there were allegations being made, but I could be wrong. But anyway, it was a long time after the Heiner - - -

COMMISSIONER: I think you seem to be in furious agreement about that?---Good.

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MR LINDEBERG: Now, did anybody ever tell you that before Mr Pettigrew established the Heiner inquiry he asked of the staff via the State Service Union to be given written complaints?---Did anybody ever tell me that?

Yes?---No.

Did your director-general tell you that?---Well, after the event, but not at the time that it happened. 1

Well, let me be clear. Let me be clear, I'm not talking about - at this point in time I'm not talking at the time? ---All right.

I'm talking - well, I put it to you, at any time: when did you first learn that written complaints were given to Mr Pettigrew?---I'm sorry, I don't remember.

You don't remember?---I don't remember when I did that detail. 10

COMMISSIONER: But you did know the detail, you just can't remember when?---Yes.

MR LINDBERG: And did you ever see those written complaints?---No.

Did you ever see the terms of reference of the Heiner inquiry?---I think not but I may have. That would have been at the time. Sorry, again, I'm a bit confused about the time that you asking me. I have seen the terms of reference of the Heiner inquiry but I don't know that I saw them before we got into government. 20

Now, Ms Warner, at point 36 of your statement you make the comment:

In relation to my knowledge of an incident said to have occurred in May 1988 involving a female Aboriginal girl, I only learnt of it from what I read in newspapers.

Is that correct?---Yes. 30

Thank you. "I was not aware of it at the time, nor have direct knowledge of it." Is that correct?---Yes.

"Nor of the handcuffing incident that people have since referred to." Is that correct?---That's my memory of it.

"Those things were not known to me." Is that correct?---At the time.

At the time. Can the witness look at this? Commissioner, do you want to see at first? 40

COMMISSIONER: Yes, please. Thank you. Okay, I'm going to show Mr Byrne, Mr Lindeberg.

MR LINDBERG: Can I give him a copy?

COMMISSIONER: Yes, sure. Have you got another one?

MR LINDEBERG: I do. 1

COMMISSIONER: Excellent. I'll give this one. Actually, I'll have Ms Warner shown it. Are you okay with that Mr Byrne?

MR BYRNE: I am, Mr Commissioner?---I had forgotten that.

COMMISSIONER: Sorry (indistinct)?---Sorry?

What - - -?---I had forgotten that I had known - it had been reported to me that the accused had been handcuffed and left overnight in an enclosed yard. 10

And what date is that report?---That report is 1 October 89.

And you're saying you'd got that fact because it's in the newspaper?---Yes.

And you accept that it is most probably - - -?---I accept that I said that staff had told me that.

- - - if that was true and you did, you had been told that? ---I did know that then but I've since forgotten it. 20

MR LINDEBERG: So then this is dated 1 October. Are you aware that the Heiner inquiry was being established around that very same time?---I don't know whether I was aware of that or not.

And you say is you had not seen the original complaints at that point in time or when you became minister you had not seen them?---I don't think I ever saw them, actually.

Well, it's been adduced in evidence that one of those complaints that was given to Mr Heiner under the title of "very concerned" concerned children being handcuffed to fences?---Mm. 30

Put it to you that they are referring to the same incident? ---Well, they may be.

You had that knowledge at the time.

COMMISSIONER: What time?---What time?

MR LINDEBERG: Well, you had that knowledge, therefore, when you became the minister?---Yes, but I may not have recalled it. 40

And did it never, ever strike you that there was a prospect - if not a prospect, that the staff who were upset about this would have told Mr Heiner?---I don't know.

COMMISSIONER: Why is the prospect of that relevant to anything? Is it something that would have caused Ms Warner to think something or do something? 1

MR LINDEBERG: Well - - -

COMMISSIONER: Because it doesn't make it any more likely that they did tell Mr Heiner that. Because Ms Warner might have thought it was likely or probable, that doesn't make it actually probable.

MR LINDEBERG: Can I put it another way? 10

COMMISSIONER: Yes.

MR LINDEBERG: This statement says, "Staff also told her about a youth being handcuffed and left overnight in an enclosed yard."

COMMISSIONER: So your question is: do you think having read that and knowing that, that that's something that somebody would have told Mr Heiner?

MR LINDEBERG: Well, I wanted to go a little step further. 20

COMMISSIONER: Okay.

MR LINDEBERG: You may not remember, but why do you think that - do you think that they were telling you that, the staff member, because they were happy about it? ---Presumably they were complaining about it.

They were complaining about it?---Yes.

And are you aware that that handcuffing was ordered by the management?---No. 30

So you had no idea why that child was handcuffed to the fence other than that the child was handcuffed to the fence?---Sorry, I don't know where you're going - - -

COMMISSIONER: Did anyone ever tell you why the child was handcuffed?---No. No, not to my - well, I have a recollection of that.

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MR LINDEBERG: Did you have any knowledge at all that the Heiner inquiry was to look into the management of the John Oxley Youth Centre?---Yes. Well, that was unclear, what it was looking into exactly by the time that I took a big interest in the matters from the inquiry.

1

COMMISSIONER: Which was when?---Which was after we'd been in government for about a month and when there were - it was discovered that there were difficulties with it. That's when I discovered - we were trying to work out what it would produce.

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So from your point of view, you'd inherited this problem? ---Yes.

MR LINDEBERG: Mr Commissioner, can I tender that statement - that article?

COMMISSIONER: Yes.

MR LINDEBERG: So, Ms Warner, it is - - -

COMMISSIONER: The Sunday Sun article will be exhibit 327.

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ADMITTED AND MARKED: "EXHIBIT 327"

MR HANGER: Can I see that when you're finished?

COMMISSIONER: Yes, sure.

MR LINDEBERG: It is fair to say, isn't it, Ms Warner, that at the time you went into the cabinet room that you had knowledge in your mind that a child had been handcuffed to a fence throughout the night at the John Oxley Youth Centre?

30

MR BYRNE: Well, that's not - - -?---No, that would not have been on my mind at the time.

MR LINDEBERG: Sorry?---That would not have been on my mind at the time.

Well, can I just look at the incident itself, a child being handcuffed to a fence throughout the night. In your opinion could that represent child abuse?---I think it would have been a very questionable action.

COMMISSIONER: As I understand it, it's still policy that that's an available option, isn't it?

40

MR LINDEBERG: Can I - well - - -

COMMISSIONER: Isn't that the evidence the state - I'll just ask Mr Hanger.

MR HANGER: I think it is, yes. "Restraint" is the word used. 1

COMMISSIONER: So there's power and authority to do that and the question of whether it crosses the line from disciplining to abuse or restraining to abuse is no doubt something that would be interesting, but before Ms Warner would even be able to form a view about whether it constituted abuse she would have to know the full circumstances in which it happened and whether there was a misuse of power or an excessive use of power or those sorts of things. I'm just not sure what - you may have a point in there somewhere, Mr Lindeberg. We just need to find it and make - what is the point you want to make to Ms Warner, that she knew something at a certain time? 10

MR LINDEBERG: Well, again, we're moving through this thing in terms of what has been - - -

COMMISSIONER: Well, we're not, actually.

MR LINDEBERG: What has been suggested is that there was no mention of child abuse in the cabinet room when this matter took place. 20

COMMISSIONER: You think that's unlikely and you want to suggest to Ms Warner it's unlikely - - -

MR LINDEBERG: I am suggesting - - -

COMMISSIONER: - - - because of all the preceding publications in the newspapers and what she probably knew herself at the time that abusing children at John Oxley would have been a real topic of conversation within cabinet. Is that right? 30

MR LINDEBERG: I am suggesting that.

COMMISSIONER: There you go, Ms Warner. There's the target behaviour?---No, that was not a topic of conversation in cabinet.

MR LINDEBERG: Okay, but you're quite sure that the documents were defamatory?---We were advised the documents were potentially defamatory from the crown solicitor.

Ms Warner, on the 14th Mr Bosscher asked you, "Were you responsible for removing Mr Coyne as the manager from the centre?" 40

COMMISSIONER: Do you remember that?---Yes.

MR LINDEBERG: You said you were not?---I was not.

Can the witness look at this item, please? I'll give it to - and I'll give Mr Byrne a copy - or I'm jumping the gun.

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COMMISSIONER: Do you want to ask Ms Warner if she still adheres to that answer? 1

MR LINDEBERG: Do you still hold to that?---Yes. Now I'm concerned that I might have at some point said "We removed him".

Sorry, can you say that again, please?---Now I'm concerned that at some point I might have said that we, collectively removed him.

When you say "we", who do you mean?---I mean the government, I mean the department, and I was the minister at the time. So I take responsibility for it but I didn't do it. 10

Can I still ask the witness to look at that item?

COMMISSIONER: Yes. The witness is having a look at the The Queensland Times for Monday, April 9, 1990. It's an article by Lyndall Pearce on page 5.

MR LINDEBERG: Do you recall that article?---No. 20

Do you know of the content of the article?---Well, I do know. I've read it.

Ms Warner, in the statement you say, "We've known of the problems at the centre for a long time"?---Yes.

What were the problems?

MR BYRNE: Well, to put it fairly, Mr Commissioner, given the newspaper article doesn't attribute that to the witness - - - 30

COMMISSIONER: You want to know what Ms Warner meant in the statement - - -

MR LINDEBERG: Well, Ms Warner - now, let me be fair to the witness. It is a spokesperson who was saying this? ---Yes.

To the extent that it's a spokesperson speaking on your behalf do you accept what that person was saying on your behalf?---We did know that there were problems there for a long time, but it was not my first - when we took over, our first step was to appoint - well, yes, it's the use of the word "we". 40

No, I'm not worried about that so much?---You're not.

No, what I'm interested in just at this point in time is I would like you to quantify what the problems were that you knew?---Well, we knew that there was disputation amongst the staff. We knew that there was a breakdown of, I

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suppose, order at the centre as evidenced by the riot. We 1
knew that things were not happy at the centre and that
there was disputation going on. We know that.

Are you attributing the riot to the manager, because of the
manager?---No, I wouldn't be in a position to attribute the
riot to the manager.

But just because there are differences of opinion are you
suggesting that that's a reason to get rid of the manager?
---No. I'm saying there were problems. There were
problems at the centre and - - - 10

Can I put this to you, that one of the major problems at
the centre which came through the State Service Union was
that Mr Coyne was applying disciplinary processes to his
non-favourites in a different way than he was to his
favourites.

MR HANGER: Now, just stop. I object now.

COMMISSIONER: Yes, Mr Hanger?

MR HANGER: I mean, this is just not relevant. It's as 20
simple as that. We've been right through all the documents
about this. There were disputes at the centre. We can't
arbitrate on whether - who's right or wrong, and you have
no intention of doing that.

COMMISSIONER: No. Mr Lindeberg, are you setting - did
you ask the question to set up a platform for another
question or are you just interested to know whether
Ms Warner knew that discipline and favouritism was an
issue?

MR LINDEBERG: I am suggesting that, Mr Commissioner. 30

COMMISSIONER: That Ms Warner knew that?

MR LINDEBERG: I am suggesting that - well, I put it to -
I'll put it to her, if I may, and if she says no,
well - - -

COMMISSIONER: Yes.

MR LINDEBERG: I put it to you that through your contacts
with your sources at the centre that you knew that the
manager was applying disciplinary processes inequitably. 40

COMMISSIONER: So it was alleged that he was - - -?---Yes.
I'm not sure through my contacts that I did know that. I
did not know that that was the specific allegation against
Mr Coyne.

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MR LINDEBERG: Right. I shall move on. Can I tender that document, Mr Commissioner? 1

COMMISSIONER: Yes. Lyndall Firth's article will be exhibit 328 - sorry, Lyndall Pearce.

ADMITTED AND MARKED: "EXHIBIT 328"

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MR LINDEBERG: Ms Warner, did the staff of this commission show you an excerpt of Channel Nine's program Queensland's Secret Shame?---Did the staff show me that? 1

Yes, when they interviewed you?---No.

So you've not seen it - sorry, they didn't show you?
---Recently.

No, okay. Well, in your statement at 60 and 61 I suggest to you that you are referring to that program?---Yes, I was. 10

And you are suggesting that Mr Comben has no basis for saying - and if I may put these words which is from the transcript, you are saying that he had no basis for putting these words, if I can read them to you - this is Mr Comben speaking on the program after you have said that you had no recollection of anything about maltreatment of children. Mr Comben then goes on to say:

In broad terms we were all made aware that there was material about child abuse, that there was material which was said to be highly defamatory and it was accepted on face value that if this matter was of such concern that it got to a level of cabinet decision, then those allegations must have had considerable merit and substance. 20

Do you recall those statements?---Not from the interview, no, because - - -

No, from the TV?---Well, I saw that 10 years ago or something.

I understand that?---So I can't remember what was said. I remember that he said that there was - that the Heiner documents were about child abuse and my memory was that they weren't. 30

And consequently you phoned him up, according to this?
---Yes.

And you said, you know - well, what did you say to him?
---The only phrase that I actually remember saying to him was, "Pat, what do you know that I don't know?" and he said, "Nothing," and so I said, "So why are you talking about it?" and I can't remember the rest. 40

That was it?---No; no; no, I mean, the conversation went on but I just can't remember any more of it.

In your statement you seem to be suggesting that he made those statements because he wanted a free flight to Sydney?---No; no, I said a friend - the transcript is

mistaken in that it implies that I said that he said that to me on the phone. I did not say that. He did not say that on the phone. I was asking around why Patrick would make such statements to people and a mutual friend said, "He probably got a free trip to Sydney," that's all. That's the only possible explanation that's been given to me for why he would make statements. Nobody else has - - -

1

He wanted a free flight to Sydney?---Well, nobody else can come up with a logical explanation for why he would say this.

10

Okay. At point 30 you are saying that the Heiner material was low-level personal stuff. Is that correct?---That's the information that I was given.

From your director-general?---Yes, from my director-general.

I beg your pardon?---Yes, from my director-general.

Who hadn't read the documents?---That's right.

Who hadn't read - - -?---That was the information that we had.

20

I think you trace it back to the crown solicitor?---No, all the crown solicitor said, because he didn't see them either, was that the matter was - matters could be potentially defamatory, that's all.

But nobody knew what was in them?---No, but there were reports in the department, I assume, from the people that took the notes.

That's an assumption on your part?---Yes. I didn't go around and interrogate every member of the department to find out.

30

But, Ms Warner, you had a lawfully established inquiry looking into the management of the centre which had a long-running lot of problems and you were about to shred the documents and you were the minister responsible for that centre in looking after the care of children and you had knowledge on 1 October that children were being handcuffed to fences throughout the night and you decided you didn't want to look at them?---I was advised not to look at them, otherwise I would become party to the defamation. You see, I think the mistake is that that inquiry - it was reported to me that that inquiry became about the dispute between the staff rather than the activities at the centre and that's what was not leading us anywhere.

40

COMMISSIONER: Who told you that if you read the documents yourself, you would become a part to the defamation? Do you remember?---I can't remember who but, I mean, my sources at that time were limited and that was the information that I was given. 1

And is that your recollection about why you never looked at those documents?---Yes; yes, it is.

MR LINDEBERG: Why would you be concerned about defamation?---Well, at the time I was concerned about - I mean, I wasn't concerned so much about myself becoming - defamation is a nasty thing. The problem was that the inquiry had been set up and that people had given evidence to that inquiry in good faith on all sides and they were assured that they would be protected and now it appeared that they would not be protected and that they could - there could be consequences for them for what they had said at the inquiry and I thought that was very unfair. 10

But I put it to you they were protected?---Well, it was put to me that they were not protected.

But your director-general went out to the centre and assured the staff that they would be covered by crown liability providing they carried out their duties diligently and conscientiously?---Well, I'm sorry, I wasn't there. 20

COMMISSIONER: Was that a point made specifically to reassure the staff who might be liable to defamation action or just their general performance of their employment out there?

MR LINDEBERG: I suggest that what can be adduced is this is a statement that Ms Warner - sorry, Ms Matchett gave to the staff and she was talking about their appearance before Mr Heiner and that they would be covered by the policy of crown liability on the proviso that they acted diligently and conscientiously. 30

COMMISSIONER: So your position is that Ms Matchett virtually gave the staff reason to believe that they would be protected against any potential defamation liability.

MR LINDEBERG: That's correct, but I take it one step further. There was a proviso in those words. 40

COMMISSIONER: They had to act in good faith.

MR LINDEBERG: Yes, and they weren't permitted to give malicious untruths to Mr Heiner.

COMMISSIONER: Yes.

MR LINDEBERG: Now, if you accept that - - -?---No, I don't know that I do because I wasn't there and I have no evidence before me that Ms Matchett said that.

1

COMMISSIONER: Just let's test the idea that it was to protect the workforce from potential civil liability for defamation. Why is it government or cabinet's function to do that?---To ensure that you keep faith with your staff or your workers who had been put in a position where they had been asked to give information about sensitive issues about each other and then - and been assured that they had been given - that they had complete confidentiality.

10

Yes?---And then it appears that that wasn't the case and that they were at risk. I think that is a breach of faith with your staff to allow them to be potentially damaged from doing something that the government had asked - albeit not my government, but the government had asked them to do.

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But they are adults. They can choose what to say about people, whether they do it voluntarily. As I understand it, maybe one person has said they felt under some obligation to speak the truth, and if the truth defames somebody, so be it. But governments wouldn't normally protect people from their own civil liability, would they? ---Well, I mean, it would be - if you were an inquiry that has been formally set up for getting information from you and you told the truth as you saw it and that that truth ended up being defamatory, I think it would be unfair for that person to suffer any kind of penalty at doing that.

1

Well, if they were compelled to do that, that might be a stronger argument, mightn't it? But if they volunteered it, why would - - -?---Well, I wasn't in a position - - -

10

- - - anyone come to the rescue?---I wasn't in a position to know how those were - under what circumstances those workers had been encouraged to speak to the inquiry.

But if you were going to protect - see, there are a number of ways you could protect them, wouldn't there? One way would be to do what you did for Mr Heiner and indemnify them. That would keep faith with them, sufficiently protect them, and allow people who had been defamed the opportunity to get redress. That would be one option, wouldn't it?---Well, for some reason nobody gave is that option.

20

But the same cabinet gave Mr Heiner that option?---Yes.

Just at the same time?---Yes.

The same meeting?---But some reason the crown solicitor never made that an option.

30

Okay, but wouldn't - all right. And no one else thought of it without him giving the advice?---No, it seems not.

All right. Well then the next thing is why - the other option was to destroy documents to protect workers at John Oxley?---Yes.

Right. And that took three days to get through cabinet? ---Not for more than - three occasions.

Three occasions to get through. And are you saying that on none of those occasions did anybody within cabinet say, "Well hang on, is this the only way we can do it? What about indemnifying people - - -"?---From my memory - - -

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- - - on the basis that let's get some advice? What sort of liability really to defamation would these people be exposed to"?---Well, I don't recall that ever been put as an option.

See, if the chances of them being sued successfully were low and the chances of them getting any real money out of it were low, then you might go with the indemnity option as opposed to the destruction option?---Yes, I wish we had your advice at the time.

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MR LINDEBERG: Can I intercede?

The point is - and I'm sorry, Commissioner, it's in the speech that Ms Matchett gave to the staff, that you did assure the staff that they were covered under crown liability?---I'm sorry, I can't - - -

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COMMISSIONER: Well, that's not fair because Ms Warner hasn't heard what Ms Matchett said and what you're asking Ms Warner to - - -

MR LINDEBERG: Let me put it this way, are you saying that Ms Matchett never told you that she gave staff assurances on or about 13 February that the people who gave evidence to Mr Heiner would be indemnified under the policy of crown liability?---I don't recall her saying such a thing.

COMMISSIONER: Now, is that a fact, is it?

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MR COPLEY: Well, perhaps if the questioner reads out the phrase that he has in mind to the witness.

COMMISSIONER: Yes, because Mr Byrne may not know.

MR COPLEY: It's in exhibit 156, which I have there.

COMMISSIONER: Okay. Would you just, for my benefit as much as anything, Mr Lindeberg, remind me what Ms Matchett said about that point?

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MR LINDEBERG: Bear with me, Commissioner. I have it. I'll just find it. She says here:

I want to remind you all, however, of the current government policy regarding legal liability of crown employees, which you all are. In short the crown will accept full responsibility for all claims arising out of a crown employee's due performance of his or her duties provided these duties have been carried out conscientiously and diligently.

COMMISSIONER: When did you tell the John Oxley Centre people that?

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MR LINDEBERG: According to this it is the meeting on 13 February. And it's exhibit 156.

MR BYRNE: It should be noted, as I'm sure you have, Mr Commissioner, that there's nothing said there about

statements to inquiries, defamation, it's about performance of the duties within the centre. 1

COMMISSIONER: Yes. But, Mr Lindeberg, you're going to say that that was intended and understood to include statements to Mr Heiner and any defamatory material.

MR LINDEBERG: Indeed. And I think - although I don't think it was tested, but I think that the staff appeared before Mr Heiner during working time, and - - -

COMMISSIONER: Yes, I think that was the evidence. 10

MR LINDEBERG: So you are saying that Ms Matchett did not tell you that?---I don't recall her telling me that.

And you had not heard of that before?---No. Well, it's not that I'd not heard of it before, but not thought it significant before.

COMMISSIONER: The argument might be put - and it's fair, I think, to give you the opportunity to address it - that is that the purpose of the destruction wasn't to help the workforce at all, it was to protect the government from its exposure to any of the fallout from Heiner. What do you say about that?---I think that there - I mean, I think my major concern was about the staff. I think there was some fear in the crown solicitor's mind that the government would be exposed. 20

See, let's look at it this way, the government had exposed itself by indemnify Mr Heiner, hadn't it?---Yes, that's right.

Now, a good way to protect yourself against ever having to pay out on that indemnity would be to destroy the very evidence that would show Mr Heiner liable for damages for defamation, wouldn't it?---I'm sorry, you lost me with that train of thought. 30

All right, think about it. In cabinet were the very documents that could make Mr Heiner liable for defamation? ---In cabinet?

Yes, the documents - well, available to cabinet. The documents that cabinet said could be destroyed - - -? ---Yes. 40

- - - was the evidence of defamation against Mr Heiner, who you'd indemnified?---Yes.

Was there any link between those in the decision to destroy?---Not from my memory.

So you wouldn't have to pay out on the indemnity if Mr Heiner was never liable for defamation, would you?---No. I don't know that we discussed - I'm sorry, I don't have any recollection of talking at any length about how much a government would have to pay out. I'm sure lawyers around the table would have had that in their mind. It was not so much in my mind.

1

See, I know the coffers. I've been in government, but if you were going to indemnify somebody you want to know what the extent of your potential liability was, wouldn't you, ordinarily?---Well, I assume that he was indemnified because he had conducted an inquiry in which he thought he had an indemnity and therefore we gave it to him retrospectively, but that's all I remember.

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So you think that - - -?---I think it was about a question of fairness.

To Mr Heiner?---It was an attempt to try and make the situation fair for everybody because there was an element of injustice seeming to occur. Natural justice was being - - -

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Well, let's test that too, because one of the people who would say that he was unjustly treated would be Mr Coyne, who was the very one most likely to sue for defamation? ---Yes.

And yet he couldn't because the government wouldn't give his lawyer the documents that he might use to formulate that claim and they were destroyed before he got his hands on them?---Yes.

So talk about justice, he might think that he was unjustly treated. And he was one of the employees - in fact he was the manager at John Oxley. So if the government was being equal - - -?---Yes, but I think - - -

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- - - in its treatment of its staff, they would have included his interests along with everybody else's interests, into - - -?---Well, I think that we were attempting to do that and we were attempting to try and put the clock back to where it was before the Heiner stuff happened.

40

Except that exactly what - in order to protect the interests of one group, admittedly the biggest group, at the centre, you had to - - -?---No.

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- - - override the interests of Mr Coyne, didn't you?---No. I think that we were also protecting Mr Coyne's interests, if he would just stop for a moment to think about it, because we were preventing any damaging material that may have been said about him at the inquiry from becoming known.

Except that he had the power to make it public or not by deciding whether or not to sue. I mean, it was always going to stay private, within reason, unless it made the papers, about what was said about him, but a lot of those things had already been said. How were you protecting Mr Coyne again?---By - I mean, he was very stressed about the idea that people had said bad things about him at the inquiry. I don't know what they were. It was reported to me that he was incredibly agitated at the time.

10

And he might have wanted to sue somebody for it?---Well, he may have.

20

Well, wasn't that the suggestion that was made?---Yes, I think that was a suggestion that was made, but I think that it would have been not in the interests of the running of John Oxley.

That might be right too, but without the documents he couldn't ventilate what he might have seen as his right to sue people who had made from his point of view false accusations about him.

MR COPLEY: Before the witness answers that can I just ask you, sir, to consider whether or not the question would be better put without the documents it might have impeded or made it harder for him to do something?

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COMMISSIONER: Yes, well - - -

MR COPLEY: It wouldn't necessarily, you'd agree - - -

COMMISSIONER: I don't know. What were his other sources? Mr Heiner, who was indemnified by the crown; the witnesses?

MR COPLEY: The witnesses who gave evidence.

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COMMISSIONER: Who - some wouldn't have known what the others said because Mr Heiner wouldn't give anybody a copy of the transcripts.

MR COPLEY: Well, all I'm saying is that - - -

COMMISSIONER: All right. I might have overstated it.

MR COPLEY: - - - all of the witnesses could have been questioned as to what they told Mr Heiner. 1

COMMISSIONER: But there was a conflict between Mr Coyne's interests and the interests of the other employees who might be liable for defaming him, wasn't there?---Yes, there was a conflict. There were many conflicts. I don't know that there was just the two.

The way that conflict was resolved was to destroy the documents that might have assisted Mr Coyne in launching a defamation action, which was what was feared, which is why Mr Heiner was indemnified and the reason in fact for the destruction of the documents themselves?---Yes, but if that information never became publicly known then he was not defamed. 10

He had no evidence of having been defamed, you mean?
---That's right.

He had been defamed but he just couldn't prove it?---Yes.

MR BYRNE: I think the other element that should be, in fairness, put to the witness, is that the indemnity given to Mr Heiner was in general terms. 20

COMMISSIONER: Yes.

MR BYRNE: It was to cover all of his actions in conducting the inquiry, it wasn't in any way limited or specified to relate solely to defamation.

COMMISSIONER: No, I think that's true too, but I think the context in which it arose was - all right, well, I can't remember enough to remember whether defamation was specifically discussed as either the cause or part of it or whether the main concern for the indemnity was his conduct of the inquiry, because as I understand the evidence, he never compelled anybody to answer any questions, so that any statement that was made was volunteered. His liability for anything might have been higher, or it would have been higher, if he'd compelled anyone, but if he'd just been sitting there taking whatever they wanted to tell him and writing it down and keeping a copy of it it's hard to see what he was going to be liable for. Yes, Mr Copley? 30

MR COPLEY: Maybe I can help inform the debate. You may remember that a certain question was asked of one witness when she went before Mr Heiner. 40

COMMISSIONER: Yes. I said before I thought there was one witness who said that she - what did occur - - -

MR COPLEY: No, what - I'll just show you what I'm alluding to. That's the easiest way. It's in an exhibit, really. Could you have a look at exhibit 110? I'll have

your assistant indicate the sentence. It's Mr O'Shea's writing. It's a file note that Mr O'Shea made apparently on 16 January 1990 after speaking with Ms Matchett.

1

COMMISSIONER: Yes, that's right.

MR COPLEY: That might be - and we're probably getting into the area of submission now, but that might be - - -

COMMISSIONER: Show Mr Byrne.

MR COPLEY: - - - the genesis of where concerns for that particularly had come from.

10

COMMISSIONER: Sure.

MR COPLEY: That is apparently a question asked by Mr Heiner.

COMMISSIONER: Yes.

MR COPLEY: That he may have asked it as a result of things he'd been told by people who he had interviewed. He presumably wouldn't have just snatched it out of thin air.

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COMMISSIONER: Yes. That was always going to be tricky, that one, because it didn't seem to be relevant to anything ever.

MR COPLEY: No.

COMMISSIONER: It might have created this whole mess, because people were asked irrelevant questions, however where we - thanks for that, Mr Copley. Why this discussion arise was because I think, Mr Lindeberg, you were making the point that the - well, sorry, what was your point?

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MR LINDEBERG: My point was that they're talking about having to shred the documents to prevent people suing each other, and I was saying that the staff had been given the assurance by the director-general - - -

COMMISSIONER: That couldn't be the reason.

MR LINDEBERG: Sorry?

COMMISSIONER: That could not be the reason to protect the staff, because they were already protected.

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MR LINDEBERG: That's exactly right.

COMMISSIONER: Would you respond to that, please?---No, because that was - well, what was actually read out was that the staff were protected in the course of their duties, not necessarily before the inquiry.

But you didn't even know that?---I didn't even know that, no. 1

Okay, and it wasn't debated in cabinet?---From memory, no, but - - -

MR LINDEBERG: In relation to - - -

COMMISSIONER: So you suggested why it couldn't have been reason. Do you want to suggest to Ms Warner what was the real reason for the destruction? 10

MR LINDEBERG: Not at the moment. I wanted to - - -

COMMISSIONER: You want to build up to it. Carry on.

MR LINDEBERG: May the witness look at exhibit 110, please?

COMMISSIONER: Is that the one you showed me, Mr Copley?

MR LINDEBERG: Yes.

MR COPLEY: It is. It's Mr O'Shea's note of his conversation with Ms Matchett. So the witness needs to understand that. 20

COMMISSIONER: Be careful. Be careful to - - -

MR LINDEBERG: Yes, I appreciate that.

COMMISSIONER: Good.

MR LINDEBERG: Go to the - you'll see it, but if you could - - - 30

COMMISSIONER: That notation is about two-thirds of the way down the page?---Yes.

There's a notation there. That's been suppressed, so if you wouldn't mention the content?---All right. Okay, yes.

MR LINDEBERG: Did you have any knowledge of that?---I'm sorry, I'm - where it starts off by saying, "Appointed by DG at the time by letter"?

COMMISSIONER: No, below that, I think. Just point - - -? ---Just immediately under that? This one? 40

MR COPLEY: It's the sentence beginning, "Question put"? ---Okay.

Just read that?---Yes, what about it?

COMMISSIONER: Mr Lindeberg?

MR LINDEBERG: Did you have any knowledge of that?---No. 1

Let me put it to you - - -?---Well, sorry, I'd heard the rumour.

You'd heard - well - - -

COMMISSIONER: The rumour about the question being asked?
---No, no - - -

At the top of the sentence?---No, I didn't know about that. 10

MR LINDEBERG: Let me put it to you, Ms Warner, that on or about 8 March I phoned your private secretary Norma Jones to arrange a meeting with you and Mr Coyne and Ms Dutney and their spouses to talk about that very subject, and I told her what the subject was. Did she tell you that?---She may have done.

COMMISSIONER: Do you remember such a meeting?---We didn't have a meeting.

No, do you remember that a meeting like that occurred?
---No, the meeting didn't happen. 20

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MR LINDEBERG: No; no, it didn't. I put it to you at that meeting - - -?---Which meeting? 1

Sorry, at that phone call on or about the 8th that Ms Jones told me that the documents had been shredded?---Right.

And the following day when I went in she told me that you would no longer meet with me; that you would only meet with the general secretary and the assistant general secretary? ---Mm.

Do you recall that?---I think that would've been the norm. 10

Why was that the norm?---Because it would be very difficult for ministers to meet with every union organiser.

I put it to you - are you suggesting it was different to meet a director-general than it was to a minister? ---What - - -

Because I was meeting with your director-general?---Right.

You saw a difference?---Yes. 20

I put it to you that when you met with Mr Martindale - - -? ---Did I?

- - you put it to him - - -

MR BYRNE: Well, that's an assumption?---That's an assumption.

MR LINDEBERG: Well, sorry, did you meet with Mr Martindale?---I don't recall meeting with - - -

You don't recall?---No, I don't recall, but it doesn't mean it didn't happen. I just don't recall it. 30

COMMISSIONER: Were you told something as a result of - about Mr Martindale at that time?---Look, I don't know.

MR COPLEY: I think the thrust of this question is what she told Mr Martindale?---I see, right.

MR LINDEBERG: So if you don't know, I can't - - -

COMMISSIONER: No, you can - - -?---You can try. 40

MR LINDEBERG: Well, can I put it to you that you put to Mr Martindale at that meeting that my conduct was inappropriate and overly confrontationalist and that I had threatened you and your senior staff?---No, that - - -

MR COPLEY: And so now the next question is: what is the relevance of that to this inquiry?---It didn't happen. It didn't happen.

MR LINDEBERG: The relevance is that I - - - 1

COMMISSIONER: Okay, stop?---sorry, I'm very clear about that one.

Please. Now, what is your point that for whatever reason Ms Warner didn't want to see you? What has that got to do with - - -

MR LINDEBERG: I will put the question.

COMMISSIONER: Sorry? 10

MR LINDEBERG: Can I put the question to her?

COMMISSIONER: You can put it to me and I will let you know.

MR LINDEBERG: I will put to you that the fact that I challenged the information that the documents had been shredded changed the dynamics of what I had been previously doing. At that point in time, can I say that - - -

COMMISSIONER: All right. So you want to put to Ms Warner that her attitude towards meeting you changed for some pertinent reason? 20

MR LINDEBERG: Yes.

COMMISSIONER: Okay. You better put that.

MR LINDEBERG: I put that to you and it was as a consequence of challenging the information that I learnt about the documents having been shredded?---No, I don't think that was the reason I wouldn't meet with you. 30

Let me go back a point. Did Ms Matchett ever put to you on or about 23 February that I had met with her and Sue Crook and told her that the POA and the Queensland Teachers' Union were seeking access to the Heiner inquiry documents and that if access was not granted out of court, we would join Mr Coyne in his litigation to gain access to the documents?---I'm sorry, I have a detailed knowledge - memory of that at all. It may very well have been told to me, but I don't have any - currently have any knowledge of that.

Given that you were taking these matters to cabinet, do you think it would have been pertinent information for you to have?---Hadn't they been to cabinet by then? 40

They hadn't been - the decision hadn't been made at that point?---Hadn't been made by then.

COMMISSIONER: I thought you put that - - -

MR COPLEY: The decision to destroy was made on 5 March?
---Yes. 1

COMMISSIONER: I thought you had put that the documents had already been shredded.

MR LINDEBERG: Yes. In point of fact I am trying to reflect precisely what was said to me.

COMMISSIONER: So are you suggesting that you were told the documents had been shredded before in fact they had been? 10

MR LINDEBERG: Indeed, but after the cabinet decision of the 5th.

COMMISSIONER: All right?---You're suggesting what?

That cabinet had decided to shred the documents, but Mr Lindeberg was told they had actually been shredded when in fact they still existed?---I see, right.

MR LINDEBERG: You have no recollection?---No, I have no recollection of that at all. 20

COMMISSIONER: Did you have any recollection of you personally deciding against seeing Mr Lindeberg any more because he was overly confrontationalist?---I think that was generally the idea at the time.

Do you think that was your - - -?---There was a certain level of harassment of my office that - - -

Right; and what about you personally? You didn't want to see him because of that?---Well, because nothing would have been served by seeing him. That's the problem. 30

Okay. Over to you.

MR LINDEBERG: Ms Warner, I mean, you talked about me harassing your staff. In what way was I harassing your staff?---Constant phone calls.

MR.....: Sorry, I object. This is irrelevant.

MR LINDEBERG: Well, to the extent that my mission was to preserve the documents?---Was it? 40

COMMISSIONER: I think it's relevant enough actually. I don't want it to devolve into a - - -

MR LINDEBERG: No.

I put it to you that I never harassed your staff.

COMMISSIONER: No, let's focus on you and the destruction of the Heiner documents and what you may or may not have been told and whether or not you were stymied in your efforts to preserve them. 1

MR LINDEBERG: Yes.

Let me put it to you this way: I put it to you that at that meeting when I met with Ms Matchett on the 23rd, I was assured that the documents were safe on the 23rd?---23rd of? 10

Of February?---February, yes.

Now, evidence adduced here is that on that same day the cabinet secretary had written to state archives to seek their approval.

COMMISSIONER: For destruction.

MR LINDEBERG: For destruction?

COMMISSIONER: Right?---So? 20

MR LINDEBERG: then I put it to you that I was given - when I left that meeting, I was given to believe the documents were safe and you were still seeking crown law advice on 23 February?---Mm.

On 8 March or thereabouts I spoke to your principal adviser and she told me the documents had been shredded.

COMMISSIONER: When in fact they hadn't.

MR LINDEBERG: When in fact they hadn't been but the order to shred them had been taken?---Right. 30

But I had been assured that they were safe.

COMMISSIONER: Right. Now, just ask your question on it.

MR LINDEBERG: Now, if I uttered surprise at that - - -

COMMISSIONER: No; no, it doesn't matter how it surprised you, but what do you want to put to Ms Warner?

MR LINDEBERG: In objecting, do you think I was harassing your staff?---I think you were, but I don't know that it's got anything to do with that chain of events that you just mentioned. 40

Ms Warner, I was a trade union official.

COMMISSIONER: No, Ms Warner is not accepting that those chain of events occurred because you don't know whether

Mr Lindeberg was assured that they were still safe when they were - - -?---No; no; no. 1

MR LINDEBERG: But you do know that I was a trade union official?---Yes.

And you do know that Mr Coyne was my member?---Yes.

And you would have reasonably thought that it was my duty to protect his interests?---Yes.

And you did know that he was seeking access to the documents?---Yes. 10

COMMISSIONER: That, Mr Lindeberg, is a line of questioning.

MR LINDEBERG: I'm learning. I think I should sit down now.

COMMISSIONER: While you're ahead, yes.

MR LINDEBERG: Ms Warner, may I just put it to you that you never at any stage told anybody in the cabinet room that you had any knowledge of child abuse at the John Oxley Youth Centre?---Nobody asked me the question, I don't think. 20

Okay, thank you. Now, you have also made a statement that - and perhaps it goes back to my role as a union official - "only Coyne and Lindeberg" - your said at point 40 - - -? ---At point?

Point 40 in your statement?---Yes; yes.

COMMISSIONER: Point 40 of how many points, Mr Lindeberg? 30

MR COPLEY: He means paragraph.

MR LINDEBERG: Sorry.

COMMISSIONER: Yes, I gathered, but how many paragraphs are there?---60.

MR LINDEBERG: You say in respect of, as I understand it, the handling of Heiner inquiry, "The only two that ever became excited on the subject was Peter Coyne and Kevin Lindeberg; just those two, nobody else." Are you suggesting that it was only Peter Coyne and myself who were getting excited about the shredding?---Yes. 40

I put it to you that I also was representing the Queensland Teacher's Union in seeking access to the documents? ---Mm'hm.

And that they had threatened litigation if the documents hadn't been handed over?---Mm'hm. 1

Were you aware of that?---No, I don't recall that.

COMMISSIONER: So what you mean is that Mr Lindeberg was getting excited in his personal and his representative capacities, whatever they were?---Yes.

MR LINDEBERG: I don't know whether to take umbrage at that or not?---You've got to admit that you were excited. 10

Can you explain what you mean by that?---No, I don't have do.

You don't have to?---No.

I see.

COMMISSIONER: I think what I'll take from that exchange, Mr Lindeberg, is that you saw Mr Coyne's rights under threat and you were doing your best to preserve his interests. I don't think Ms Warner is saying anything different. 20

MR LINDEBERG: I think that may be true, but the notion of getting excited, I mean, I'm not sure - I mean, whether that's an appropriate word. I mean, if you want to call me excited about protecting my members' interests, well I'm more than happy to accept that - more than happy to accept that.

COMMISSIONER: I don't take it pejoratively.

MR LINDEBERG: No, okay. 30

Well, can the witness finally - can the witness look at exhibit 181, please?---Yes.

Have you seen that before?---It's the cab sub.

For 5 March?---That's the date of the decision. Yes, I assume it's - - -

- - - find it earlier?---Sorry?

It is the cabinet submission - - -?---Yes. 40

- - - that went to (indistinct)?---Which one are we looking at? 181? Is this just another copy?

I hope we've got the right - - -?---It's at the background. I haven't got the background to the - is that background?

Just to assist, 181 seems to encompass two documents; the decision of cabinet on 5 March and the submission on 27 February.

1

COMMISSIONER: Has it got 181 on it?---One's got 81, but there's another document which looks exactly the same. Just a minute.

Might be slight variation?---Yes, it's exactly the same.

Is it? Okay.

10

MR LINDEBERG: This is a document you signed on 27 February?---Yes.

And it's a document that you took to and spoke to in cabinet?---Yes.

Can I ask you to turn to page 2, please, and look at the heading called Urgency?---Yes.

You read and understood those words at the time you took your decision?---Yes.

20

Thank you very much. I have no further questions.

COMMISSIONER: Thanks, Mr Lindeberg. Mr Byrne? Sorry, Mr Harris, you've got some questions?

MR HARRIS: Yes, I just have - - -

COMMISSIONER: You want to go last, Mr Byrne?

MR BYRNE: Yes, I do. I'm just looking at the time. The witness has been there for a little while.

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COMMISSIONER: Yes. Would you like a break, Ms Warner, or want to get it over with?---Depends on how long you're going to be.

MR HARRIS: I only want one question?---Okay.

MR BYRNE: But then I have some.

COMMISSIONER: You have some? Let's work on the basis of 20 minutes. If you want a break, more than happy - - -? ---Yes, let's have a break, then, if it's 20 minutes.

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THE COMMISSION ADJOURNED AT 11.37 AM UNTIL 11.45 AM

THE COMMISSION RESUMED AT 11.53 AM

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COMMISSIONER: Yes, Mr Harris?

MR HARRIS: Thank you, commissioner.

COMMISSIONER: Can I let everyone know that I'm adjourning just before 12.30 today and we will resume at 2.00?

MR HARRIS: Could I have the witness have a look at exhibit 315, please?

10

COMMISSIONER: Certainly.

MR HARRIS: Ms Warner, my name is Gordon Harris. I'm representing Shelly Neil who was an inmate at the John Oxley Youth Centre. Could I ask you to read that document, please?---Yes.

Now, have you ever seen that document before?---Not to my recollection.

20

Could I just ask you about the contents of the document? ---Yes.

I know it's a long time ago, but do you recall any of the contents of what's written in that document ever being brought to your attention?---I'm sorry, I don't recall.

Okay. No further questions, commissioner.

COMMISSIONER: Thank you.

MR COPLEY: May I question further before Mr Byrne goes last?

30

COMMISSIONER: Yes.

MR COPLEY: Thank you.

Ms Warner, you were asked some questions about a conversation Kevin Lindeberg says that he had with Norma? ---Yes.

What was the surname of Norma?---Jones.

40

Now, who was she?---She was my principal private secretary.

Is she still alive?---Yes.

Does she live in Brisbane?---Yes.

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WARNER, A.M. XXN
WARNER, A.M. REXN

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Okay. Did you know that three days after cabinet on 8 March 1990 Ms or Mrs Jones met with Kevin Lindeberg?
---I'm sorry, I can't recall that. 1

So it's possible you did know it at the time or were - - -?
---Yes, it's very possible that I knew at the time.

All right. Now, it's been put to you that she said, that is, Jones said, the documents had been shredded?---Mm.

If that is true that Ms Jones said that, that would not have been correct in fact, would it?---No. 10

Because, as you know, they weren't shredded until later in March?---Yes.

Agreed?---Yes.

Was there any agreement or discussion between you and Ms Jones that if anybody asked about the existence of the documents, people would simply be told they had been destroyed rather than they were to be destroyed before they were in fact destroyed?---No, not to my memory. 20

COMMISSIONER: Was there a specific agreement to tell Mr Lindeberg that as opposed to the population in general?
---No, not that I can recall.

MR COPLEY: Most of the population were either unaware or simply not interested in the fate of these documents. You would agree with that, wouldn't you?---Yes.

But there were at least two people that you were aware were interested?---Mm.

One was a solicitor and one was Peter Coyne?---Yes. 30

Okay. So if Ms Jones had falsely pretended or falsely represented that the documents had in fact been done away with, destroyed, before they had been destroyed, is that something that she did with your concurrence or knowledge or acquiescence?---I'm sorry, I have no memory of this whatsoever.

No, but what I'm asking you is if she had told that falsehood - and I keep saying "if" because we haven't heard from her, but if she had told that falsehood to Kevin Lindeberg, would she have done so pursuant to an agreement or after having had a discussion with you that that's what she said say to anyone who asked for the documents?---Not necessarily. 40

Does that mean from that answer that it's possible that you and she might have decided to give that reply to people?
---No, I have no recollection of that.

Well, what I'm trying to elicit from you is whether or not it's possible that you and Ms Jones and/or maybe other people but you and Ms Jones at least had decided, "If anyone wants access to these things that cabinet has decided will be destroyed, we will just say they have been destroyed"?--I have no recollection of having any conversation of that nature.

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COMMISSIONER: So if Ms Jones did tell Mr Lindeberg that, it wouldn't have been pursuant to any arrangement with you?---No.

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It would have been off her own bat?---Yes.

MR COPLEY: She would have been off on a frolic of her own?---Well, it's hardly a frolic.

That's the expression lawyers use?---Is it?

She would have then gone down a path that you didn't know she was going to go down to say that?---I'm not entirely sure that it's true that she did.

COMMISSIONER: No, I know.

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MR COPLEY: I know that. That's why I keep saying "if she said it"?---Yes, well, I don't have any recollection of this whole line of thinking.

COMMISSIONER: She wouldn't have had your authority to say it if she did to Mr Lindeberg?---Not that I can recall.

MR COPLEY: You must remember now whether or not you and she ever had a discussion about, "What do we say if Coyne or Lindeberg or the solicitors - - -"?---No, I don't think so. Well, I mean, if we did, I don't recall it.

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COMMISSIONER: At this time - just bring me into context here - what was the situation in relation to the lawyer's question for Mr Coyne about the whereabouts or the status of the documents? Was he still waiting to hear back from Ms Matchett?

MR COPLEY: Yes.

COMMISSIONER: How long did he wait before he got an answer, from when he asked to when he was actually told?

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MR COPLEY: A letter was sent and it's annexed to exhibit 200. A letter was drafted for Ms Matchett to send to Rose Berry Jensen dated 18 May 1990. Yes, 18 May 1990 because it begins "I refer to your letter of 8 February 1990".

COMMISSIONER: So it was five or so months between when he asked for the documents and when he got a response.

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MR COPLEY: Three, March. 1

COMMISSIONER: "May", I thought you said.

MR COPLEY: Yes, but the letter asking for these documents was dated 8 February so to March is one month; to April is two; to May is three.

COMMISSIONER: Right.

MR COPLEY: So it's about three months and two weeks. 10

COMMISSIONER: Three, right. The question about Ms Jones's involvement - where does she fall in that time frame?

MR COPLEY: She is alleged to have had a conversation with Kevin Lindeberg on 8 March 1990, so about one month after the letter was written and two months and two weeks before - - -

COMMISSIONER: Whether there had been agreement to put the lawyer off or delay telling him, the fact is there was a delay. 20

MR COPLEY: Yes, there was.

COMMISSIONER: He was essentially ignored until the government worked out what it was going to do with these documents.

MR COPLEY: Well, he wrote to the director-general again on 15 February.

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COMMISSIONER: What did he want to know then? Did he ever ask for an assurance - - - 1

MR COPLEY: Well, can I just remind you of the sequence so we know exactly what we're talking about?

COMMISSIONER: Yes.

MR COPLEY: That's the best way to do it. February the 8th, exhibit 141, Rose Berry Jensen writes, refers to regulation 65 and says, "We want statements of allegations made by the employees and then transcripts of the evidence taken by Mr Heiner." That's on 8 February. Then on 14 February 1990, exhibit 159, the solicitor rings Trevor Walsh seeking assurances from Ms Matchett that the Heiner material would not be destroyed and saying that his client, Coyne, considered his career had been disadvantaged by the transfer given the day before on 13 February and that he, the solicitor, made it quite clear that they were going to bring proceedings to attempt to gain access to the documents. Then on 15 February, exhibit 161, the solicitor says, "We refer to the conversation on the 14th," and it reminds Ms Matchett, "Mr Walsh did indicate to the writer his intention to communicate with you to advise of our intention to commence court proceedings." Then on 16 February, exhibit 163, a letter is signed on Ms Matchett's behalf answering the letter of 8 February. 10 20

COMMISSIONER: Saying what?

MR COPLEY: That's the one where they requested the documents under regulation 65.

COMMISSIONER: Yes.

MR COPLEY: The answer was, "We've referred your request to our department to legal advisers and you'll get a reply in due course." 30

COMMISSIONER: The advice was sought as a matter of urgency then.

MR COPLEY: Well, according to exhibit 161 the letter of 15 February again reiterating the intention to seek legal advice was received on 19 February and then Walsh has a note that on 21 February he wrote to the manager of personnel services saying, "Refer it to the crown solicitor as a matter of urgency." 40

COMMISSIONER: So on 22 February it was an urgent request.

MR COPLEY: Yes, and then as you know, on 23 February the state archivist's consent was obtained, and as you know, on 13 February the cabinet memorandum was signed by Mrs Carrick telling the cabinet that a solicitor acting for two people was desirous of having access to the documents.

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WARNER, A.M. REXN

COMMISSIONER: The cabinet's to destroy was when? 1

MR COPLEY: Made on 5 March.

COMMISSIONER: When did the destruction of the documents occur?

MR COPLEY: It occurred on 23 March.

COMMISSIONER: When is the evidence that it became public knowledge that that had happened? 10

MR COPLEY: As far as I can ascertain, in a document I haven't yet tendered, it became knowledge in the media on April 11, 1990, but how it - what got revealed to the media prior to that and when prior to that, I don't know.

COMMISSIONER: All right. Now, does that help contextualise things for you, Ms Warner?---Yes.

MR COPLEY: So there's no possibility at all that you and Ms Jones would have decided, "If someone asks for these things we'll give them a false answer. We'll fob them off by saying, 'They've already been destroyed'?"---No. 20

There's no possibility as far as you're concerned of that? ---I don't see what the point would be of making those statements to people if we weren't prepared to make a public statement saying that they had been shredded if they hadn't been shredded.

Well, I suppose one possibility is that - - -?---I mean, why - you know, why did we take so long to make the statement that they had been shredded if we were telling people privately they had been shredded before they were shredded? 30

I can't answer your question. I can only ask them?---No.

But one possible reason for telling someone they have been shredded when they were still extant is that that would fob that person or deter that person from bringing an application for something such as an injunction in the courts to prevent destruction?---I see. It didn't cross my mind, I don't think, at the time, to have that view.

So your position then is if Norma Jones said anything like this she didn't say it with your knowledge or consent? ---Well, certainly not with the motive that you have just suggested, because I don't think that occurred to any of us. 40

No, but my question is if Norma Jones said, falsely pretended, that the documents had already been destroyed, she did so without your knowledge and consent?---Yes.

Would you agree with this summation of the position, that cabinet knew that a solicitor was seeking access to the documents. Cabinet also knew that people at the centre were concerned about their legal position at the John Oxley Centre?---Yes, I think so. 1

I'm alluding there - or referring back to your evidence that people were concerned they might be sued for defamation?---Yes.

If they were the things that cabinet knew, would you agree with me that cabinet in the end made a judgment that the wishes of the minority, namely the one or two who wanted these documents, needed to be given less weight than perhaps the need or the majority out there to be protected from whatever action might flow if access to the documents was given?---I don't know that cabinet thought about it in those terms and I'm certain that I didn't think about it in those terms. 10

Would you agree with me that if one looks at the cabinet submission and looks at the cabinet decision there's discernible this inference, that cabinet decided, "Well, we can't keep everybody happy here"?---Yes. 20

"There's diametrically opposed interests. We'll take the course of action that keeps the largest number happy and the minority, their rights here just have to be sacrificed or come second"?---Well, I find that difficult to answer, because I don't recall that being ever voiced, and also it's a little bit contrary to my own view, which was that it was not in Peter Coyne's interests to have those complaints about him public.

Can I suggest to you that that approach is a rather - - - 30

COMMISSIONER: Paternalistic.

MR COPLEY: - - - paternalistic approach?---Well, it may be. It may be, but there was a certain duty, I think, that I felt at the time and still do that when an inquiry is somehow wrongly set up and gets consequences and results that are actually damaging to a large number of people, that we should take steps to try and stop that damage. That is my view.

COMMISSIONER: But it wasn't wrongly set up, was it? 40

MR COPLEY: I'll just explore that with you. What do you mean by it was wrongly set up? Do you mean wrong in law, wrong politically, wrong factually? What do you mean by that?---Well, that there were questions being raised about whether or not the information that was being given to the inquiry was protected information, and that is, that people would not be damaged as a result of giving that information to the inquiry.

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WARNER, A.M. REXN

Yes?---Therefore, the inquiry was flawed, and it was not only flawed from that legalistic perspective, it was also flawed from the point of view of providing any beneficial results to the smooth running of John Oxley or beneficial results to the people that had given evidence.

1

You see, the legal advice of the crown solicitor was the inquiry was perfectly lawful, in the sense that Mr Pettigrew had the power to appoint Heiner to do the inquiry and Mr Heiner had the power to do what he did, which was simply to ask questions and if people answered them, well and good. So to that extent it wasn't flawed. Do you understand?---Yes, I understand that.

10

Yes?---But the problem was that once people had answered those questions, what was then to happen to the information that they gave?

Yes?---And that's when it becomes flawed, because you couldn't do anything with it. Even though it was perfectly legal for the action to take place, you couldn't actually use the information in any practical way.

Well, that might be because Mr Heiner decided he wasn't going to apparently make a report?---No, he was going to make a report; what he wasn't going to do was to make any recommendations.

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Okay?---But I would have been concerned about whether or not such a report would have been protected.

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COMMISSIONER: I understand that you're saying what you understood. I understood from the evidence that he refused to even make a report until his legitimacy had been sorted out.

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MR COPLEY: That was the effect of his letter, yes. See, the legal advice from the crown solicitor to your acting director-general was this, that the material 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?
---Yes.

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And he's given evidence that by that he meant there was a possibility at the time he was doing this advice - 23 January - that another inquiry might be launched, a better inquiry or one set up in a different way by the new government. And so what Mr Thomas was saying was, "If you destroy the material then it won't be around to affect the deliberations concerning management." that is to say, Mr Coyne and Ms Dutney won't have to be concerned that at the next inquiry anything found at this first one will be around to affect the mind of the next inquirer. So he was saying destruction would achieve this: Coyne and Dutney could rest easy that their reputations would be restored to where they were before Heiner started and the new inquirer form a view about them based on what the new inquirer had found, not what Heiner had found?---Mm'hm.

20

And the other reason that he gave or thoughts for saying that it might be an idea to destroy is that it would remove doubt in the minds of any persons concerned that it could possibly affect the treatment of any staff at the centre?
---Yes.

And by that he meant that the staff, if they knew the material had been destroyed, needn't be concerned about being victimised?---That's right.

30

Or bullied?---That's right.

Or prejudiced?---Mm'hm.

The manager wouldn't be acting to their prejudice if he didn't know what they said?---That's right; that's right.

Okay?---Yes.

40

So they were the reasons that the crown solicitor's letter gave to Ms Matchett or destruction?---Yes.

Yet when you go to exhibit 151, which is the submission that you signed?---Yes, sorry - - -

You don't have it, I'm just going to read it out to you?
---Okay.

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WARNER, A.M. REXN

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And if I'm reading it incorrectly someone will object. The objective of the submission was this, it says: 1

Destruction of the material gathered by Mr Heiner would reduce risk of legal action and provide protection for all involved in the investigation.

So what I'm suggesting to you is that there's been an oversimplification of the advice?---Sure.

It's been simplified down into this statement to protect them from legal action?---Yes. 10

Now, you've been constantly talking about, "People would be protected from defamation"?---Yes, that was the advice I had, yes.

Yes. Well, is that the inference that you drew from what was in that passage I just read you out?---Yes, it is the inference that I draw but I concede that it was a shortened version of all the protections that we were trying to provide, because it wasn't just - if you go back to the crown solicitor's advice it was about all sorts of detriments, not only defamation; detriments to people's careers and so on in terms of any victimisation that might occur. 20

Right?---And I was aware of that, yes.

But did you get given the crown solicitor's advice to read? ---I don't recall, but I may have. I mean, I was aware at the time that it was more - and I think I said in my statement - that it's not just about defamation, it's about the good running of John Oxley from a number of points of view, and it was about people's reputations, and it was about people's working - what other people thought of them in their working life, and so on. 30

Right?---So it was a much broader issue than just defamation.

COMMISSIONER: When was Mr Coyne reassigned to his special projects?

MR COPLEY: He was given his marching orders, so to speak, on 13 February.

COMMISSIONER: Right, so any acts of reprisal against the staff who had complained about him to Heiner was not an issue after that? 40

MR COPLEY: Well, he wouldn't be in a position to - - -

COMMISSIONER: Of power.

MR COPLEY: - - - to change their rosters or to do other things to them that he might have been if he'd been the manager, no. 1

COMMISSIONER: So what other detriments other than defamation would Mr Coyne have been responsible for after his reassignment?---Can I?

Yes?---I think that it was - I think from memory it was the view that other people in the department may have taken action or caused detriments to individuals who had said certain things at the inquiry. 10

Other people at John Oxley?---No, other people in the department and in town. The other staff; the executive officers, those sorts of people.

MR COPLEY: Sorry, can you say that again? What do you mean?---Well, I'm probably drawing an inference here that may be going a little bit far, but I'm just suggesting that it wasn't just about rosters or what have you, it was about people's overall - the opinion that the whole department had of them. 20

You mean opinion of Peter Coyne?---No, not necessarily Peter Coyne, but other people, the people who'd given evidence.

I see. So do you mean that the people in head office - - -?---Yes.

- - - might have formed an adverse view - - -?---Yes.

- - - About the complainants?---Yes.

The people doing the whinging?---Yes. 30

COMMISSIONER: And particularly if that went on their departmental file, which everybody - access?---People would have been very frightened of that, I think.

So the solution was to make sure it didn't ever get on the file?---Yes, because it was just seen to be an unfortunate occurrence.

MR COPLEY: Well, it has to be the case that cabinet didn't rush into the decision, did it?---That's right. 40

Because it deferred it twice?---That's right.

Was there any consideration given to obtaining a legal opinion from the crown solicitor as to what effect destruction might have on the right to get access to the documents that the solicitor was asserting?---I don't recall that, I'm sorry.

COMMISSIONER: There was an assumption that the proposed Freedom of Information legislation - which hadn't been passed yet but was almost fully developed - would, if these documents survived - destruction would be available under that legislation, wasn't it?---No, I think that it was the opposite. I think it was that if the Freedom of - but I may be wrong - the Freedom of Information legislation would provide full access by everybody to these documents.

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Yes, that's right?---Yes.

And that was part of the - was that part of the cabinet discussion?---Well, from my recollection it was part of the decision. See, my - and it isn't borne out in the documents in the cabinet submissions exactly, but my recollection is very clearly that cabinet's view was that we should perhaps try and find a safe place in the government for these documents until they could be of no damage to anybody and not destroy them, and that that place may be the archives, and the archivist suggested that it would be possible to put them into the archives but that with Freedom of Information, that they would become accessible, and therefore it wasn't a safe place for them, to cause the damage that we've just talked about.

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MR COPLEY: Okay. Well, I'll just put this proposition to you now for what it is worth, and you can accept it, reject it, qualify it, comment upon it as you will:

In the end cabinet decided that the best interests of the vast majority were better served by destroying the documents than by keeping them or leaving them available so that they might be accessed by someone?

---I think that's a fair enough assumption but it's not the one that I have.

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The next proposition I put is that if somebody's ability to access the documents, whether simply for curiosity purposes or for the bringing of legal action later, was inhibited or destroyed by the decision to destroy, "That was unfortunate but the decision we've made was we considered to be in the best interests of the vast majority"---Yes, for the greater good. 1

For the greater good somebody's rights had to come second. What do you say to that proposition?---Well, as I said before, I don't believe that Mr Coyne's rights were - his immediate rights were being stopped but his overarching interests, in my view, were being protected. 10

What do you say now - looking back on it, what do make of the fact that before the documents were destroyed or before - if it be the case that Norma Jones falsely said on 8 March, "The documents have been destroyed," what do you make of the fact that despite the threats of legal action none was actually ever instituted?---Well, just that it was - it was just that, a threat rather than any real action.

So we know that now with the benefit of hindsight?---Yes. 20

It was only ever a threat - - -?---Yes.

- - - because between when the threat was made and prior to destruction was commenced, was it?---That's right, and there was quite a long time.

Yes, so it was just a threat?---Mm.

We have heard evidence from Mr Thomas that threats of legal action are what he called the currency of the adversarial system?---Mm. 30

By that he meant that they were commonly made?---Yes.

Was it the view of cabinet that this was on one level just a threat and, "If we defer it from February 12 or 13, defer it a bit, we'll wait and see whether or not the solicitors - - -"?---No, that wasn't - I don't think that was the reason for the deferral. I'm sorry, but the whole question of the possible legal action being on foot, if you like, by the letters I don't think was ever considered seriously. It certainly wasn't by me, but then I'm not a lawyer, but there were other lawyers and nobody ever said to me, "This is serious," you know, "We've got to protect the documents because there's legal action on foot." Nobody ever said that and I was not aware of that issue at the time; you know, I mean, things are said and people take from them what they understand and I didn't understand that issue at that time and so the reason for the delay was always to try and find an alternative. 40

COMMISSIONER: Whose job was that to look for the alternative option?---Well, the initial suggestion was that Stuart Tait make inquiries from the archivist, from memory, and then I think other people were going to go and - I presume the attorney - look, I don't know exactly.

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So it went from one cabinet; deferred to the next; in the meantime get someone to find out - look for another option? ---Yes.

It came back and then what, the other options hadn't been found?---Well, if you noticed in that memorandum, the other options were fairly slender and - - -

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MR COPLEY: You're referring to the memorandum of 13 February?---Memorandum; yes, the memorandum.

That had four options?---There were four options and, you know, they were very slender options. They weren't very effective and so I think that the - but it was still thought that we may be able to find some other action - some other alternative but, as it emerged, it became less and less - - -

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COMMISSIONER: None of the lawyers in cabinet said, "Well, hang on, these are crown employees acting in the discharge of their duties when they were answering questions of this inquiry. They'd be protected from any liability or if they're not, we'll indemnify them just like we did - - -"? ---I don't recall anybody saying that. It was 23 years ago.

MR COPLEY: It wasn't your idea to destroy the documents, was it?---No.

In the sense that it wasn't you that thought, "I think we should destroy these. Do me up a cabinet submission to this effect"?---No.

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No, so it's, of course, possible that there were people motivated by different things but ultimately all happy enough to see the same outcome, namely, destruction. It's possible, isn't it, in the government?---It's possible, but I have no reason to believe that it was the case.

COMMISSIONER: Do you mean somebody else was driving the car that Ms Warner was a passenger in?---Thank you.

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MR COPLEY: All I'm putting to the witness is that - - -? ---Thank you.

- - - cabinet might have decided, "Well, we think we should destroy them now for these reasons."

COMMISSIONER: "But Ms Warner wants to destroy them for other reasons and we'll let it happen."

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WARNER, A.M. REXN

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MR COPLEY: And Ms Matchett who was the person who gave you the - - -?---Who could possibly be in this position?

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You can't ask me questions. I can only posit things to you?---Well, I'm sorry, but the questions that you're asking give rise to other questions.

All I'm suggesting to you is that Ms Matchett might have thought these should be destroyed for certain reasons?
---Mm.

Cabinet might have thought, "We agree these things will have to be destroyed but our reasons are as follows"?
---Yes.

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COMMISSIONER: So mixed motives might have had a common outcome.

MR COPLEY: I didn't think of summarising it so pithily.

COMMISSIONER: Thank you, I think.

MR COPLEY: Thank you.

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COMMISSIONER: All right. Mr Byrne, do you mind if we adjourn you until after lunch, 2 o'clock?

MR BYRNE: No, that seems appropriate.

COMMISSIONER: Would you be able to come back yet again, Ms Warner?---Sure; sure.

Thank you. All right, thank you, 2 o'clock.

THE COMMISSION ADJOURNED AT 12.29 PM UNTIL 2 PM

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COMMISSIONER: Mr Copley?

MR COPLEY: Just a couple more issues, Mr Commissioner.

Mrs Warner, by the time you signed the last submission to cabinet on February 27 the submission said, "The state archivist has now given approval in writing for destruction." Were you privy to; that is to say, did you see whatever correspondence or communications went to the archivist in order for her to grant consent to destruction? ---No.

10

The last thing that I want to show you is this newspaper article from April 11, 1990. I'll just get you to have a look at it. You will see that you're quoted?---Yes.

Having looked at that document which attributes various comments to you and having looked at the date on it, April 11, 1990, what do you say to the suggestion that that newspaper article was the first article that reported the fact of the shredding?---Yes, it may very well have been, but I'm - yes, I don't know that - I don't know when I announced to parliament that that happened, the inquiry had been terminated and that it had been shredded, but it may very well be some time before this. I don't know. I can't remember.

20

I see. So it's possible that you made an announcement in parliament - - -?---I may very well have, otherwise I don't know why this information is public.

All right. I'll have that document back, thank you?---Yes. I'm not sure though.

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No further questions, thank you.

COMMISSIONER: Thank you. Mr Byrne?

MR BYRNE: Thank you, Mr Commissioner.

Ms Warner, can I take you to your statement which I believe is exhibit 325? Do you have a copy of that with you? ---Yes.

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May I take you first to paragraph 30 on page 8? That contains two sentences. The first relates to you recounting that certain documents were supplied to you in November last year and you point out that there was not a matter of any criminal activity in destroying the documents?---Yes.

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WARNER, A.M. REXN
WARNER, A.M. XXN

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The second sentence reads this way: "I think they said" - by "they", is that the briefing notes you're talking about? ---Yes. The briefing notes, yes. 1

"There was abuse mentioned in that briefing note and that again, my memory is hazy, that a lot of the comments were of a low-level personal nature"?---Yes.

Can you just expand on what that represents, that sentence? ---Well, I went back to the briefing notes after the interview with the police and I could not find any mention of abuse within those briefing notes at all and the fact that the comments before the Heiner inquiry, they were of a low-level personal nature and didn't have any matter of great substance to them was something that I recalled from the time. 10

That's essentially what you were being briefed as to at the time?---Yes.

The principal briefing was from your then director-general? ---Yes.

Can I take you to paragraph 60 then on page 17? In paragraph 60 and 61 I think you appear to be responding to a statement made by Mr Coleman on a television program? ---Yes. 20

That is the passage set out at the bottom of paragraph 60 in inverted commas, namely, "In broad terms we, and my understanding, cabinet, were aware that there was material about child abuse." Firstly, do you recall ever having said that to Mr Coleman?---No.

Was your knowledge at the time of the cabinet decisions, and I'm talking about the three times it went before cabinet, including the final one when the decision to destroy was made, did you have any such knowledge about the material in the Heiner documents about child abuse?---No. To my knowledge there was no information about child abuse within those documents. 30

So could you have, with that state of knowledge, communicated it to anyone, let alone Mr Coleman?---Well, that's right, because I had no knowledge - I had had no report of that being in those documents.

Now, can I just get a brief snapshot of what was going on in the very early days of the new government? You told Mr Copley on Thursday that you were running around trying to get up to speed on your various areas?---Yes. 40

Was that typical of the new ministers in the Goss government?---I would imagine it was. I was so busy I probably didn't notice what other ministers were doing at the time, but it was a very busy period, because we not

only had to meet and greet all our stakeholders but also look at the question of a reorganisation of the department to encompass the new portfolios that had come into the family services department.

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This is at a time when there are, my expression, musical chairs being played with various departmental officers as well?--Yes, there was. There was a certain lack of staff at the upper echelons of the public service at that time, because a lot of the people who were there weren't appropriate to the new organisation that the department was going to have and the director-general was newly appointed. Although she had had a lot of experience within the department, she didn't have a full complement of staff at her disposal at that time.

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Just from your point of view as being a new minister, do you recall having the time or energy to be poking into other persons' areas of responsibility, that is, other ministers' areas of responsibility?--Absolutely not.

Do you recall, have any recollection, of any other minister poking into yours, in that sense?--Not that I recall in any way, no.

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Was that the way it worked at that time?--Yes. Mostly the communications would be at a departmental level to try and iron out any differences of opinion about various submissions rather than doing it at ministerial level. It would have been very rare for ministers to communicate before cabinet about differences of opinion that their departments might have.

Certainly in relation to the Heiner documents you're aware of no such communication between you and any other minister?--None that I can recall.

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Can we look just briefly at paragraph 61? When you were asked questions about that this morning by Mr Lindeberg you see you say, "I rang him about it and he said," and we have it in quotes, "What are you talking about? What do you know that I don't know, Pat?", close quote. So that's a direct conversation that you recall?--Yes.

The next sentence reads, "He said, 'Nothing.'" Now, as I understood the inference you gave this morning, that "nothing" should be in inverted commas?--It should be, yes. He said he didn't know anything other than what I knew.

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Okay, so there was a response but it wasn't a positive one?--Yes.

And I think you told us that you said something like, "Why on earth" - there was further discussion but you can't recall the details?--Yes, that's right.

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WARNER, A.M. XXN

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Okay. Now, can I ask you these general areas: you've told us that you had a new DG - firstly acting DG and then DG? ---Mm'hm. 1

Who, albeit had some experience, had not, as I understand it, been in the role of director-general before?---That's right.

How long did you work with Ms Matchett?---All-up about six years.

Did you ever and have you ever since had any reason to doubt her integrity or accuracy in relation to information passed to you as director-general?---No. She was always very meticulous. She was very painstaking. She was very precise and I trusted her opinion and her integrity. 10

And just to confirm, she was the principal, if not sole source of information being briefed to you in respect of the Heiner documents?---Pretty much, yes.

Now, you were asked questions this morning about the original cabinet submission and ultimately decision to grant an indemnity to Mr Heiner?---Yes. 20

Firstly can I confirm these things: that submission went up, as you understand it, from the director-general to you on the basis of crown law advice?---Yes.

And do I understand the evidence you gave on Thursday to be to the effect that that was to deal with Mr Heiner in the sense of putting him in the position he would have been in had his inquiry been set up under the Commissions of Inquiry Act, such as the present matter?---That's right, yes. 30

All right. It wasn't to do specifically with defamation or anything of that sort; it was simply to give a general indemnity that he would have had for all actions and statements?---Yes, I think to give him the indemnity that I think he already thought he had.

Okay. Now, and the final issue I want to just probe briefly with you is this: you were asked questions by my friend Mr Copley just before lunch about what was going through at least your mind, if you can't speak for all of cabinet, but certainly in your mind in presenting to cabinet in relation to the decision to destroy the documents. Now, do I understand this to be an accurate summation: that your priority, at least in putting it forward, was to achieve the greater good in general terms? Is that right?---Yes. 40

And one of the major priorities for you was to put everyone back to the position they were before the Heiner investigation was put into place?---Yes, as best we could.

And the principal reason for that was to ensure that the various centres were running efficiently?---So that they could start running efficiently, yes.

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Yes. And the reason for that is obvious, isn't it, that these centres dealt with children in care?---Yes.

And in need of quite close supervision and you needed a very well-oiled cohesive team running those centres?---That would have been very good.

Yes, and from what your knowledge of the low-level disputations and comments, that coming out into the public sense would not have advanced the efficient running of the centres?---No, it would have just led to more disputation and argument.

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COMMISSIONER: But you didn't know a lot about the low-level disputation that's detailed, did you?---No, I didn't know about its detail but I knew broadly speaking what the two main camps, although there were others involved, I understand.

MR BYRNE: Perhaps just to expand on that briefly, can you tell us what the two camps were and what your understanding was?---Well, as I understood it at the time there was the view that Mr Coyne was trying to institute a new kind of regime in the detention centre. It wasn't even called a detention centre, it was just called the John Oxley Youth Centre, which would have been more rehabilitative rather than punitive in its approach, and that the other workers were of the view that that was too soft on the children and that more, I suppose, strenuous methods of custodial care should be employed.

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That, again to put it in some form of context, was your understanding of what the Heiner inquiry was directed to finding out, what people were saying about each other? ---Yes.

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That's all I have, thank you, Mr Commissioner.

COMMISSIONER: Thank you, Mr Byrne. Mr Copley?

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

COMMISSIONER: Yes. Ms Warner, thank you very much for coming?---Thank you.

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Sorry we've taken so long before you're excused, but you're formally excused from your summons. Thank you.

WITNESS WITHDREW

MR COPLEY: I call Patrick Comben.

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COMBEN, PATRICK sworn:

ASSOCIATE: Can you please for the record state your full name and occupation?---My name is Patrick Comben, C-o-m-b-e-n. My occupation is business proprietor.

COMMISSIONER: Good afternoon, Mr Comben. Welcome?
---Good afternoon. Thank you.

MR COPLEY: Mr Commissioner, could the witness be shown the original of what we believe is your statement?

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Could you have a look at that document, please, Mr Comben, to confirm that it is a statement you provided on 18 January 2013?---It is.

I tender that document.

COMMISSIONER: It will be exhibit 329.

ADMITTED AND MARKED: "EXHIBIT 329"

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MR COPLEY: Thank you. You can take it and mark it and if it needs to go back, it will?---Can I get it back?

Thank you. Now, Mr Comben, did you have any knowledge of the Heiner investigation prior to it being made the subject of a submission to cabinet on 12 February 1990?---I think at best a very low-level awareness of an inquiry that was going on into John Oxley.

All right?---I wouldn't have known it was the Heiner inquiry.

30

Okay. And were you aware of any dissatisfaction about the fact of the inquiry itself?---No.

So the first you knew that there was any issue about this inquiry was when - - -?---It came to cabinet on that first occasion.

Now, according to your statement matters to come to cabinet have to be generally speaking made the subject of a written submissions first. Was that the experience you had in January 1990?---Yes. That would have only been the second or third cabinet meeting, but yes, that was the experience.

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All right. And did that prove to be the practice as the years under cold and in the Goss cabinet?---Certainly; Certainly.

Okay. Did you play any part or any role in the compilation of the first submission that Mrs Warner signed and brought to cabinet regarding Mr Heiner's inquiry?---None whatsoever.

1

Do you have a recollection of the cabinet discussing her submission on 12 February 1990?---A recollection, yes.

All right. Generally speaking, what was the view regarding the indemnification of Mr Heiner?---I think the indemnification of Mr Heiner was fairly well accepted fairly quickly.

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Right. And what is the fact that it was accepted quickly? Do you mean to say there was widespread support in the cabinet room for that measure?---To the best of my knowledge, yes.

Do you recall whether votes were taken on a matter like this?---No, there were no - very rarely were ever votes taken in cabinet.

Right?---It is by consensus.

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All right. And so from that can we assume that if nobody spoke up about the matter and said that he disagreed with it, generally speaking a submission from a minister would simply go through as approved, would it?---He or she. Yes, I think that's - there would be at times somebody might be sitting in cabinet who it would be well-known, perhaps, that they didn't support something, but for whatever reason it would go through.

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All right. Now, as the minister for - you were the Minister for the Environment at this time?---And Heritage.

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Being the Minister for the Environment and Heritage, did you have any particular interest in youth detention centres at that time?---Not as the minister, no.

No. You may have had some interest as a member of the public or as having - did you have any of these centres in your electorate?---Yes. It was a little wider than that and a little deeper. My late wife was very active in unhoued - homeless youth. We were both financial and volunteers for the homeless youth shelter, the Sir Leslie Wilson Youth Centre was in my electorate and I also had some acquaintances that worked at a challenge centre, Basil Stafford Centre, and vaguely knew about John Oxley Centre as well. May I add that in opposition I was also spokesperson for prisons as well as health so that to some extent had some nodding acquaintance with those sorts of places?

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Yes. Anyway, moving forward then, however, once you were the Minister for the Environment and Heritage, you had no interest as a minister of the crown in what was going on particularly in connection with youth detention centres or the Heiner inquiry itself?---None whatsoever.

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All right. Now, the first decision that cabinet made in connection with the question of the destruction of the documents was to request that a further memorandum be made concerning what approach cabinet should take to that issue. Do you agree with that?---Yes.

So a decision was made to defer a decision?---Yes.

Pending further information?---Yes.

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Do you recall now why cabinet decided to defer the question of destruction on 12 February 1990?---I think if you put it into the context that it was a new government, this was probably the most technical issue that we had in front of us. It wasn't a simple policy issue. With great respect, QC's and SC's were potentially going to be asked their opinions and the two lawyers in cabinet, the premier and the member from Murrumba, Mr Wells - they seemed to have a bit of interest and for any failed law student such as myself the whole question of shredding something was of interest and of some sensitivity.

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And so would you characterise it as being perhaps a reflection of caution that the decision was made to defer pending some further advice?---I think it's a great compliment to the government of the day that it was a cautious approach, a very proper approach, to make sure that the best possible advice was obtained and a great compliment to the minister herself.

18/2/13

COMBEN, P. XN

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Do you recall whether or not anyone's actual advice - written advice from any official or expert was tabled before the cabinet or put before the cabinet on this first occasion?---I don't recall there being any. It would probably have been fairly unusual.

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Why do you say that?---The submissions normally stood by themselves and would quote from an advice or something like that. I don't remember many occasions especially of formal legal advice or anything akin to that. It may have been there, but I don't remember it being particularly.

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All right. Moving back to the general for a moment, was it generally the case that no matter which minister it was, if he or she was bringing a submission to cabinet on a matter, they didn't generally append to the cabinet submission a report from an expert, for example, about water quality or an expert about economics or something like that?---Or heritage. It would be unusual. Sometimes it might be that that was actually what had to be decided, something in there that might, but it wasn't the general practice to have that sort of thing appended.

Did that have anything to do with how long it might take to digest the material in the cabinet room?---I don't know. Certainly when you looked at the bulk of material that came to you each Thursday, there was plenty to discuss without all of that and I suppose it's also a reflection of having the expert on tap rather than on top so the précis was put up in the terms that the government or the minister of the day was looking at.

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Now, just going back to 12 February 1990, in terms of who was who there, do you recall the name of the director-general of the Premier's Department at that time? ---It would've been Erik Finger, I believe, but he wouldn't have been at cabinet.

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No, no, because he was a public servant, wasn't he?---Yes, but nothing directly to do with cabinet.

No, because in your statement you say, "To my memory the cabinet office was headed by the premier Wayne Goss with Kevin Rudd as the public servant head and other public servants"?---The cabinet office, yes.

Yes, "I recall that initially Mr Rudd was in charge of the cabinet office and later became director-general of Premier and Cabinet"?---Yes, I think that's correct.

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We have heard evidence to suggest that that in fact may have become the case one day but was not the case in the period between January and March of 1990?---I have no difficulty with that. I was asked this question cold. I gave the best recollection I could.

Right?---I have no problems with - if that is incorrect, it's incorrect. 1

All right. Do you recall when after election - put it this way: after your party came to power on December 2, 1989 do you now recall what role Kevin Rudd performed immediately after that?---I now assume on what you've just told me that he was probably at that stage then the principal private secretary to the premier or chief of staff for the premier. I don't know what the term would have been.

All right. So therefore to the extent that you have now qualified paragraph 8 we need to read paragraph 8 coupled with the answers you have given here this afternoon?---Yes. 10

Now, could you have a look at exhibit 168, please? The top page of that is the actual cabinet decision that day - - -? ---Yes.

- - - which we needn't worry about for the moment?---Right.

But the two pages attached are called "Cabinet memorandum number 117", okay?---Yes. 20

And you will see on the second page that various options are set out for cabinet's consideration in terms of what to do with these documents?---Yes.

Do you remember receiving that submission and reading those options?---Yes.

What weight in considering this matter was given to the matter raised under the heading "Issues" which starts at the foot of the preceding page, namely, the fact that there have been a number of demands requiring access to the material, including requests from solicitors on behalf of staff members?---I think at this distance I can only recall what my thoughts on it were and that was to ensure, firstly, the protection of all participants at John Oxley; that is, Mr Coyne and the others who appeared to be unprotected by privilege of any sort. Their interests should be paramount. 30

Now, you have mentioned the name "Mr Coyne"?---Yes.

His name doesn't appear in this document, does it?---No, but I didn't realise I had to refer just to that. 40

If you just answer the question, we'll get through it more quickly?---Sorry, I thought I answered the question of what weight was given to that. The weight given to it then, taking out Mr Coyne's name, was to ensure that all the staff who had been mentioned or involved in that inquiry should be protected.

When you were sitting in the committee room on 13 February 1990, were you aware of the name "Coynes"?---No. 1

Okay. So when you used the name "Coynes" before, were you drawing upon information that you have gathered in the years since that Mr Coynes might have been one of the people - - -?---Probably fairly recently, yes.

That's what I'm trying to ascertain, you see?---Yes, I apologise.

All right. So so far as you can remember back in actually February 1990 when you read that document you didn't actually know the name or names of the staff members who were anxious to have a look at these documents, did you? ---None at all. 10

Because you had no involvement in detention centres?---No. That's right.

So was there any consideration given or did you consider or turn over in your mind the possibility that maybe a further legal opinion needed to be obtained concerning what the ramifications might be of destruction if a solicitor was anxious to get the documents or asking for the documents? ---I think if I could again take you to the situation of the individual cabinet ministers on 13 February, we were still new. We had huge pressures on us and we had in front of us legal advice. I don't think there was "thought" about going wider. We had the experts' advice in front of us. 20

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Did you consider yourself in your own mind, and if you did consider it in your own mind did you articulate it to the cabinet, this possibility of perhaps not making any decision at all about the fate of these documents for a while longer to see whether or not the solicitor ever actually instituted any legal action to get access to them?---The answer to both your questions there is, "No." 1

Looking at the four options that are set out there, destruction, release, retention or referral to the cabinet for noting, did you, back on 13 February 1990, have any view yourself about what should be done?---I think my view was always towards destruction, but there was raised at that cabinet meeting the question of the archives and the archivist and so that seemed to be the good place to go for further advice, that as a practical sense rather than the legal which you've raised. 10

You did not play any role in obtaining the opinion from the archivist, did you?---No.

Were you ever shown, as a member of the cabinet, any correspondence directed to the archivist setting out what the issues were for her to consider?---I don't believe so. 20

If you would have a look at exhibit 181?---Yes.

If we put the first page to one side you can see there submission number 160?---Yes.

You will see again on page 2 under the heading Urgency in the second paragraph the fact that the cabinet was made aware that a solicitor representing staff members was seeking to have access to the documents?---Yes.

Did that consideration play any role in your view about what should happen with the documents?---It certainly raised concerns. When at a later stage, 10 years later, I said there were some concerns, it was about that issue, that where you had to decide what to do with documents and someone was seeking them, how much, was it serious? Those things certainly weighed on my mind at that time. 30

When you say how much, was it serious, what are you referring to there?---I think often the attempt to say - or the statements by lawyers that "We will immediately institute proceedings" is a fairly commonly stated matter in letters. Proceedings are not always instituted. 40

So did you have a view yourself that it might not have been - that the solicitor's interest in the matter might not have been as serious as it might have been made out to be? ---I don't know that it was made out to be particularly serious. I certainly wondered how serious it was.

In arriving at the decision to authorise destruction of the documents was that a matter which was a consensus of the cabinet or was it a matter that a vote was taken on. What's your recollection?---It would have been a consensus. I don't remember any votes being taken in cabinet. 1

All right?---Actually, I'm not sure that's right. There may have been one or two, but not at that time.

You said in your statement in connection with that last exhibit I showed you that that was not an easy thing to decide what to do?---Which paragraph are we talking about? 10

26?---Thank you.

There was some angst around the cabinet table because it was a hard decision, not because of any improper motives. What was hard about the decision?---Weighing up just what the legal demands were and knowing that you were actually potentially destroying something, which was an unusual act. We were doing something unusual. That was hard. This was probably the first time that we as a cabinet had moved out from the straight policy issues of deciding we want to double the national park estate, we want to introduce legislation, and so this was almost a technical decision which just didn't sit comfortably. If it had been there a year or two later I suspect there might have been far greater debate and discussion and understanding, but at that time it was just very difficult. 20

In view of the fact that it was a technical matter and a difficult matter was there ever a question raised as to the appropriateness even of cabinet being asked to address the fate of the documents?---No, because as a difficult matter the ultimate decider is cabinet. So we would not have considered that in any way. We sought the advice of the experts, the lawyers and the archivist. 30

But the fact is that the lawyers never said that the fate of the documents in terms of whether they were preserved or destroyed needed to be decided by cabinet. You were never told that, were you?---No, but I believe that the advice in front of us included statements such as, "There's no impediment to destruction of the documents."

That might be so?---Then I don't understand the question.

Okay, well, there's a difference between there being no impediment to cabinet destroying something, or ordering it to be destroyed, and a situation where there's a positive requirement on cabinet to consider whether they can be destroyed or not. Do you see the distinction I'm drawing?---Yes, I do, but I thought that determination or consideration by cabinet to seek that advice had been done, and I still do. 40

To seek what advice? About whether it should even be before cabinet?---Yes - well, no, whether it was before. Cabinet decides what comes before it.

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That's right?---At some stage there was great minutiae in front of cabinet. We shouldn't believe always that cabinet deals with every high-ranking decision, but cabinet had sought the views of others as to whether it could. It didn't have to discuss whether it needed to seek it.

It didn't have to, and I'm simply asking did it, did it discuss the option of, "Look, this really has got nothing to do with us. The old cabinet didn't set this inquiry therefore it shouldn't be a decision for the new cabinet as to what to do with the documents." Was that point ever discussed?---Did you mean the old cabinet did set it up? I think you said "didn't set it up."

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That's right, because that's the evidence, you see?---Yes. It didn't - well, they set up an inquiry.

No, they didn't. No, see, that's the point?---Mr Pettigrew set it up.

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That's right?---Right, fine.

Yes. It was his idea?---Yes.

Argument might occur as to how much of it was the minister Beryce Nelson's idea, but one way or the other it didn't get set up by the National Party cabinet?---Yes, I see. I understand.

That's what I'm saying the evidence is in this case. Okay? ---If we then believed the advice that we had in front of us that it was defamatory material then it would be difficult to send it back to a public servant to allow it to continue. Cabinet, as the ultimate decision-maker in the state, was the appropriate place, is how I would have believed it went.

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So your view was that once it came to cabinet, for better or for worse it had to stay there until cabinet made a decision about it?---I believe so. Only once or twice did I see material ever sent back to another decision-maker.

COMMISSIONER: You said before that cabinet decides what it considers and what it doesn't. How does it know in advance whether it should be considering a particular issue or not in cabinet as opposed to not?---Cabinet doesn't know in advance. Any minister, so a member of cabinet or the executive council, more correctly, can submit anything to the premier, effectively, and then that goes to the office of cabinet and there is some deciding about how many - perhaps - "This is simple," some weeks. "Look, we've got

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three other big issues and then we've got 10 other smaller ones. We can't fit that other big issue in this week. It will go next week," or at times it would even come back from the premier with perhaps a note on it saying, "Look, can you think about this as well and then send it back to us?"

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In your experience has a cabinet submission ever been generated within the cabinet office rather than coming through a minister?---I have no experience, no knowledge of that occurring. I think perhaps after some decisions there might have been a suggestion by cabinet office that another submission be brought or something, but it was always done by the department stroke minister's office.

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What about the drafting of the submission itself? Would that be done by the cabinet office?--No, the individual staff within the departments. There's normally a cabinet liaison person. Depending on the competency of that person, they would do a submission. There was a handbook showing you how things should be done. It would then go through some iterations going to more senior staff and eventually land on the minister's desk and again, depending on personal preferences, that might get moved a bit. Probably at that stage it's about the minister deciding, "Yes, this is palatable as it is" or "Hang on; let's put a bit more emphasis on that," or something like that. Thank you.

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Thank you.

MR COPLEY: Now, even though you weren't the minister responsible for these submissions, your presence here is due to a large extent in the commission's interest in something that you had to say in 1990. You realise that, don't you?---I am very much aware of it.

Right; and you agree that on a program called the "Sunday Program" on Channel Nine in 1999 you said, "In broad terms we" - meaning the cabinet - "were aware that there was material about child abuse." Now, you acknowledge you said that, don't you?---Yes.

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What did you mean by "child abuse"? What did you have in mind as that phrase encompassing?---The sort of complaints which I'd received at my electorate office about Sir Leslie Wilson. The sort of things I'd heard from homeless kids that had experience at John Oxley; low-grade scuttlebutt from staff members about people being - children being treated inappropriately or inappropriately punished, et cetera, generalised gossip.

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All right. Can you tell me within that description you have given me what act or acts you heard were being done to children that you would say constituted child abuse that "we were aware of"?---I'm not sure I can say what we were aware of. It's what I was aware of.

Right?---I state in there "we were aware of" but this must be my knowledge, not cabinet's knowledge.

Yes, okay. You tell me what you were aware of in terms of actual act or acts?---So the children from the Sir Leslie Wilson hostel would say that if they did the wrong thing or they were caught smoking at times, they were denied privileges that they thought were their rights and things such as staff members coming in and saying that X or a person, a manager or someone had been seen to go to a child's room, spent 20 minutes there, no-one knew what they did and they came back out. When they were pressed for further and better information, it was always, "That's what

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COMBEN, P. XN

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my friend told me." "Well, if you want me to take this up with the department or something, ask them to come in." "Yes, I will." I never saw anyone; low-grade scuttlebutt. 1

All right. So you were aware of that, so how was it that you were able to assert on the TV show that "we were aware of that"?---By a very loose use of language 10 years after the event. I was not expecting to be in front of a commission of inquiry as to "I" or "we".

Sorry, what?---I was not expecting to be in front of a commission of inquiry or law court finalising "I" or "we". "I" should be the word there. 10

So it was a mistake on your part all those years ago?
---Absolutely; absolutely.

And did you make some assumption in 1999 that that was what was in the material that cabinet was asked to consider in 1990?---I made either a presumption or an assumption in 1990 and 1999.

Did you ever look in the material?---No. 20

Did you ever see it?---No.

Did you ever see a box with it in it?---No.

Do you have any knowledge of any other minister ever claiming to you that they had seen the box or looked in it?---I don't know what the box is.

COMMISSIONER: Are you talking about the rattly box, Mr Copley?

MR COPLEY: I won't go into that. No further questions. 30

COMMISSIONER: Mr Hanger?

MR HANGER: I have got no questions.

COMMISSIONER: Mr Harris?

MR HARRIS: No questions, commissioner.

COMMISSIONER: Mr Lindeberg?

MR LINDEBERG: Do I go before the eminent senior counsel? 40

COMMISSIONER: Yes, you do.

MR LINDEBERG: Good afternoon, Mr Comben?---Good afternoon, Mr Lindeberg.

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COMBEN, P. XN
COMBEN, P. XXN

Mr Comben, you say you were a failed law student?---I was then. 1

Does that mean that you had a number of years of law training?---Prior to that. I'm now admitted in New South Wales, but I had done three years of law and then dropped out.

What did you understand what indemnity meant when you indemnified Mr Heiner?---Indemnity is the agreement to pay and to indemnify someone their costs or whatever is involved. 10

But it doesn't forestall the potential litigation, does it? ---What potential litigation?

The one you're indemnifying him for?---I wouldn't have thought so, no.

So there was in the mind at the time a potential litigation against Mr Heiner?---There was advice that someone had made some inquiries, yes. Against Mr Heiner?

Yes?---Very much so. Mr Heiner - in those days that was in the cabinet submissions. 20

So there was in existence the potential of a court proceedings down the track?---Sorry, could you repeat that, please?

You were indemnifying Mr Heiner against the potential of future judicial proceedings in relation to his handling or his involvement in the Heiner inquiry?---Yes.

Were you aware that the staff were assured of their costs as well if any litigation were to come out as a consequence of the Heiner inquiry?---No, I'm not aware of that. 30

MR HANGER: With respect, I very much doubt that. I mean, he's mentioned this exhibit that was read from this morning. It's open to two constructions and I would have - - -

COMMISSIONER: All right. I will have Mr Lindeberg put the precise statement.

MR HANGER: Yes, but in context because over the age from what he read this morning it seems to me arguably to give the lie to any suggestion there would be an indemnification in respect of defamation. 40

COMMISSIONER: All right, thanks, Mr Hanger. Mr Lindeberg?

MR LINDEBERG: I'm sorry, I didn't get the last bit in response.

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MR HANGER: I suggested that the document containing Ruth Matchett's speech is open to two interpretations and that while on the first page of it she talks about they're being indemnified, I would suggest that the second page is open to an interpretation that they're being indemnified in respect of defamation. It's a possibility but not clear.

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COMMISSIONER: Maybe we can avoid the debate by asking Mr Comben this question.

Did you have any knowledge or understanding that Ms Matchett had spoken to the staff at the John Oxley Youth Centre about their own legal position?---No.

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MR LINDEBERG: Mr Comben, at point 20 of your statement you say, "There were no specific incidents discussed at these cabinet meetings in relation to allegations of abuse or sexual abuse"?---Did you say paragraph 20?

Sorry, did I say paragraph or point? Paragraph 28 I think I said.

MR HANGER: You said 20.

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MR LINDEBERG: Sorry, if I said 20, I apologise?---Yes, thank you.

Is that correct?---Are you asking me is it correct as to every - the paragraph or each sentence?

The sentence where you say, "There were no specific incidents discussed at these cabinet meetings in relation to allegations of abuse or sexual abuse"?---That is true. That is true to the best of my memory. There was nothing specific.

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Okay. Nothing specific, but was there any general discussion?---No, nothing at all.

Can I just go to your statement at point 21?---Yes.

You say, "I recall that it came to cabinet on three occasions and on the third occasion I leant over to Anne Warner, the then Department of Families minister, and said to her to the effect of, 'What's it all about?'"

Is that right?---That's correct.

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And she said, "They were all having a go at each other and accusing each other of abusing kids and all that stuff." Is that correct?---I believe so. She certainly said "of abusing". I now wonder whether or not she did say "kids", but - because said something - "having a go at each other and abusing". But is that correct? I think so, with a query as to whether or not "kids" was said.

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Well, you've repeated it again in point 22, haven't you? ---Yes, because I spent overnight tried to remember exactly what was said and that was as close as I could get.

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But from your point of view - now, notwithstanding I think you're not sure about the child abuse?---Yes.

Let me put it this way, this is a youth detention centre - - -?---Yes.

- - - in which children reside?---I'm aware of that, yes.

You're talking about abuse going on. Would it be fair to say it could be child abuse?---Well, I suspect that that is the interpretation I put on it in the early 1990, whether that is correct.

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Rather than the staff abusing each other?---No, I think the question now is whether or not it was the staff abusing each other. At the time I put the interpretation that is kids. But with all the ability of hindsight I'm not sure that she did say kids. I think I heard "abuse" and took all that scuttlebutt that was in the back of my mind and thought, "Oh yeah, that's typical stuff they come to the electoral office with, all that stuff, and that's what it is." That's why I now query whether she said "kids

Are you suggesting that you're in the Cabinet room?---Yes.

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You leant across to her and said to her, "What's this all about"?---Yes.

And she sent back to you those things?---Yes.

Are you putting forward the proposition that this is just a little chat between you and the minister?---Very much so.

While the rest of the cabinet are worrying about defamation and things like that?---A little chat between I and the minister on my right whilst we're all stressed (indistinct) and listening, and I really just went over - in cabinet you can move about (indistinct) - "What's it all about? Are they all having a go at each other?" And I was basically told to get back in my chair. Listen.

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And the staff were abusing the kids?---It could be be.

The staff - - -?---Could have been the kids. Abuse was there. 1

Yes?---"Staff" and "abuse" was there.

And you decided to keep this quiet?---Well, there was no new knowledge; no new knowledge of any sort.

We'll come to that. There has been mention here today about your appearance on Channel Nine?---Yes.

Now, - and again, I'm not sure what - there is talk in the statement about what the commission showed a witness. I'm not particularly sure as to what they actually show - you know, what the witness was shown, whether it was the first program or the second program. 10

COMMISSIONER: I can't help you, Mr Lindeberg, neither can I.

MR LINDEBERG: Let me put it to you, Mr Comben: what they show you, the first program or the second program?---I didn't know there were two programs. 20

Well, there was two programs?---I was not aware of that.

Well, Mr Commissioner - - -

COMMISSIONER: Is there some other way of discriminating between the two? Was one in May and the other in December?

MR LINDEBERG: Yes. The first program, a thing, was around about 21 February 1999. Do you recall that?---I don't recall the day. I remember the program, yes.

And there was a follow-up program I think around 23 March called - it was called Neglect and Cover-Ups. You don't recall that?---I have no recollection of that whatsoever. 30

I put to you that that program replayed what you said in relation to your first appearance on the program?---I have no difficulty with that.

Because you had suggested that you had been misquoted or that you had been misrepresented and I think they were saying that you had also suggested you are going to sue them?---I'm surprised at the issue of suing someone. Several media outlets, the day after the first program went to air, ran the story, but for the first time ever during 16 years of public life I was unhappy with the way that some people had interpreted the media, and that was to suggest that what I'd said was in some way an endorsement of a view by some outsiders that cabinet had some knowledge about sexual or other abuse of kids. It was not. 40

That meant the clear, Mr Comben, you used the word sexual there?---Sexual or other abuse, I said. 1

Okay, okay. All right, "or other abuse". Well, it's a matter of interpreting the words - the plain words, might I suggest, in that me reading to you, "In broad terms we" - we -

were all made aware that there was material about child abuse. That there was material which was said to be highly defamatory and it was accepted on face value that if this matter was of such concern that it got to a level of cabinet decision, then those allegations must have had considerable merit in substance. 10

Now, I put it to you the inference from that is that in broad terms "we" - in other words all members of cabinet - "were informed"?---Mr Lindeberg, in response I say that in the comments I made earlier to counsel assisting the commission I said that "we" was a slack use of language, it was "I", I stick by that. They are my thoughts. I have no right of any sort to say "we" for the cabinet. I was mistaken, slack use of language, I apologise to my cabinet colleagues. 20

When did you do that?---No, I do now.

I see. Did anybody contact you afterwards to ask why you said that?---Yes.

Who?---Ms Warner.

Anyone else?---Not that I know of. Not that I can remember, no. I don't think so. 30

So you are suggesting, are you that this was all scuttlebutt, low-level - - -?---Absolutely.

Of no particular importance?---As I said on many media outlets the day after it appeared, the interpretation put on it by you and others was absolutely erroneous.

COMMISSIONER: What interpretation should have been put on your comment that if it reached the level of cabinet consideration, there must be something in the allegation? ---Well, I think that at that time I was of the view that it was there. We were told it was substantially defamatory, that it had to be destroyed. At that stage I wouldn't have a problem with that. It was that it was sexual allegations that we were aware of specifics. That was where I had the problem. 40

So what you did mean on the Sunday Program was to convey the fact that what allegations had reached cabinet level must have some substance?---Yes.

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Which ones? Which allegations were you referring to?
---Well, the ones which I had taken in in 1990, for my own
mind at the moment that Ms Warner said to me, "They're
abusing kids or each other," I thought, "Oh, that's all
that stuff," which I have to say with great respect, any of
the institutions in Queensland in the 1970s, 80s, when I
was first involved in politics, had a lot of (indistinct).

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I know, but that's what I'm struggling to understand.
You said in your mind as far as you knew anything, it was
scuttlebutt - low level scuttlebutt. Why would you then
characterise what you regarded as low-level scuttlebutt as
an allegation which must have had some substance because it
had reached cabinet level?---I have no idea. I had not
thought that there was a conflict between those two things
prior to you saying that, but you're correct. But I
suppose to some extent by the 1990s we were aware there was
other stuff there so perhaps again I'd taken it on that:
all right, that must have been the stuff that was in there.
But I didn't know it was in there.

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What did you think - what material did you think you were
being asked to authorise the destruction of?---I presumed
statements. I assumed that there'd been some form of
inquiry, although I understand now it was really across a
desk sort of interviews. It was the shorthand notes, I
suppose, I'd have thought, of those discussions which
contained allegations of abuse by some staff of some
children.

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Right, that's what you thought at the time you gave the interview with the Sunday program based on your - a side conversation with the minister?---Yes. 1

And your background exposure to what you regarded as low-level scuttlebutt?---That's correct, Mr Commissioner.

That's as high as you could put it?---Absolutely.

It was no higher at the time that you gave the Sunday program interview?---No higher at all, and I gave that program an interview to try to say about Mr Lindeberg that there wasn't much around and I was rather surprised to get questions about the actual destruction, et cetera. I thought I was being interviewed about my view of a union official I'd known reasonably, not all that well, and an 11-year search. So I was taken somewhat short by the questions, in actual fact. 10

So what were you there to say?---I thought I was there to say, "Kevin's a great bloke. There was nothing in the destruction stuff. He should move on with his own life."

Okay, but what you actually said was - would you read out that quote again, please, Mr Lindeberg? 20

MR LINDEBERG: "In broad terms, we were all made aware that there was material about child abuse, that there was material which was said to be highly defamatory and it was accepted on face value that if this matter was of such concern that it got to a level of cabinet decision then those allegations must have had considerable merit and substance."

COMMISSIONER: So that's a very different statement to the one you went there to say?---Yes, absolutely. It was - I'm not going to say ambushed. I'm too experienced to hide behind that, but I was surprised that that sort of question - - - 30

But nonetheless the answers was yours?---Yes, the answer is mine. I - - -

You only answer - I was wondering if you could explain to me now what you meant to convey by that answer when you gave it?---What I meant to convey was that in broad terms we were told the material was defamatory. I made the assumption, as I believe that other cabinet members have made the presumption, that it was the sort of stuff which we had heard around the traps. If I had it again I would say I presume - in the broadest of terms, I presume that we all had an awareness that there were allegations of child abuse around the institutions and the material there must have been serious because it got to cabinet. 40

What did you think the defamatory matter was?---We were briefed it was defamatory. 1

Yes?---No other thoughts, just we were briefed.

It was just, "It's defamatory"?---Yes.

Not what's defamatory?---No.

Or of whom?---No.

Why didn't Mr Heiner - did you - no, I won't ask you that question. Why did Mr Heiner need an indemnity, and against what?---In retrospect I can't give you an answer to that. At the time - and again, I'd ask you to think of where the cabinet was at that time. We were asked to indemnify him. Perhaps if he had written something, reported to someone, something akin to that - I don't think it was hard for us to work out that something could go wrong with Mr Heiner and that was the level of it. 10

What about treasurers being the guardians of the public coffers? Was there any questioning by the treasurer as to how much might be involved in this indemnity, what sort of indemnity might be requested? Did it involve damages for defamation as well as legal costs?---I don't believe there was any. None that I can recall, any discussion along those lines. 20

What was the purpose in the destruction? What was sought to be achieved by cabinet approving the destruction of these documents?---I believe to stop the republication primarily, but secondly to stop the access to allow - to stopping potential litigation.

Why was that cabinet's job?---In hindsight, don't know, but I think if I was a new acting director-general in a department and you had that sort of thing in front of you, had people raising legal queries, where else do you put it? There was limited corporate experience in both cabinet and the senior ranks at that time in the public service. I think it was probably a good place to put it. 30

But looking at the process now it just strikes me that if indemnity and destruction were the answers I wonder what the questions were, because none of the questions I would have expected to have been asked to reach a conclusion of destruction and indemnity being the best way to go were asked?---I think in all the gifts of hindsight that's probably correct, but I think that a number of people, including the cabinet, didn't know what else to do with the stuff. I think there would have been a different answer had it been done a year, two years later. 40

You see, in order for me to protect your rights in a potential litigation I've got to interfere with mine?
---Yes.

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Was that a topic of conversation, that somebody's rights had to give way to somebody else's if we destroyed these documents that might have been needed by somebody to litigate a potential defamation action?---Well, I think that was not perhaps addressed but thought through by members of cabinet as being, "Well, if this stuff is there and it's scuttlebutt, it is defamatory, they're all just having a go at each other, let's just get rid of it." I don't believe that it - - -

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But that's the point, you see, because nobody knew what was in the documents to make that conclusion?---No, but the advice in front of us was it was defamatory.

But it wasn't that it was just scuttlebutt?---No. It was - - -

You yourself said if it had reached this level of cabinet there must be something substantial in it?---Yes.

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So it couldn't have been destroyed on the basis of your thinking and reasoning because it was low-level scuttlebutt, it was destroyed because it was the exact opposite. That's a fair conclusion, isn't it?---I think it's a very fair conclusion, but it wasn't one that was present to us at the time.

You can see why Mr Lindeberg might have drawn the conclusion?---I can see as a matter of logic how that could be seen, but I still think you go back to the lack of experience and corporate wisdom in cabinet, in the senior ranks of the public service, to work it out that this was set up by the department. Most of the employees would probably have been protected by the normal departmental employer relationship, we could have done something else, but that was not in front of us. We did something - and most of us did not have our minds on this. This was about the third cabinet meeting. We all had our policies, years of waiting.

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But as you say, this was a very unusual, non-policy step to be taken by a new cabinet?---Yes.

And you took it, rather boldly?---After three goes; after three goes.

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Yes, but not on much information?---No, but after three goes.

Yes, but I just wondered about that. What's the point of the three goes? I mean, did you do any better on the third go than you would have done on the first?---I think we certainly had a belief that we had sought all the advice we could get, yes. 1

What did you know on the third occasion that you didn't know on the previous two?---The combination of there's no legal impediment to destruction of these documents and the archivist said it's okay.

You didn't have that on number 1?---No, certainly not the archivist. 10

Okay?---Because the four options went to cabinet on the second submission and it was cabinet then looked and said, "Well, what about the archivist?" and so really a fifth option was taken.

So, what, you put it down to inexperience of the new cabinet?---I'm aware there's a cabinet colleague sitting in here and she may have something to say to me afterwards, but I believe that is so. There would have been a different decision a year or so later. We'd have all been a bit more experienced, a bit more robust, yes. 20

Thanks, Mr Lindeberg.

MR LINDEBERG: Were you aware of what the archivist was told in terms of when the approval was sought for her to destroy the documents?---Not in any specific terms, no. No, I was not told.

But you were aware that at least in two cabinet documents there was an indication that lawyers were seeking access to the documents, weren't you?---Yes. 30

Did you ask the basis - did you ask the minister, or anybody ask the basis of why the lawyers were seeking access to the documents?---I think it was stated for the interests of their clients or something. Something would have been said but not - - -

And that didn't matter?---Well, it mattered, but there were a lot of people's considerations to be taken into account.

Due process, did you take that into account? 40

MR COPLEY: Well - - -

MR LINDEBERG: Look, I'm sorry, I take that back.

MR COPLEY: Perhaps before we can summarise it all in this expression called "due process" it would be better if the questioner formulates what it was that should have been taken into account because that concept can mean different things to different people. 1

COMMISSIONER: It is an American - - -

MR COPLEY: It is, yes, but it has come into vogue in this country.

COMMISSIONER: The TV does that. 10

MR LINDEBERG: Commissioner, I won't - - -

COMMISSIONER: You won't pursue it. You're pushing against an open door, Mr Copley. Yes, thanks, Mr Lindeberg.

MR LINDEBERG: Was cabinet made aware that the POA and the Queensland Teachers' Union was seeking access to the documents at the time you were thinking about destroying them?---I don't believe so. I don't remember. 20

Now, you call these complaints low-level scuttlebutt. Is that correct?---The ones which I thought for my mind to be, yes. It was in my mind low-level scuttlebutt.

Now, it seems that what you're saying is that you and Minister Warner had this little quiet chat to yourselves and - - -?---I asked Minister Warner a question. I got a fairly brief answer and basically got told to go back to my place.

And then you were told to sit up straight?---Yes. 30

Meanwhile there's the issue of defamation being thrown around the place. Nobody knows what the defamation is, but they're talking about defamation.

COMMISSIONER: You need an answer for that.

Mr Comben, is that what happened?---Yes.

MR LINDEBERG: And who was raising the issues of defamation?---It was in the submission.

Was it the attorney-general?---No, it was in the submission. 40

But within the discussion, was it - - -?---Ms Warner would have spoken to her - I don't remember her speaking to her submission but she would have spoken to it.

She only spoke to it. Did you talk to it?---No; no.

Can I ask the witness to have a look at exhibit 327, please? 1

COMMISSIONER: Sure?---Yes.

MR LINDEBERG: Do you see that it's talking about the John Oxley Youth Centre?---Yes.

And do you see what the minister is aware of as of 1 October 1989?---Yes.

That children are being handcuffed to fences overnight?--- Yes. 10

Do you think that that might represent suspected child abuse?---Well, suspected but, of course, there's still, I think, under the law the ability to control and to detain so I think I'd need some more information before I could give you a view. I'm not an expert on child abuse or the finer points of the law on that.

Children being handcuffed to fences throughout the night you would think - - -?---It would seem to me as a layperson that that would be child abuse but I am not an expert in this area. 20

Do you think it's possible that - - -?---That it was child abuse?

Sorry?---That it was child abuse?

Yes.

COMMISSIONER: No; no, you don't want - - -

MR LINDEBERG: No; no, I didn't mean that. 30

What I was going to say is that when - your statement in terms of when you said that "Staff are abusing children", do you think that it may have involved that?---It could have done. It could've involved - well, when I - - -

COMMISSIONER: Was that an event that was in your mind when you used the term "child abuse", handcuffing them all night to a fence, or not?---No, not that one.

MR LINDEBERG: But I put it that the minister is aware, albeit through sources, that this type of conduct is going on at the John Oxley Youth Centre which has been reviewed by Mr Heiner and it's that material which you're thinking of destroying. 40

COMMISSIONER: Yes, but hang on, you have already asked Ms Warner if that's what she knew. He didn't know that. The width of his concept of child abuse isn't helping me.

MR LINDEBERG: Mr Comben, what would you think of the suggestion that there was another member of your cabinet who believed that the complaints that were talked about at the cabinet meeting were sufficiently serious that they could be referred to the CJC for misconduct or the police? ---I don't think the CJC was formed then, was it?

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No, I understand that, but it was in the formation of - it had been established but it was in the process of getting under way.

COMMISSIONER: 1989 I think it was established?---Was it? Before we got government.

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MR LINDEBERG: Yes, it was?---You're putting to me a hypothetical; what do I think of a suggestion. If that's true, that's true.

I'm suggesting that it is true?---It's true, yes, someone could be thinking that. I don't know what I'm supposed to say.

COMMISSIONER: Nothing, because you can't?---Thank you.

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MR LINDEBERG: One final question, I think. Mr Comben, you talked about going on the Sunday Program to - if I'm interpreting you incorrectly, but basically to point out the error of my ways, that I was pursuing something which was not right and you attempted to say that in your statement so you went on the Sunday Program and said what you said. You were doing it for my benefit.

COMMISSIONER: Yes, he was going to go on there to tell you to stop flogging a dead horse but he said something different.

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MR LINDEBERG: Is that right?---Yes. What the commissioner has just said is correct, yes.

Now, are you aware that in relation to this - you know, you said you were loose with your English in terms of when you appeared on the program. Is that correct?---Yes.

You didn't just say it once, did you? You said it twice to the camera?---I don't recall.

Well, Mr Commissioner - - -

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COMMISSIONER: Do you dispute that you - - -?---No, I don't dispute it. If I said it once, I could have said it twice. I don't dispute that.

Are you going to tender that at some point, Mr Lindeberg?

MR LINDEBERG: The reason I asked the question in the first place is that it appears that Mr Comben has been shown something but I'm not sure what he was shown. Certainly he was shown - you know, it appeared on two programs. 1

COMMISSIONER: Right.

MR LINDEBERG: The second program was shown on the basis that it was alleged - - -

COMMISSIONER: Was it the same clip or a different clip? 10

MR LINDEBERG: Sorry?

COMMISSIONER: Was it the same clip or a different clip?

MR LINDEBERG: Two clips.

COMMISSIONER: Separate; different clips. He said the same thing on two separate occasions.

MR LINDEBERG: That's right?---Excuse me, I couldn't have said it on two separate occasions, could I? 20

No, let me be clear. It appears that when you were on camera, you said something and there was some noise or something and they said, "Let's take it again"?---Yes, that would quite normally happen. I would probably stop it myself. I've done a lot of media.

So you were sloppy twice with your English language?---Yes.

COMMISSIONER: In the same interview within seconds?
---Yes. 30

Is that right?

MR LINDEBERG: Well, I assume it was within seconds.

COMMISSIONER: Okay.

MR LINDEBERG: I mean, if that's relevant, I have the tape.

COMMISSIONER: That is why I say are you going to tender it. 40

MR LINDEBERG: I wish to tender it.

COMMISSIONER: Okay. That is probably a really good thing because it will speak for itself and you won't need to - - -

MR LINDEBERG: Indeed.

Finally, Mr Comben, when the shredding took place, at a later time did your colleague Mr Hamill contact you and say he had been contacted by lawyers for Mr Coyne wanting to know who shredded the documents and that the department was in a lot of trouble around May? Did he speak to you then? ---I don't believe so.

1

You have no recollection of that?---None whatsoever.

That's okay. Thank you very much.

COMMISSIONER: Thanks, Mr Lindeberg. The tape of the Sunday Program of 25 May 1999 will be exhibit 330.

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ADMITTED AND MARKED: "EXHIBIT 330"

COMMISSIONER: Have you got a machine to play that, Mr Lindeberg? I didn't think they existed any more. Mr Byrne?

MR BYRNE: Thank you, commissioner.

COMMISSIONER: Mr Harris, have you - - -

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MR HARRIS: I have already said no questions, commissioner.

COMMISSIONER: Right, thank you.

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MR BYRNE: Mr Comben, just to clarify a few things about that Sunday Program, as I understand your evidence you interviewed once and once only?---Yes. 1

And it seems that although you - as I understand your evidence - have no knowledge of that interview or parts of it were played on two occasions?---No, I have no knowledge of that.

Okay?---But there were - certainly the day after it was clear the first time - a number of media comments from me saying it had been misinterpreted. 10

Okay. Let's just look at that. That interview took place in 1999?---About then. I'm not sure of the exact date.

And you were speaking - or purporting to recall events that occurred in 1990?---That's correct.

So a nine-year gap there?---With no thought about those events between then.

Okay. And you'd been asked to speak on the program and you've given us your motives. But you haven't done any research or had any notes or records?---No, nothing at all. 20

All right. And as I understand it, what you were speaking about in 1999, seeking to relate that back to, as best you could, 1990, you took on board what you'd heard, what had been said in the ninth year's intervening?---That's correct.

And some of those things even at the time - that is back in 1990, let alone nine years down the track - were, at least so far as you are concerned, to use your words, either low-grade scuttlebutt or generalised gossip?---That's correct. 30

And these are things you're not hearing in any official government channels?---No.

Certainly not in your role as a minister?---No, certainly not, no. Why I hesitated was some people would have come to the electoral office and said, "Oh, such-and-such is going on down at Sir Leslie Wilson," or something like that, but that's the only level, and that was years before.

And by - just to clarify, thank you for that - just to clarify by "government sources" I don't mean persons in your electorate dropping in, I mean persons in either the department - - -?---No, you mean formal advice or anything, no, nothing like that. 40

Okay. Now, to clarify, you did say on that programme - you use the term "we"?---That's what I said.

You accept now that that was, for whatever reasons, incorrect?---Absolutely incorrect. 1

So what it should have said was: in broad terms - that is, given the background of scuttlebutt and gossip - you, Pat Comben, had some background about matters at the John Oxley Youth Centre?---That's a true rendition. Perhaps it should have been even: I could make the presumption that these were the matters that were there. I think that would have been a better rendition, but yes, that's correct.

All right. The other part of that interview is that when you talked about the importance of the matter such that it came to cabinet, again that was you nine years later about what you perceive may or may not have occurred back in 1990?---That's correct. My understanding of my request - the request for me to have that interview - was that Channel 9 had actually contacted most of the then cabinet and contacted me a couple of times before and I'd said, "No, I don't know anything about it," and then they came back to me and said, "We've been able to get know one. Someone's got say something." So I said, "Oh, all right," and did it (indistinct). 10

But to be clear, you have no particular knowledge as a minister either of the times or even at the time he was speaking in 1999 of any specific importance of the issues involved?---None whatsoever. 20

Your knowledge was based solely on what was in the cabinet memos and briefing papers?---Correct.

Now, is it fair - and you've told us about some of the things which occurred after that programme aired in 1999, one of them - and I'll put this specifically to you because it relates to Ms Warner: she, you've told us, contacted you?---Yes. 30

And I suggest she said something along the lines of, "Pat, what are you talking about? What do you know that I don't know"?---That's with expletives removed.

That's the sanitised version, Mr Comben. Yes?---Yes, that's the sanitised version. Yes, that's correct.

And you said words to the effect of, "Nothing"?---That's correct. 40

All right. And she said something like, "Well, why on earth did you do it or say it?" And to be fair to you, she can't remember the details or the further details of the conversation, but would be fair from what you've told us this afternoon that it was along the lines of, "Well, that contacted me three times and I thought someone should say something"?---And someone should say something about

Mr Lindeberg and to move on and I suspect it was close to some version of "it seemed a good idea at the time". It wasn't.

1

Clearly it wasn't now?---Clearly it wasn't.

But you had - to just be as clear as we can - you had no specific knowledge - - -?---No specific knowledge.

- - - over and above what was in the cabinet submissions? ---None whatsoever.

10

And to your knowledge no other member of cabinet did at that time?---To my knowledge, no, they did not.

And by that I mean it wasn't discussed, you've told us, in cabinet?---It wasn't discussed.

There were no discussions between anyone else - and we'll deal with Ms Warner in a second - and you about this matter?---No.

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So we can limit the Sunday Program and exhibit 330 to what you have told us. It was about your low-level degree of scuttlebutt and gossip at the time?---That's correct. 1

Can I take you then to what you have said in your statement, in particular paragraphs 19 to 22? I'm happy if you have that in front of you, Mr Comben?---Thank you. Yes, sir. Yes, Mr Byrne.

Now, to put this matter in its proper chronology, these events occurred in 1990, that is, the final submission of decision by cabinet?---Yes. 10

It's nine years later in 1999 that you make these assumptions that you did on the Sunday Program?---That's correct.

And it is on my maths at least a further 14 years down the track when you're asked to recall for the first time what's in paragraphs 19 to 22?---That's correct. You actually said there that it was 10 years later when I made the assumptions of what was in there. No, I think I made those assumptions at the time. 20

I put that badly?---Yes, sorry.

It was nine years later when you related - - -?---Yes, I had to rethink about it; yes.

Without any, I think you have told me, intervening investigation, knowledge, notes?---None.

So getting back to your statement, do you agree at least approximately with the calculation that it's a further 14 years on from 1999 when you give this statement?---Yes, that's correct. 30

Can I firm you up on this because you have reflected on these conversations even between the time when you spoke to police assisting the inquiry and today? Is that correct? ---Yes.

And, as I understand your evidence this afternoon, you recall now on reflection that, whilst the words "staff" and "abuse" may have been used, you can't now say with any degree of confidence that "kids" was used?---None whatsoever. I have agonised over that. When the police interviewed me one afternoon, they then went off to type it up and I made some changes the next day and it was that piece and the "kids" that has worried me more - is the only thing in that statement which worries me. I don't know and my belief at this moment is that she probably didn't say "kids". It was having a go at each other and I probably intervened. We're talking about a youth detention centre. I think I intervened with "kids". 40

So to the best of your knowledge today you can't say that Ms Warner said anything about kids abusing kids?---I could not under oath say that she said that, no.

1

Again, as I understand your evidence, this is an exchange between the two of you whilst other people were speaking and other issues were being talked about?---It was a question to me and a - - -

A question from you?---A question from me to Ms Warner and a very brief response from her.

10

So we're talking a matter of seconds?---Yes. I would put it similar to the comments that are made at a bar table at times from someone to someone else saying why did they ask that. It's that sort of thing.

And you had no particular reason to recall that 14 or 23 years down the track?---No. I just say what I said earlier. As a failed law student, I was always interested in the issues that were around this and so I did take a bit of interest and Anne or Ms Warner sat next to me so it was always of interest and I suspect - I can't remember anything else that was discussed at cabinet that day, but it was just one of those things that had the minutia and the monotony at times of cabinet but at that time the excitement of cabinet some things do crop up that are of interest to you. Any lawyer sitting around that table would have been interested; any aspiring lawyer.

20

To put that in some form of text, you were asked questions by my friend Mr Copley to the effect that you had no knowledge of the Heiner investigation, to use those terms? ---None whatsoever.

That was prior to you becoming a minister and prior to it becoming the focus of a cabinet submission?---I think I was aware that an inquiry was going on. I didn't know it was the Heiner affair. I didn't know what was really going on, but I was aware something was going on.

30

So you didn't know because - and I'm not being critical. It's simply that you and in fact your government had nothing to do with setting it up or the mechanics of it? ---That's correct, and also I'd moved from having the shadow responsibility for Health and prisons where I still had some contacts around detention centres, et cetera, but that was no longer part of my focus. I had been moved to, I think, the Health environment or something like that.

40

This inquiry has the advantage that you probably don't have that Heiner - the terms of reference?---Yes.

You didn't see those?---No.

You say at least that you remember "staff" and "abuse".
Were you aware that there were management issues that were
being focused upon by Mr Heiner, that is, management issues
between staff and different factions and different unions
at the John Oxley Youth Centre?---No, and I think that's
why I then took my background to put it in as being, "Oh,
it's about abuse of kids and those sorts of things." I
knew nothing about a union dispute or staff dispute.

1

I ask you just to humour me for the moment. If you knew
that the background was personnel dispute, management
issues, union issues between adults working in the centre,
then that would make sense of staff and abusing each other
but would have nothing to do with child abuse?---Yes.

10

And you're now with the passage of time unable to recall
that there was ever in that context, if that conversation
did take place, the use of the word "child" or "kids"?
---When that conversation took place, no, I am not able to
say with certainty that there was any children or kids.

That's all I have, thank you, commissioner.

COMMISSIONER: Thanks, Mr Byrne. Yes, Mr Copley?

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MR COPLEY: May the witness be excused?

COMMISSIONER: Mr Comben, thank you very much for spending
time in the witness box to give us the benefit of your
recollection of relevant events. It is much appreciated
and you are formally excused from the obligation of your
summons?---Thank you very much.

WITNESS WITHDREW

COMMISSIONER: Yes, Mr Copley?

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MR COPLEY: I call Stuart Tait.

MR BYRNE: May I and my instructing solicitors be excused?

COMMISSIONER: Thanks, Mr Byrne, good to see you.

MR COPLEY: I understand there is a solicitor, Mr McGraw,
who will be seeking authority to appear.

COMMISSIONER: Is there any objection?

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MR COPLEY: There will be no objection from me.

COMMISSIONER: Yes, Mr McGaw?

MR McGAW: Thank you, Mr Commissioner. My name is McGaw,
solicitor from McGillivrays. I seek to leave to appear for
Mr Tait if it becomes necessary in relation to this
proceeding.

18/2/13

COMBEN, P. XXN

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COMMISSIONER: You have leave, Mr McGaw, thank you. 1

MR MCGAW: Thank you.

TAIT, STUART PETER sworn:

ASSOCIATE: For recording purposes please state your full name and occupation?---Stuart Peter Tait and I'm a company director.

COMMISSIONER: Good afternoon, Mr Tait; welcome? 10
---Thank you.

Please take a seat. Yes, Mr Copley?

MR COPLEY: Thank you.

Mr Tait, prior to the state election in December 1989, where did you work?---The Queensland Premier's Department.

What did you do there?---Well, I had quite a few roles so I suppose to summarise it from about - - -

No, I'm just asking what you did immediately prior to the state election in the Premier's Department. So what was your last - what was your job, say, on December 1, 1989? 20
---I was in a very small office designing and writing the cabinet handbook and doing the administrative arrangements for a potential change of government.

I see; and had you worked in the cabinet office or the cabinet secretariat prior to the change of government?
---No, I had not.

Okay. So who appointed you or why were you doing that task of administrative arrangements for a change of government? 30
---I was appointed by Mike Ahern who was a prior premier just prior to the Cooper change of government and I was reporting directly to Erik Finger and to Eric Digby.

Okay. Now, who was Erik Finger?---Erik Finger was he director-general of the Premier's Department.

And who was the other fellow you were reporting to?---Eric Digby was the secretary of state.

Now, after the change of government, were you made the acting cabinet secretary?---I was. 40

And who did you replace in that role?---It's 23 years ago. It starts with H, Hassler or Hassard or someone like that. I can't recall.

We've heard evidence that Mr Littleboy was your second in command?---Correct. 1

Does that accord with your recollection?---It does.

Who was your superior then if you were then - when you became the acting cabinet secretary who was your boss?---In chain of command, Erik Finger, the director-general of the premier's department.

So if you wanted to apply for leave you applied to Mr Finger, did you?---Correct. 10

How long did that situation remain in place for, that he was your boss?---Probably for about - once again, you're testing my memory. I think about nine months before Kevin Rudd took over as head of the office of cabinet. So there was a bit of a reorganisation about nine months after the Goss government came into power.

So the Goss government came in on December 2, or thereabouts, 1989?---Correct.

Now, you have a memory then that Mr Kevin Rudd had some role to play in relation to your cabinet responsibilities about nine months later. Is that so?---Yes. 20

What title did he then assume nine months later?---I'm sorry, I can't recall. It will be in the records, though, of the time.

Yes, it's just that some people - a lot of people don't seem to be able to remember, you know, what this man Mr Rudd did, and it just sounded promising there a minute ago when you were able to remember at least the time that he - - -?---Well, Kevin was - - - 30

- - - came into the picture?---Kevin became head of the Office of Cabinet.

Right?---I think Kevin still reported, though, to Erik Finger. That's my recollection, but I could be wrong.

So wasn't there an institution called the Office of Cabinet in say January, February, March of 1990?---No.

We've heard and we've been referring to something called the cabinet secretariat. Would that be the correct expression to explain where you worked in January, February, March of 1990? 40
---Yes.

So just so that we know then, in January, February and March of 1990 you did not report to Mr Kevin Rudd?
---Correct.

You did not report to him, you agree?---No.

1

Right, and did he work anywhere - - -

COMMISSIONER: Sorry, that no is a yes. He didn't report to him?---No, I did not report to him.

MR COPLEY: Good, okay. Did he work in that executive building?---Yes, he did.

Where did he work?---On the 15th floor next to the premier's office - or, actually, it was a little bit along from the premier's office at that stage.

10

What did he do, do you know?---He was, I think, the principal policy adviser or private secretary to the premier.

Now, where was the cabinet office?---On the 13th - - -

Or the cabinet secretariat?---The 13th floor.

The 13th floor. Is that where you worked?---Yes.

20

Now, I want you to have a look at exhibit 293, please? ---Sorry, I'm - - -

Do you have a copy of that, do you?---Well, I'm hopeful that I have. 293.

It might be better if we show you the one that we've marked as exhibit 293?---Okay.

That way there won't be any confusion?---Good. Can you show it to me, please?

30

That was a document we've heard evidence was sent to a fellow called Trevor Walsh, the cabinet legislation and liaison officer at family services. Do you have any recollection as to the circumstances in which Mr Walsh received that document?---No, and I haven't seen this document before.

Did you send it to him?---No - well, sorry, 23 years - no, I don't - I have no recollection of having sent this to Trevor Walsh.

It appears to be an extract from the minutes of a cabinet meeting of the government which preceded the one where you were the acting cabinet secretary for, do you agree?---Yes.

40

It has been suggested that there was some impediment on or inability or some difficulty in making those cabinet minutes available to people in the next government. Do you know anything about that convention or understanding? ---Yes.

18/2/13

TAIT, S.P. XN

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Can you explain your understanding of that to us, please? 1
---Well, it is a convention of the Westminster system that
a new government does not have open access to the cabinet
records of a previous government. However, for
administrative purposes the responsibility of government
has to go on, so there are no problems about transferring
extracts of cabinet submissions from a previous government
to those involved in the bureaucracy, it's just that it is
a convention, a Westminster convention, that an incoming
government will not seek access to the documents of a
previous government unless, of course, it's required for 10
court matters or - and if it is required then you seek the
permission of the leader of the opposition before those
documents are given out.

So it would have been quite in order for a public servant
like Trevor Walsh to have solicited a copy of the extracts
of the previous cabinet's minutes?---Absolutely.

Could you have a look at exhibit 151, please? You will see
on the front of it there's the decision of the cabinet
called the Cabinet Minute?---Yes.

It's got your signature on it, hasn't it?---Yes. 20

Where was a cabinet minute, or where was that cabinet
minute or a cabinet minute, whichever you prefer to answer,
because you may remember this one, typed up? Was it typed
up in the cabinet secretariat or in the department?---In
the secretariat. It was typed up by me, in my office.

You typed these yourself, did you?---Well, no, I had staff
to do it, but I'm ultimately responsible for every cabinet
decision.

Okay. So now - - -?---The wording of it, I might add, of 30
the - - -

I beg your pardon?---The wording of it, not the decision
itself.

The wording of what?---I was responsible for writing the
decisions in accordance with the decision of cabinet.

So you were responsible for the first page of exhibit 151?
---Correct.

But the way - you wouldn't produce a document like this 40
unless in fact cabinet had decided in accordance with
what's written there, would you?---Absolutely, yes.

No, okay. Now, attached to that is a cabinet submission,
number 100 of 1990. There's a short version of it which
goes from pages 2 through to 3 and then there's a lengthier
version of it?---Well, that's actually not quite right.
Every cabinet submission done under the new cabinet

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TAIT, S.P. XN

handbook was done as a - it was a summary document so ministers could flick through it very quickly and then there was a more lengthy, more detailed briefing attached to it. It was just the style of how things were prepared for ministers.

1

Attached to exhibit 151 therefore is a summary, is it?
---Correct.

The first three pages, and then there's a lengthier document?---Correct.

10

Did you have any role to play in the compilation of either the summary or the lengthier submission?---No, I did not.

Did you know that this submission was coming to cabinet?
---Well, we always knew submissions were coming to cabinet. There were no surprises - well, sorry, did I know that it was coming to cabinet before it arrived in the secretariat, no, I did not.

So the first that you would have known of it would have been when it came from the department. Is that the case?
---Yes.

20

Okay, so I'll get you to have a look at this letter, please. You'll see that's a letter addressed to you, isn't it?---Yes.

It's dated 6 February 1990?---Yes.

Which is the day after Mrs Warner signed the cabinet submission on the 5th, isn't it?---I'm sorry, I can't answer that, honestly. How would I know that from the documentation you've given me? I see, yes, one is dated the 5th. Yes, that would be correct.

30

On page 7 of exhibit 151, if you go to the last page, she's identified her signature there?---Yes, okay. Now I see it, yes.

It says 5 February 1990?---Yes.

So would you say that the cabinet submission found its way to your office under cover of the letter that I've just shown you dated 6 February 1990?---Yes.

All right, and that would have been the first time you would have been aware that the department wished to bring this matter to cabinet?---Yes.

40

I tender that letter dated 6 February 1990 and ask that it be made perhaps exhibit 151B. Did you read this cabinet submission when it came?---Yes.

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COMMISSIONER: Sorry, Mr Copley, I'll make the letter -
how do you describe it, for the record?

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MR COPLEY: It's a letter to Mr S. Tait from Mr Trevor
Walsh dated 6 February 1999.

COMMISSIONER: That will be exhibit 151B.

ADMITTED AND MARKED: "EXHIBIT 151B"

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18/2/13

TAIT, S.P. XN

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MR COPLEY: Okay. Can it just be returned to the witness, please? 1

COMMISSIONER: Yes. That's why I asked you what it was because he has still got it.

MR COPLEY: He has still got it, thank you.

You will see on the bottom of it it says "10 am, 6/2/1990" in handwriting?---Yes.

Is that your writing?---No. 10

Is it Ken Littleboy's, do you think?---I don't know.

Do you know what it means?---Well, I think it's just the time and the date that it was received by my office.

All right. That's a fair inference, isn't it?---But I don't now who's it is.

No, okay. Now, you have said you read the cabinet submission after it came in?---Yes. 20

And why would you read it?---I read all the cabinet submissions.

For what purpose?---Because I had to be aware of all the issues that were going to be discussed in cabinet so that it would allow me to understand the will of cabinet when it came to writing the decisions.

All right, that's good. We have heard evidence that on 12 February the matter was duly discussed and that cabinet decided to give an indemnity to Mr Heiner but decided to defer a decision concerning what should happen with the documents, okay. Now, what role did you play thereafter in terms of what became of the documents?---Which documents? The Heiner documents, are you talking about? 30

We can do this the hard way or the easy way. So we will do it the hard way. If you have a look at exhibit 151, it says that a further memorandum to cabinet be made concerning what approach should be taken regarding papers spoken of of submission number 100. Now, if we now turn back to submission number 100, we can see that if we go to page 2 under the heading "Objective of Submission", it says: 40

Destruction of the material gathered by Mr Heiner in the course of his investigation would reduce risk of legal action and provide protection for all involved in the investigation. The crown solicitor advised us that there is no legal impediment to this course of action.

Okay?---Okay.

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So they're the documents we're talking about?---Right. 1

Now, the first question is: where were those documents?
---I'm getting a bit confused here. I'm sorry, I'm not trying to - I'm not trying to mislead you or anything like that. I'm just getting a bit confused. You're talking about the actual Heiner documents themselves in respect of their destruction. Is that what you're talking about?

I'm talking about the material that cabinet is being asked to destroy in the submission dated 5 February?---Well, at that stage I wouldn't have known where they were. I presume they were with the Department of Family Services, but I didn't know at that stage where they were. 10

Did they ever come to your secretariat?---They did, yes. They came to the secretariat.

When did they - - -?---But when they came, I can't - I mean, I can't remember that.

Do you know why they came to the secretariat?---They were delivered up because the premier wanted me to do further investigations about this matter. He was very unhappy about the recommendation that the material be destroyed and he was - he wanted more information from the crown solicitor about the advice that he'd given the department and he gave me the job of finding out exactly what was going on. 20

So did you ask for the documents to be sent to the cabinet secretariat?---I don't recall doing that, but I'm not saying that I didn't. I just can't recall whether that was the course of action or not.

But you were aware that eventually they materialised in the secretariat, weren't you?---Absolutely, yes. 30

And did you look at them?---Never.

Why not?---Well, the question was: were the documents lawfully obtained and whether they should form part of a public record and eventually it fell to the state archivist to make a determination whether those documents should remain - should be destroyed or not.

Well, there was no difficulty about the fact that the documents had been lawfully obtained, was there?---Well, my understanding of the submission originally put by the Department of Family Services was that Mr Heiner was inappropriately appointed. I think my reading of the documents subsequent to that in the last few days indicates that that's probably not the case, but he certainly did not have an indemnity, but at the time my gut feeling was that he possibly was not lawfully appointed in the first instance. 40

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In the submission which you read which is number 100 under the heading "Purpose Issues", second paragraph it says, "The crown solicitor has advised that Mr Heiner was lawfully appointed"?---Yes, but I've only just read that in the last - I mean, I've refreshed my memory in the last couple of days. I accept that now.

1

But you just said before that your understanding was that he wasn't lawfully appointed and that was one of the reasons why you didn't look in the documents?---Look, I'm trying to remember 23 years ago. My recollection at the time was that there were two problems, whether he was lawfully appointed and whether he had indemnity. I accept now that I'm probably wrong, that he was lawfully appointed, but Crown Law advise was that he didn't have indemnity because he was an independent contractor.

10

Right; and what did you understand by the expression "indemnity"?---I'm not a lawyer. He was not indemnified against legal action arising from the material that he gathered.

So why did either of those thing constitute an impediment to you looking at the actual documents yourself?---I mean, I had no interest in looking at the documents. I didn't look at the documents.

20

All right. So cabinet deferred a decision on 12 February 1990, and then what steps did you undertake to look into the matter further?---I rang Ken O'Shea, the crown solicitor.

Yes?---Told him the premier wasn't happy with the whole issue and wanted - and he was to prepare a brief to the cabinet on his previous decisions and, "Can I have it as quickly as possible?"

30

I'll just get you to have a look at exhibit 158. Now, that's a letter that you signed to Mr O'Shea, isn't it? ---Correct.

Did that precede the telephone call that you made to him or did that letter follow after you called him?---I can't recall that now. They would've been at much the same time, I would imagine.

Because the letter itself, you'd agree, doesn't tell Mr O'Shea with any particularity what it was that you wanted advice about, does it?---No, I think the letter fairly summarises some of the discussions and concerns.

40

From Mr O'Shea's perspective if he had received this letter on the fax machine or in the mail, he wouldn't have known what type of documents there was possibly a writ coming for, would he?---Well, I was unaware of - yes, but the

point was that there was quite a bit of discussion between Mr O'Shea and my office about the need for cabinet to receive more information.

1

So was this letter one written on the basis that Mr O'Shea would have known what you were talking about because there had been telephone contact between you and him?---That could well be, but I really can't recall after 23 years.

Okay, but the letter required Mr O'Shea to contact Mr Littleboy, didn't it?---Correct.

10

All right; and Mr Littleboy agrees that he told Mr O'Shea that the cabinet secretariat had a large sealed box containing all Mr Heiner's tapes, pages, et cetera?---That could be right. I can't recall that now.

And that they wanted to know whether they would become cabinet documents and thus be secret. Is that your understanding of what the secretariat wanted to know? ---Well, there was a range of issues we wanted to know. That was one of them.

What else did you want to know?---Well, we wanted, I think - not so much what I wanted to know. I think cabinet wanted to have a fairer and fuller understanding of what the department was recommending happen.

20

Right. Mr O'Shea did send you a lengthy advice, didn't he? ---Yes, he did.

I'll get you to have a look at exhibit 164. Now, you have seen this advice before, haven't you?---Yes, and I've refreshed my memory about it over the last couple of days as well.

30

Well, you'll agree that in the second paragraph after referring in the first to the letter, your letter of 13 February, he refers to the conversation with Mr Littleboy and he sets out that Mr Littleboy said that there was a sealed box which contained tape-recordings and other documents delivered to the department by Mr Heiner? ---Yes.

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So those documents and that box must have been in the possession of the cabinet secretariat by Wednesday, 13 February 1990?---That could be true, yes. I don't know. I can't recall that.

1

You don't remember whether they arrived because you'd asked them to arrive to go to the cabinet secretariat or they were just sent. Is that the position?---No, I can't recall that.

Mr O'Shea said in the second-last paragraph that the query, as he understood it from you, was what options were open to cabinet so far as retention or disposal of the documents were concerned and whether they were susceptible to discovery should someone issue a writ in the courts. Does that accord with your understanding of why Mr O'Shea was being asked to provide advice?---Yes.

10

You would have read that advice when it came in?---Yes.

You would have understood that Mr O'Shea said that the documents were not - his view was that they did not become cabinet documents by merely being taken into cabinet? ---Yes.

20

He said that his view was that the documents might have been public records within the meaning of the Libraries and Archives Act?---Yes.

Therefore it was necessary to see whether or not the state archivist - what her attitude was regarding the fate of the documents, wasn't it?---Yes.

That can be returned and I'll get you to look at exhibit 168. If we ignore for a moment the first page of that document but look at the second and third, that's a copy of a memorandum sent in, isn't it?---Yes.

30

I'll get you to have a look at this document and ask you whether or not this letter from Mr Walsh addressed to you on 13 February 1990 would have been the covering letter that accompanied that submission dated 13 February 1990? ---Yes.

I tender that and ask that it be made exhibit 168B.

COMMISSIONER: The letter of 13 February 1990 will be made exhibit 168B for Bravo.

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ADMITTED AND MARKED: "EXHIBIT 168B"

MR COPLEY: Did you have any part to play in the compilation of this cabinet submission?---Well, look, my recollection is no, that I did not, but I can't be absolutely sure because all the cabinet and legislation \

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liaison officers used to seek my advice when they had -
when they had difficult documents to prepare I would get
regular calls from 18 different liaison officers, and that
would happen all day every day. So it might well be that
Trevor Walsh did ring me up and ask me for some advice
about this, but I can't recall that 23 years later.

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All right. Now, you would have seen, if you read it, and
I assume you did, that it adverts to the fact that a
solicitor was interested in getting access to the material
cabinet was being asked to destroy?---Yes.

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That would have been - I'm sure you would have regarded
that as an appropriate matter for the department to bring
to cabinet's attention?---Yes.

Because that would be, you'd agree, something that the
cabinet would want to know?---Yes.

Whether the documents were wanted by anybody?---Yes.

Was the fact - all right, well, we'll move forward a bit,
perhaps. Cabinet, according to the minute which you've
signed, deferred a decision on the matter to allow you to
liaise with the state archivist?---Yes.

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Was cabinet concerned about the fact that the solicitor
wanted access to the material?---That's not my
recollection. Cabinet was concerned to make sure that the
advice it was receiving was accurate and truthful.

Yes?---So when the solicitor-general had - I mean, when
Crown Law - Crown Law effectively changed their advice from
these documents don't form part of the public record, now
they do form part of the public record, and once they form
part of the public record it's then up to the state
archivist to make a determination under her act whether
they should be retained or whether they should be
destroyed, and cabinet was very concerned to make sure that
it acted in a proper manner.

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I see, so that was your understanding of what cabinet
wanted to do, act properly?---Yes.

Was there a little bit of irritation about the fact the
crown solicitor's opinion had waxed and waned on the public
record point?---If I may, I think the irritation was that
this particular problem had been caused by the previous -
you know, a minister in the previous Cooper government and
left to the incoming Goss government to fix it up. I think
that's where the irritation was.

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I see, and was it a matter which - that was a matter which
irritated the cabinet?---Well, it was unfinished business
from a previous government that they had - they not been
responsible for causing this problem.

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Did it irritate you?---No.

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It wasn't a problem to you?---No.

COMMISSIONER: What was perceived as being the problem?
---The fact that Heiner was appointed without an indemnity.
This occurred - I believe it was - I can't remember the
minister's name; I think it was Beryce Nelson - made this
appointment in the manner that she did, you know, six weeks
prior to the change of government, and then, of course, the
incoming Goss government has all this material coming
across its desk. I think it was quite frustrating for an
incoming government to be dealing with this.

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MR COPLEY: Could you have a look at exhibit 168A? Do you
know where that type of document would be prepared?---This
looks like a billet-doux.

A what?---A billet-doux. In the executive process prior to
a cabinet meeting there is a meeting of about five or six
people in the premier's office in the hour before the
cabinet meets and treasury and premier's department prepare
very small briefing notes that summarise their view on
every cabinet document, both the financial and the legal
and political consequences of each cabinet document, and
this then forms the basis of the premier and the
treasurer's discussion about how cabinet can thoughtfully
review the matter when it sits. This to me appears like a
briefing note that would have been attached as a
billet-doux to the cabinet submission and could well have
been prepared by the secretary of state, but I don't know,
I can't recall 23 years later who prepared this note.

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So you didn't prepare this note? Would you go to those
types of meetings between premiers and treasury officials
before cabinet?---Yes.

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Why was that?---Because I listened to the discussions and -
I listened to the discussions and was preparing for - and
assisting the premier in how the debate unfolded. I sat on
the left-hand side of the premier at cabinet.

So was he the central man in the cabinet in terms of
controlling the debate?---Absolutely.

Right, so do you remember attending a meeting at which it
was resolved that the recommendation that should be made to
the cabinet was that the decision be deferred to allow the
secretary to liaise with the archivist?---Yes, I remember
that.

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So you were at that meeting when that was resolved?---Yes.

Who else was at that meeting?---Well, my recollection is that that was the decision of the whole cabinet and the decision was to once again defer this matter and to give me time to speak to the archivist. 1

Yes?---Or to write to the archivist.

Sorry, maybe you misunderstood me. I meant the meeting which preceded cabinet at which this document was compiled?---Look, I can't recall. I really can't recall the meeting prior to cabinet, but if this was the briefing note attached to it it would have been discussed very briefly at that meeting. We only had about an hour prior to the cabinet meeting so things were dealt with pretty quickly. 10

Did you always attend those meetings before cabinet?---Yes.

Who from premier's department attended?---Erik Finger.

Who else?---Just Erik Finger.

Who from treasury?---The head of the - the head of treasury. The under-secretary. 20

Was that person called the under-treasurer or something in those days?---Yes, the under-treasurer.

Just as a matter of interest, why would this type of issue interest the under-treasurer?---Everything interests the under-treasurer.

Why is that - or why was that?---Because there's financial - because the treasury will have - actually, sometimes the treasury will not have a view on a particular matter, but treasury likes to keep a watching brief on everything that goes on right across the whole of government. 30

COMMISSIONER: And the word "indemnity" would mean money to a treasurer, potentially?---Yes, that - I mean, they try and keep track of everything from a financial perspective.

MR COPLEY: So the view was formed before the cabinet meeting by Erik Finger and the under-treasurer that what cabinet should do would be simply to defer a decision until after you consulted with the archivist?---Well, I can't be sure of that. I really - I cannot recall that particular meeting prior to the cabinet meeting. I mean, there would have been 20 or so items that we discussed. Generally speaking, the premier would take advice on various matters, but cabinet made its own mind up about things. It wasn't necessarily directed in any one direction by the bureaucracy. 40

Cabinet ultimately decided on 19 February to defer to allow you to liaise with the state archivist, didn't it?---Yes.

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According to exhibit 168A, the recommendation of whoever the authors were of exhibit 168A was that a decision be deferred to allow you to liaise with the state archivist?
---Yes.

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So to that extent the people that came up with that as a course of action, their recommendation was followed by the cabinet?---Yes.

So it was then incumbent upon you to set in process the chain of discussion with the archivist, wasn't it?---Yes.

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Could you have a look at exhibit 169?

COMMISSIONER: Mr Copley, when is an appropriate time?

MR COPLEY: This is probably an appropriate time now.

COMMISSIONER: Are you sure?

MR COPLEY: Yes. We can look at it tomorrow.

COMMISSIONER: How much longer do you think you'll be with - - -

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MR COPLEY: I suppose another half an hour to 45 minutes.

COMMISSIONER: All right. Then in that case, Mr Tait, do you mind coming back tomorrow? Good, we'll see you at 10 o'clock tomorrow.

THE COMMISSION ADJOURNED AT 4.22 PM UNTIL
TUESDAY, 19 FEBRUARY 2013

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