QUEENSLAND CHILD PROTECTION COMMISSION of INQUIRY

SPECIAL DIRECTIONS SUBMISSION
- Term of Reference 3(e)

Kevin Lindeberg
1 March 2013

MATTERS AT ISSUE

This submission is supplied in accordance with Commissioner the Hon Tim Carmody SC's 19 February 2013 direction on parties with standing to appear to address the following issues by the end of business on 1 March 2013:

(a) What Term of Reference 3(e) means and should be interpreted to mean;

(b) Whether sufficient evidence exists of historic child sexual abuse in youth detention centres within the meaning of 3(e) that makes reviewing the adequacy and appropriateness of the Cabinet decision to destroy the Heiner Inquiry documents reviewable under 3(e); and

(c) whether in reviewing the adequacy and appropriateness of Cabinet's response - that is, the decision to destroy the Heiner Inquiry documents – that it can be done fully and carefully within the requirements of Order in Council (i.e. *Commissions of Inquiry Order (No. 1) 2012*) without hearing from members of Cabinet who made that decision directly.

This submission limits itself to strictly accord with the 19 February 2013 direction and does not represent finality on our part.

1. What Term of Reference 3(e) means and should be interpreted to mean

1.1. Term of reference 3(e) states: "*...reviewing the adequacy and appropriateness of any response of, and action taken by, government to allegations, including any allegations of criminal conduct associated with government responses, into historic child sexual abuse in youth detention centres.*"

1.2. On 24 July 2012, the Commission ruled, as a consequence of a recusal application brought against the Commissioner, the Hon Tim Carmody SC, ("**the Commissioner**") on the grounds of apprehended bias by Messrs Kevin Lindeberg and Bruce Grundy, that the word "government" in this inquiry under 3(e) shall mean "Executive Government, namely the Premier and Ministers of Cabinet."

1.3. We submit that what is commonly known as "the Harding Incident" constitutes an incident of "*...historic child sexual abuse in a youth detention centre*" within the meaning of 3(e).

1.4. We also note that the word "government", as in being defined as "Executive Government, namely the Premier and Ministers of Cabinet", is not defined and/or limited in 3(e) to just mean the 1990 Goss Cabinet, and hence the adequacy and appropriateness of other Cabinets' responses and actions in this matter cannot be properly excluded if the Order in Council is to be fully and carefully complied with.

1.5. Accordingly, it leaves open the reality that the handling of the Heiner Inquiry documents, their shredding and related matters (notwithstanding that 3 (e) is satisfied) now under careful review is just the beginning. It may and/or must extend beyond these events to permit subsequent events involving 'governments' to also be fully reviewed. Consequently, we submit that another inquiry covering beyond the 5 March 1990 shredding decision is warranted and ought to be unfettered (as in 'whole of government') so that it may

investigate the full story of the Heiner Affair as has been laid out in the 10 volume Rofe QC Audit.[1]

1.6. We contend that sufficient evidence has been presented to the Inquiry to reliably hold that in the material lawfully gathered by the Heiner Inquiry was evidence of the Harding Incident. As to whether or not it was properly handled by the department or the police at the time is not a material consideration in this direction, save that that evidence was destroyed along with other material when it ought to have been preserved.

1.7. That is to say, in order for 3(e) to be satisfied, it does not have to rely on whether those who disclosed concern over the Harding Incident were misconceived about whether or not the department or police properly handled the matter at the time (if in the fact they were misconceived in this belief), but rather, that Mr Heiner was simply told because he was lawfully appointed to receive their public interest disclosure.

1.8. We also contend that the Harding Incident cannot be dismissed as being irrelevant to 3(e) if the basis for its disclosure to Mr Heiner rested either on the absconding of certain inmates connected with the incident having occurred or on the non-disciplinary treatment of the supervisory staff on the excursion whose failure to supervise the inmates permitted the sexual assault incident and the absconding to occur.

1.9. Relevancy is found in the fact that the Harding Incident carried within it more elements than just being an historic incident of child sexual abuse in a youth detention centre, namely those additional elements (i.e. absconding and equitable disciplinary processes). Accordingly, by any element, it leads back to the sexual assault itself because they are all interconnected[2] and, according to certain Youth Workers, it was symptomatic of the mismanagement of the Centre.

1.10. We submit that this 13 December 2012 exchange[3] between the Commissioner and Mr Michael Roch may be seen as the touchstone of the overarching debilitating effect that

[1] See QCPCI Recusal Exhibit 5 Attachment 2

[2] Transcript, Mr George Nix, 13 February 2013 pp 68-69

[3] See Transcript, Mr Michael Roch, 13 December 2012, page 17 at 10.

the Harding Incident had for certain staff regarding how they saw the dysfunctional running of the Centre:

> **COMMISSIONER:** Could I just ask you this question: did you and the others out there see the Annette Harding affair as symptomatic of the overall faulty management style?
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> **ROCH:** It was a good example, I think, as your Honour pointed out, that they were sent out with some teachers who, quite frankly, were not nearly so security minded as we were. I do stress a lot of us came from lots of different professions, but at least we had the basic grounding of security and I think it came – yes, the teachers were even less so security minded.
>
> **COMMISSIONER:** In terms of those critical of the management, it was just another example of mismanagement in their view?
>
> **ROCH:** Affirmative.

1.11. We submit that the word "any response and/or action" within the term "***...the adequacy and appropriateness of any response of, or action taken by government, including any allegations o criminal conduct associated with government responses***" may safely rely on the fact that the material lawfully gathered during the Heiner Inquiry being dealt with by 'government' contained evidence of historic child sexual abuse in a youth detention centre.

1.12. We submit that "any response and/or action" remains relevant and reviewable even if the Executive Government knew nothing about the child sexual abuse in the Heiner Inquiry documents when responding at a particular time - as in the act of ordering the shredding of the material – for whatever reasons.

1.13. We say this because responsible democratic government (i.e. Executive Government, Minister of the Crown or Departmental Director-General) simply cannot make a virtue or practice out of deliberately engaging in wilful blindness in order to avoid informing itself about the contents of lawfully gathered information concerning the management of a dysfunctional State youth detention centre.

1.14. This is particularly founded on the Westminster principle of ministerial responsibility. Allied to this principle is the bounden duty on any emanation of the Crown to act as "the model litigant". This means that it should have always acted and/or not acted out of "an abundance of caution" and assiduously avoided *ad hoc* rushed responses and actions. Particularly so in a matter as perilously contentious and dangerous as deliberately shredding public records to prevent their known use as evidence in foreshadowed judicial proceedings, let alone not being certain what was in them.

1.15. Relevant to duties on the Crown to act as "the model litigant", Mahoney J in ***P & C Cantarella v Egg Marketing Board*** [1973] 2 NSWLR 366 said at 383:

> *"'The duty of the executive branch of government is to ascertain the law and obey it. If there is any difficulty in ascertaining what the law is, as applicable to the particular case, it is open to the executive to approach the court, or afford the citizen the opportunity of approaching the court, to clarify the matter. Where the matter is before the court it is the duty of the executive to assist the court to arrive at the proper and just result.'*

1.16. By that we submit that a Minister of the Crown, as well as the political Executive (i.e. the Cabinet) when engaged in deciding the same matter via Cabinet submission, ought not to have used as a response to material in its possession or control, such as the Heiner Inquiry documents, some ill-defined excuse that because its contents were (allegedly) defamatory in character that it shouldn't be looked at by responsible public officials, including the relevant Minister and Director-General, even to verify whether first, that defamatory comments actually existed and secondly, that (alleged) defamatory comments

weren't relevant to the proper running of the John Oxley Youth Centre ("**JOYC**") and the proper welfare of its residents given the duty of care owed to those residents. Nothing was properly clarified.

1.17. By their own criteria, when transferring the responsibility to inform themselves over to the State Archivist and her assistant and transporting the box to State Archives at Dutton Park from the Executive Building Cabinet Secretariat on 23 February 1990, it is open to suggest that the alleged defamation which Premier, Cabinet Ministers and Department Director-General were purportedly so anxious to avoid reading about and/or listening to was laid squarely at the feet of the State Archivist and her assistant who had no protection of privilege attached to their statutory function under the *Libraries and Archives Act 1988.* However, protection appears to have always existed inside the Cabinet room and its Secretariat under the convention of "Cabinet confidentiality".

1.18. Notwithstanding the involvement of all Cabinet members, we submit that the Families Minister and Departmental Director-General in particular, being responsible at law and the custodian of the Heiner Inquiry documents, should not have relied on others, like the State Archivist and her assistant when appraising the documents for disposal, to discover what the alleged defamatory comments were concerning personnel at the JOYC.

1.19. The fundamental point being that while a comment-cum-allegation laid before Mr Heiner may have been defamatory in character it may well have exposed a potentially genuine criminal or disciplinary act which could only be established after a thorough investigation by a proper authority had taken place. We submit that proper authority, as a final arbiter in the handling of these documents, was not State Archives.

1.20. In this case, complaints given in good faith by staff about the Harding and handcuffing incidents and whatever else to Mr Heiner, a lawfully appointed agent of the

Crown, went nowhere afterwards except through the shredder and thus remained unresolved, a running sore and apt to be repeated.

1.21. Relevantly *The Queensland Times* of 9 April 1990 ***"Escapees still on the run"*** reporting on five youths absconding from the JOYC has a spokesperson for Minister Warner saying the following while also making reference to the March 1989 riot:

> *"...We've known of the problems at the centre for a long time and when we took over the ministry our first step was to appoint a new manager which we hoped would solve the problems.* ***But problems do still exist.***"[4] (Bold and underlining added)

1.22. Disclosures of potential wrongdoing are brought to the notice of the police all the time. The public is encouraged to do so, most publicly through "Crime Stoppers." The community supports persons reporting suspected wrongdoing to the police, and expects them to be properly evaluated not immediately shredded. Providing sound grounds exist for reporting such concerns and it is not motivated by malice, qualified privilege and commonsense offer protection from suit, and defamation proceedings are rarely instituted afterwards if the complainant was misconceived in his/her disclosure.

1.23. The same process applied and still applies in respect of public servants, in particular Chief Executives, being obliged to report suspected official misconduct to the Criminal Justice Commission ("**CJC**") and/or Crime and Misconduct Commission ("**CMC**") once becoming aware of the suspicion.

1.24. In this matter we are dealing with a troubled public facility, former or serving public servants (who enjoyed legal coverage under a long-standing Crown Liability policy guarantee) being asked, during their paid work time, to voluntarily disclose their problems/concerns about the sound running of a State-run youth detention facility to a

[4] See Exhibit 328

lawfully appointed former magistrate commissioned to undertake the task. Trust that action would follow the disclosure was involved but fear of defamation purportedly stifled everything. And yet, while concerns about defamation were being wrestled with in the Cabinet, Ms Matchett, the departmental Director-General, had been advised by Crown Law on 23 January 1990[5] that witnesses enjoyed qualified privilege and that any prospective defamation action was likely to fail.

1.25. But additional to that assurance, was the Crown Liability Policy for Crown Employees, pursuant to which this relevant exchange occurred on 14 February 2013 at page 74 at 30:

> **BOSSCHER:** Third paragraph down, "Current government policy provides for crown employees to be indemnified" - et cetera. Do you see that there?
>
> **MATCHETT:** Yes.
>
> **BOSSCHER:** I take it that that's why indemnity was not being sought for others additional to Mr Heiner, because there was already a policy in place?
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> **MATCHETT:** That's right.
>
> **BOSSCHER:** Do you agree with that?
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> **MATCHETT:** Yes, that's right.
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> **BOSSCHER:** So that all of the employees, et cetera , who may have given evidence before Mr Heiner, by virtue of government policy already had a form of indemnity?
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> **MATCHETT:** Yes.

1.26. The evidence adduced at the Inquiry now shows that Ms McGregor, the State Archivist, and Ms McGuckin, senior archivist, didn't examine all of the material anyway, and

[5] See Exhibit 128

most relevantly, none of the tape recordings used by Mr Heiner to store his gathered evidence during interviews with his witnesses.

1.27. In that sense alone, we submit that members of the 5 March 1990 Cabinet, Ms Matchett, or Messrs Tait, Cabinet Secretary, and Littleboy, Principal Cabinet Officer, may not take any comfort that no evidence concerning historic child sexual abuse was in the Heiner Inquiry documents before having them destroyed on the pretext that they were "***...no longer required or pertinent to the public record.***"[6] Indeed, we submit that compelling evidence adduced at the Inquiry shows that evidence of child abuse and child sexual abuse was in the box of transcripts and tape recordings and waiting to be acted on if anyone had cared to look when it was placed in the possession and control of the department by Mr Dermon Roughead after he collected it from Mr Heiner's Office at the Children's Court[7]. Even when it was later secretly transported across George Street from the Family Services Building to the Office of the Cabinet Secretariat in the Executive Building in early February 1990, the material could have been examined in that Office.

1.28. Most importantly, given the breadth of the Heiner Inquiry's terms of reference[8], we submit that any final reliance on State Archives to evaluate the worth of the information given by Youth Workers and other professional staff to Mr Heiner about how to better improve the management of the juvenile detention centre, should not have occurred because of a lack of expertise on their part in running a juvenile detention facility.

1.29. Consequently, the urgent *ad hoc* appraisal arguably undervalued or little understood the information centre staff could have been reasonably expected to have

[6] See Exhibit 173

[7] See Exhibit 309: http://www.childprotectioninquiry.qld.gov.au/__data/assets/pdf_file/0004/174892/QCPCI_Exhbit_309_Statement_of_Derman_Roughead.PDF

[8] See Exhibit 83

brought to the process which some had long agitated for, especially in areas of adequate staffing, disciplinary processes, safety to workers and residents and the like, all of which were covered in the terms of reference. It is therefore open to suggest that the 'hands-off' attitude adopted by the Minister and her Director-General was contrary to (a) all notions of ministerial responsibility; and (b) a departmental chief officer's duty, *inter alia*, to ensure that all staff members were treated fairly and justly and proper records maintained[9].

1.30. We submit that it is not credible for either Ms Warner or [redacted] to be oblivious to the efforts by certain JOYC staff to have Mr Coyne's management investigated when knowing that their respective unions were backing them.[10] Indeed, Ms Warner herself in the 1 October 1989 *The Sunday Sun* article[11], in which she also referred to a child being handcuffed to a fence overnight, was urging a review of how the JOYC was being run.

1.31. The use of the words and/or terms "***...nasty meaning people obviously had some complaints to make about each other***"[12] or "***...low level scuttlebuck(sic)***"[13] has been attributed to what was told to Mr Heiner by Ms Warner and Mr Comben respectively. It should be noted that the handcuff-restraining act, authorized by Mr Coyne on or about 26 September 1989 and brought to Mr Heiner's attention through the "***Very Concerned***" letter of complaint and during interviews, was subsequently found to be unlawful by the 1999 Forde Inquiry but no punishment could be recommended due to the lapse of time. It is clear, however, that punishment could have been recommended in early 1990 regarding this incident of child abuse when Mr Heiner investigated it. Punishment could also have been recommended when Ms. Warner and [redacted] took over the running of the department and when the Heiner Inquiry material came into their possession around late January 1990.

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[9] See Sections 12(q) and (r) of the *Public Service Management and Employment Act 1988.*

[10] Transcript, 18 February 2012 at 40.

[11] See Exhibit 327

[12] See Ms Warner's Statement at Point 28 (Exhibit 325)

[13] See Transcript, 18 February 2013, page 87 at 20

1.32. This state of knowledge and turning a blind eye to it becomes a subsequent feature in the evolving Heiner Affair (and is addressed in the Rofe QC Audit) in respect of the ex gratia/special payment of $27,190.00 made to Mr Coyne on or about 12 February 1991 under a Deed of Settlement with the State Government on the proviso that both parties would never disclose "***...the events leading up to and surrounding his relocation from the centre.***"

1.33. We submit that the aforesaid conduct of not informing themselves about the content of the documents may amount to wilful blindness by those with a duty of care towards the children, and, for that matter, duties towards the Centre staff to ensure that their rights and responsibilities were respected and upheld under the *Public Service Management and Employment Act and Regulations 1988*, and other relevant laws (i.e. the *Criminal Code (Qld) 1899* and the *Children's Services Act 1965* and the *Children's Services Regulation 1966*[14]). We submit that Ms Warner, as the responsible Minister, is not immune from properly informing herself either, and it follows that all members of the 5 March 1990 Queensland Cabinet had the same duty when collectively deciding the fate of the Heiner Inquiry documents that no law was offended.

1.34. In *R v Garlick* (No 2) [2007] VSCA 23 (28 February 2007), the Victoria Court of Appeal at 38 said:

> "...In *The Queen v Crabbe* the High Court held: "...Finally, there is the question whether the jury should have been directed on the question of wilful blindness. When a person deliberately refrains from making inquiries because he prefers not to have the result, when he wilfully shuts his eyes for fear that he may learn the truth, he may for some

[14] Regulation 23(10) and section 69(5) of the Act may have actionable in 1989/90 against Mr Coyne over the 26 September 1989 handcuffing episode – See the **Forde Report** p173. Also see alleged *prima facie* criminal counts 14-23 in the Rofe QC Audit (QCPCI Exhibit 5 Attachment 2).

purposes be treated as having the knowledge which he deliberately abstained from acquiring.

According to Professor Glanville Williams, *Criminal Law: The General Part*, 2nd ed. (1961), at p.159: "A court can properly find wilful blindness only where it can almost be said that the defendant actually knew. He suspected the fact; he realized its probability; but he refrained from obtaining the final confirmation because he wanted in the event to be able to deny knowledge. This, and this alone, is wilful blindness. It requires in effect a finding that the defendant intended to cheat the administration of justice."

Again, in his *Textbook of Criminal Law* (1978), at p.79, Professor Glanville Williams said, in a passage cited by Lord Edmund-Davies in ***Reg v Caldwell*** [1982] UKHL 1; (1982) AC 341, at p 358: "...A person cannot, in any intelligible meaning of the words, close his mind to a risk unless he first realises that there is a risk; and if he realises that there is a risk, that is the end of the matter"."

1.35. We submit that it is open to find that Messrs Tait and Littleboy could have easily inspected the documents themselves in the Office of the Cabinet Secretariat. We submit that such an inspection could have been done under the complete protection of "Cabinet confidentiality" being an extension of the deliberations of Cabinet itself. It may have resolved matters insofar as inspecting the material without further defamatory broadcasts being made was concerned. This appears to have been overlooked but it may have been reflective of a pattern of conduct. It may have been deliberately overlooked in light of the *prima facie* failure by Messrs Tait and Littleboy to properly inform the State Archivist, Ms McGregor, of the known key fact pertaining to the legal status of the Heiner Inquiry documents in their letter of 23 February 1990 when seeking her urgent approval to dispose of them.

1.36. We submit that it is open to conclude that there was a determined effort to ensure that State Archives' fingerprints, by whatever means, were all over the appraisal of the Heiner Inquiry documents right down to the actual shredding act itself which was secretly carried out in Mr Walsh's office in the Family Services Building on 23 March 1990 and well away from the Office of the Cabinet Secretariat.

1.37. It is clear, we submit, that the real objective throughout by the parties involved was to deny and obstruct Mr Coyne, in particular, from exercising his known legal right of access to the documents or the opportunity to test that right in a court of law, and at a time when it was arguably known that his application, via his lawyers and trade union, pursuant to *Public Service Management and Employment Regulation 65* would probably succeed.

1.38. If the concern really was that by looking at the material the alleged defamation would be broadcast further and therefore needed to be avoided, then, we repeat, why wasn't there any concern paid about extending that defamatory state of knowledge to State Archivist, Ms McGregor, or her assistant, Ms McGuckin, when they were requested to examine the contents on 23 February 1990?

1.39. We submit that this reveals the real motive behind those involved in destroying the documents and it was to prevent and obstruct Mr Coyne and his lawyers gaining access to them and for their anticipated use as evidence in anticipated/foreshadowed judicial proceedings.

A NOBLE CAUSE FOR THE GREATER GOOD

1.40. From evidence adduced, an attitude appears to have existed that notions of JOYC staff suing each other (notwithstanding that it appears to have been solely directed towards Mr Coyne) over alleged defamatory comments said by adults to Mr Heiner had to be prevented at all costs. If this meant the Cabinet intervening into what was a legal/judicial matter, then it was doing it for "the greater good" and being authorized by the entity at the centre of executive power in the State in the name of the Crown. In short, who would dare challenge that authority?

1.41. The following exchange to place on 18 February 2013:

COPLEY: 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"?

WARNER: Yes, for the greater good.

COPLEY: For the greater good somebody's rights had to come second. What do you say to that proposition?

WARNER: 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.

1.42. We submit that Ms Warner's (and the Cabinet's) position was profoundly misconceived and oppressive on individual rights. It was and remains also impermissible at law, and represents a major assault on the doctrine of the separation of powers by the Executive arm of government (as in the form of the political Executive).

1.43. Without any legal authority, justification or even knowledge of what was actually said and written (save for one exchange which has been suppressed), the Queensland Government prejudged the information given to Mr Heiner by the witnesses without fully understanding the breadth of the cover from suit available to those witnesses under qualified privilege.

1.44. His Inquiry being lawfully established, Mr Heiner was open to receive information about the running of the Centre from his witnesses, including, we suggest, information on the suppressed matter.[15]

1.45. The matter was touched on in the following exchange on 13 February 2013 at pp81-82:

[15] See Exhibit 110

1.45

THIS SECTION NOT FOR PUBLICATION

1.46. We accept that the inference open in [redacted] response is probably not what she intended. That is, sexual relations between (consenting) adults during work time was acceptable just so long as they weren't having sex with the children at the Centre. The point we raise is that the *prima facie* offending comment (presumably) put to Mr Heiner by a staff member who then put it to Mr Coyne may in fact have been put in the public interest because of its relevance to the sound running of the JOYC if the sexual activity were occurring during work time at the Centre.

1.47. While Mr Coyne may have vigorously denied that any relationship ever existed (as indeed he did and was seeking to tell Ms Warner about its deleterious effect on his family, as was XXXXXX, and that was the purpose of Mr Lindeberg's phone call on or about 8 March 1990 to Ms Norma Jones) [redacted] arguably had a duty to check out its veracity. This is because if the allegation were true, then Mr Coyne and XXXXXX would have been in fundamental breach of their employment contracts and

[16] This person's identity has been ordered by the Commissioner to remain confidential.

Code of Conduct[17], and such conduct would be prejudicial to the best interests of running the Centre.

1.48. Counterwise however, if the comment were established as being knowingly false and malicious, we submit that Mr Coyne had the common democratic right to recover his reputation without interference by another, including the Queensland Government, even when done for the so-called 'greater good.' The rule of law does not permit the political Executive to interfere with the known legal rights of another, especially in respect of anticipated judicial proceedings where those rights were to be tested.

1.49. ***Patrick Stevedores Operations No. 2 Pty Ltd & Ors v Maritime Union of Australia & Ors*** [1998] 397 FCA (23 April 1998) Wilcox, von Doussa and Finklestein JJ of the Federal Court of Appeal said this about the rule of law:

> "...*As individuals, each member of the Bench, like all sensible Australians, is in favour of an efficient waterfront. Export income is the economic life blood of our nation. Most of our exports depart by sea, many through container terminals. It is obviously important to ensure that the operation of container terminals is as efficient and economical as reasonably possible... Just as it is not unknown in human affairs for a noble objective to be pursued by ignoble means, so it sometimes happens that desirable ends are pursued by unlawful means. If the point is taken before them, courts have to rule on the legality of means, whatever view individual judges may have about the desirability of the end. This is one aspect of the rule of law, a societal value that is at the heart of our system of government.*"

1.50. Deane J in ***A v Hayden*** (1984) CLR 532 clearly ruled that Executive Government was not above the law, wherein he said:

> *"...neither the Crown nor the Executive has any common law right or power to dispense with the observance of the law or to authorise illegality."*

[17] Note Point 5 of the Terms of Reference (See Exhibit 116)

1.51. Consequently, we submit that this leads the Inquiry to a higher governance/rule of law principle which must apply and prevail in these circumstances. It was the state of things set out in the 5 March 1990 Cabinet submission No 00160 which went to every Cabinet Minister. It was the state of things that all members in Cabinet on 5 March 1990 were aware that these public records were being sought by lawyers as evidence in foreshadowed judicial proceedings as captured under the page 2 heading "**URGENCY**".

1.52. It was put to the Hon Anne Warner in these plain terms in respect of the relevant information contained in the 5 March 1990 Cabinet submission at page 2 under the heading "**URGENCY**":

> **COMMISSIONER:** Has it got 181 on it?
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> **WARNER:** One's got 81, but there's another document which looks exactly the same. Just a minute.
>
> **COMMISSIONER:** Might be slight variation?
>
> **WARNER:** Yes, it's exactly the same.
>
> **COMMISSIONER:** Is it? Okay.
>
> **LINDEBERG:** This is a document you signed on 27 February?
>
> **WARNER:** Yes.
>
> **LINDEBERG:** And it's a document that you took to and spoke to in Cabinet?
>
> **WARNER:** Yes.
>
> **LINDEBERG:** Can I ask you to turn to page 2, please, and look at the heading called Urgency?
>
> **WARNER:** Yes.
>
> **LINDEBERG:** You read and understood those words at the time you took your decision?

WARNER: Yes.

LINDEBERG: Thank you very much. I have no further questions.

1.53. Therefore, we submit that in reviewing the adequacy and appropriateness of "any response of, or action taken by government" in respect of this matter, what may described as a discretionary act (i.e. of not informing themselves about the contents of the Heiner Inquiry documents for whatever reason) by government (i.e. Premier and Cabinet Ministers) cannot prevail over a strict prohibition[18] (i.e. not to destroy any document or thing which is or may be required in evidence in a judicial proceedings) which applies to **all** citizens in a democracy, including members of the political Executive (i.e. the Cabinet).

A GREATER DEPTH OF MEANING TO 3(e)

1.54. Consequently, we submit that the facts in the relevant 5 March 1990 Cabinet submission concerning the fate of the Heiner Inquiry documents have brought about greater depth of meaning to 3(e) wherein a "discretion to inquire" confronts a "duty to obey the law" in respect of "any response of and/or action by" the political Executive (i.e. the Cabinet).

1.55. We submit that the duty to obey the law must prevail over any departmental-cum-ministerial discretion, even one to remain ignorant of the contents of the Heiner Inquiry documents.

1.56. Put simply, the members of the 5 March 1990 Queensland Cabinet, as well as certain senior bureaucrats, were not ignorant of the contents of Cabinet Submission No 00160 (**Exhibit 181**) and its purpose, and must be held liable at law for **all** responses and/or actions pertaining thereto.

[18] See Sections 129 (destroying evidence) and/or 132 (conspiracy to defeat justice) of the *Criminal Code (Qld)* 1899. (See *R v Ensbey*)

1.57. The authority which captures the same triggering elements[19] associated with the shredding of the Heiner Inquiry documents is ***R v Ensbey: ex parte A-G (Qld)*** [2004] QCA 335. His Honour Justice Davies recited the initial ruling by His Honour Judge Samios in the Queensland District Court regarding section 129's proper interpretation. It provides the unfettered breadth of section 129 of the *Criminal Code (Qld)* 1899 in respect of judicial proceedings:

> *"...Now, here, members of the jury, the words, 'might be required', those words mean a realistic possibility. Also, members of the jury, I direct you there does not have to be a judicial proceeding actually on foot for a person to be guilty of this offence. There does not have to be something going on in this courtroom for someone to be guilty of this offence. If there is a realistic possibility evidence might be required in a judicial proceeding, if the other elements are made out to your satisfaction, then a person can be guilty of that offence."*

1.58. The leading authority which captures elements concerning conspiracy to defeat justice[20] is ***R v Rogerson and Ors*** (1992) 66 ALJR 500 wherein Mason CJ at 502 said:

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

1.59. Regarding any parties involved in the Heiner shredding decision attempting to rely on an exculpatory claim of acting on legal advice, we submit that what Callinan and Heydon JJ said in ***Ostrowski,*** in finding a guilty verdict against Mr. Palmer, a small businessman and crayfisherman from Western Australia, who obtained advice from the Crown[21] - which happened to be wrong at law - and then acted on it, is relevant:

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[19] The triggering elements are: 1. knowing that any document may be required in evidence in a judicial proceeding; 2. wilfully rendering it illegible or indecipherable; and 3. with intent thereby to prevent it from being used in evidence.

[20] Also see ***R v Selvage and Anor*** [1982] 1 All ER 96; ***R v Vreones*** [1891] 1 QB 360

[21] Western Australian Government's Department of Fisheries. See ***Ostrowski v Palmer*** [2004] HCA 30 (16 June 2004)

"...A mockery would be made of the criminal law if accused persons could rely on, for example, erroneous legal advice, or their own often self-serving understanding of the law as an excuse for breaking it..."

1.60. We submit therefore that it is not open for the Commissioner to accept any act by the political Executive (i.e. the Premier and Cabinet Ministers) ordered in the secrecy of the Cabinet room which takes the position that public records may be deliberately destroyed to prevent access to them when they are known to be required in evidence in judicial proceedings lawfully foreshadowed by lawyers to the Queensland Government, both orally and in the writing, and supported by two Queensland registered public sector industrial unions, namely the Queensland Professional Officers' Association and the Queensland Teachers' Union.

2. Whether sufficient evidence exists of historic child sexual abuse in youth detention centres within the meaning of 3(e) that makes reviewing the adequacy and appropriateness of the cabinet decision to destroy the Heiner Inquiry documents reviewable under 3(e)

2.1. We submit that this question can be satisfied in evidence adduced from witnesses, Ms Irene Kathleen Parfitt[22] and Mr Michael Jospeh Ormond Roch[23]. It is underpinned by other evidence adduced from Messrs George Ernest Nix[24], and Daniel Francis Lannen[25] and David Reginald Smith[26].

2.2. Due to the passage of time and given that Mr Heiner is now deceased, we submit that in deciding whether or not Mr Heiner took evidence about child sexual abuse during the course of his inquiry so that it may be safe to then consider the adequacy and appropriateness in respect of "any response and/or action", including potential

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22 http://www.childprotectioninquiry.qld.gov.au/__data/assets/pdf_file/0006/170664/QCPCI_Exhibit_42_Statement_of_Irene_Parfitt_REDACTED.pdf

23 http://www.childprotectioninquiry.qld.gov.au/__data/assets/pdf_file/0007/170737/QCPCI_Exhibit_236_Statement_of_Michael_Roch.PDF

24 http://www.childprotectioninquiry.qld.gov.au/__data/assets/pdf_file/0008/175076/QCPCI_Exhibit_322_Statement_of_George_Nix.PDF

25 http://www.childprotectioninquiry.qld.gov.au/__data/assets/pdf_file/0019/170092/QCPCI_Exhibit_30_Statement_of_Daniel_Lannen_redacted.pdf

26 http://www.childprotectioninquiry.qld.gov.au/__data/assets/pdf_file/0006/172896/QCPCI_Exhibit_277_Statement_of_David_Smith.PDF

criminality, thereafter taken by government, it would be fair and reasonable to take into account what the known issues were which led to the Inquiry itself which touched upon or contributed to the (apparent) dysfunctional operations of the JOYC under the management of Mr Coyne in particular, and arguably extending to Ms Dutney.

LOCATIONS WHERE THE EVIDENCE WAS GATHERED

2.3. We do not cavil with the assertion that most of the evidence gathered by Mr Heiner occurred at the JOYC. However, an early issue at the Inquiry was whether or not Mr Heiner undertook interviews at the Children's Court at North Quay. It was asserted by his assistant, Ms Barbara Flynn, that to her knowledge all the interviews took place at the JOYC.[27] The facts show however that her evidence is unreliable, particularly on this point. A number of witnesses (i.e. Parfitt, Roch, Healing, Cartledge and Everett) stated that they were interviewed away from the JOYC at Wacol and were interviewed by Mr Heiner either in the Children's Court or in Brisbane[28].

2.4. Mr Coyne confirmed this fact on 11 December 2012 at page 58 point 15 when the following exchange took place:

> **COPLEY:** ...First of all, where did you get the information from that the inquiry was due to end?
>
> **COYNE:** Well, my understanding was that Mr Heiner through – well, I knew through the fact that Jan Cosgrove in particular but also Barbara Flynn was making requests for staff to attend to the Children's Court at North Quay and also to interviews at John Oxley that we had to find replacements for those staff..."

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[27] See Transcript, 4 December 2012, P33 at 10

[28] Additional to Ms Parfitt and Mr Roch, See Point 8 in Mr Glenn Scott Healing's Statement (**Exhibit 23**), Point 8 in Mr Brian Cartledge Statement (**Exhibit 7**), and Point 9 in Mr Dennis Gary Everett's Statement (**Exhibit 16**) http://www.childprotectioninquiry.qld.gov.au/__data/assets/pdf_file/0020/170282/QCPCI_Exhibit_23_Statement_of_Glen_Healing.PDF and Transcript, 7 December 2012, pp10-11

2.5. Accordingly, we submit that it is safe for the Inquiry to assert that Mr Heiner took evidence from his witnesses in two locations: the JOYC at Wacol, and the Children's Court at North Quay (where he was allocated office space when first appointed[29]).

RELEVANT WITNESSES

Mr George Ernest Nix

(i) We submit that Mr Heiner, being lawfully appointed by Mr Pettigrew under section 12 of the *Public Service Management and Employment Act 1988*, had the undoubted power to take and hear evidence concerning the alleged mismanagement of the Centre. In regard to staff "*...**doing the wrong thing***" [30] resulting in the welfare of the children at the Centre being placed at risk, Mr Nix's Statement makes clear that "*...**an example of a major breach of staff responsibility and trust***"[31] told to Mr Heiner when he met with Messrs Pettigrew and Nix to draw up the terms of reference was the Lower Portals excursion on 24 May 1988, commonly known as "the Harding Incident."

(ii) While Mr Nix cites the absconding[32] of the boys in the context of mentioning the Harding Incident to Mr Heiner before his Inquiry commenced, we submit, on the basis of the department knowing its full story that it went beyond absconding as an example of being a major breach of staff responsibility and trust. We suggest that this explains why Mr Nix used these words to describe the Harding Incident, namely "*...**The focus at our level from memory was the fact that the outing had to result in failure because the kids had not been under staff supervision at all times.***

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[29] See Exhibit 83 – The Office was No 2 Magistrates Chambers as well as parking at the Children's Court, North Quay.

[30] http://www.childprotectioninquiry.qld.gov.au/__data/assets/pdf_file/0008/175076/QCPCI_Exhibit_322_Statement_of_George_Nix.PDF See Point 10.

[31] Ibid

[32] See Exhibit 248 page 2: The **Freemantle Memorandum** sets out that the motive for the boys absconding related to their sexual dealings with Ms Harding and a concern that the teachers were sympathetic towards her.

There was conflicting evidence about the actual sexual assault. The way the staff handled it had been abominable."[33]

(iii) The following extract from Mr Nix's cross-examination on 13 February 2013 (Pages 68-69) supports the proposition that concern about the Harding Incident **was not** limited to the absconding of the boys, and that Mr Heiner might make inquiries about it:

> **BOSSCHER:** According to your statement, as I read it, "During this conversation I remember the Harding incident was mentioned because four kids had escaped and the staff had done the wrong thing"?
>
> **NIX:** Yes.
>
> **BOSSCHER:** So that's your recollection now, that at this very first meeting Harding was a topic of conversation?
>
> **NIX:** It was part of the conversation. It wasn't the sole topic.
>
> **BOSSCHER:** No, a topic?
>
> **NIX:** A topic, yes.
>
> **BOSSCHER:** You also go on to say in that same paragraph, "This incident was often raised as it was an example of a major breach of staff responsibility and trust, taking kids out on a picnic and four of them absconding"?
>
> **NIX:** Yes.
>
> **BOSSCHER:** In what type of circumstances would it have been raised otherwise, in what other type of meetings, given it was often raised?
>
> **NIX:** Raised in senior executive management team meetings held on a Monday morning where we discussed our various programs and what has happened in the recent past, how we could go about things not recurring, things like that.

[33] See Exhibit 322, Nix Statement at Point 8

BOSSCHER: So it was a little bit of - - -?

NIX: I'm not saying often raised – it wouldn't be often – wouldn't be raised on a weekly basis or a monthly basis. It was raised two or three times, yes.

BOSSCHER: It was a little bit of a case study of how badly things could go wrong if the supervision wasn't provided to inmates when they were on an excursion, for example?

NIX: I suppose you could term it as that, yes.

BOSSCHER: It's the only incident that you recall involving any suggestion of sexual abuse or sexual activity amongst inmates. Is that correct?

NIX: That's the only one I've ever heard of.

BOSSCHER: So it's one that's obviously stuck in your mind because it's a little bit unique?

NIX: Yes, partly that. We had escapes from Westbrook as well but there was no sexual activity involved.

BOSSCHER: No, but there are two issues with the lack of supervision that occurred on that day. One is the fact that four people absconded, which is obviously a serious matter, and the second being that there was a suggestion or an allegation of at least sexual activity and possibly a sexual offence?

NIX: There were allegations of that, yes.

BOSSCHER: It was used, I take it, as an example, or given to Mr Heiner as an example of the management problems that were occurring at John Oxley?

NIX: I suppose you could go – draw the long bow on that, yes, you could.

BOSSCHER: For other purpose would it have been raised with Mr Heiner at that first meeting?

NIX: Well, it was just to apprise him of some of the things that had occurred in the recent past that may need clarification.

BOSSCHER: So something that he might want to have a look at?

NIX: Yes. Well, question the staff, I guess.

BOSSCHER: Do you recall any other specific incidents being raised with Mr Heiner similar to the Harding matter or similar to staff issues at that first meeting?

NIX: No.

BOSSCHER: So it was, to your recollection, only the Harding matter that was raised?

NIX: There were other matters raised but it wasn't – nothing of a sexual nature.

Ms Irene Kathleen Parfitt

(i) Ms Parfitt (See **Statement 47**[34]) relevantly said in her statement at Points 7 and 8:

> *"When I spoke to this man I recall telling him about an incident that had occurred at JOYC involving a female child Annette who was 14/15 years old. I had spoken about this matter as there had been media hype about it as well as mention of numerous riots at JOYC happening around the same time. I formed the belief that this is what the Inquiry was about.....I subsequently spoke at the Inquiry of a matter involving Annette. I remember thinking 'Why haven't these boys been charged'? The matter related to detainees having gone out on an excursion and sexual intercourse alleged to have occurred."*

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34 http://www.childprotectioninquiry.qld.gov.au/__data/assets/pdf_file/0006/170664/QCPCI_Exhibit_42_Statement_of_Irene_Parfitt_REDACTED.pdf

(ii) Ms Parfitt was cross-examined on two occasions at the Inquiry, one being on 12 December 2012 and when called back on 21 January 2013. We submit that on both occasions that she provided safe and consistent proof that she informed Mr Heiner about her concerns over the handling of the Harding Incident when she met with him in the Children's Court at North Quay.

(iii) We submit that Ms Parfitt's assertion of having been interviewed by Mr Heiner at the Children's Court and informing him about the Harding Incident was securely locked up under our cross-examination on 21 January 2013.

(iv) If necessary, we submit that on her evidence alone Question 2 is satisfied in the affirmative beyond a reasonable doubt (as we assert), and certainly on the balance of probabilities.

(v) The following are extracts which we submit can be relied on:

RELEVANT EVIDENCE ADDUCED ON 12 DECEMBER 2012:

(vi) We submit that Ms Parfitt was rigorously cross-examined by counsel assisting regarding her interview with Mr Heiner, and held to her position strongly in a credible manner. In conclusion, counsel assisting put this to Ms Parfitt:[35]

> **COPLEY:** Okay. So you're positive that you – 100 per cent sure that you mentioned the Annette incident to Mr Heiner?
>
> **PARFITT:** Yes.
>
> **COPLEY:** Yes, but beyond that you can't remember what you discussed?
>
> **PARFITT:** No.
>
> **COPLEY:** But there could have been other things discussed?
>
> **PARFITT:** Yes.

[35] See Transcript, 12 December 2012, P26 at 10.

(vii) In order that Ms Parfitt could consolidate her position, Mr Bosscher put the following to her:

> **BOSSCHER:** Thank you, Commissioner. I have a few questions for you, Ms Parfitt, so I won't keep you for long. The date of your statement on the front page that you have in front of you there is 27 September 2012. I take it that's the day you sat down with Detective Senior Constable Denise Pera and told her the information that's in the statement?
>
> **PARFITT:** Yes.
>
> **BOSSCHER:** Did that take the form of questions and answers?
>
> **PARFITT:** Yes.
>
> **BOSSCHER:** And was she typing that statement at the time?
>
> **PARFITT:** No.
>
> **BOSSCHER:** At a later time, did you get given a typed copy of your statement?
>
> **PARFITT:** Yes, it came through on the email.
>
> **BOSSCHER:** So you had an email version of the statement before you signed it?
>
> **PARFITT:** Yes.
>
> **BOSSCHER:** Given what you have said to us today, I would take it that you carefully read through the statement before you signed I think?
>
> **PARFITT:** Yes, and I seem to recall answering back in the email of a couple of little mistakes in it.
>
> **BOSSCHER:** So there were some edits that you requested be made?
>
> **PARFITT:** Yes.

BOSSCHER: You signed that, as I see it, on 5 November of 2012, so a month or more after you first sat down with Detective Pera. You would agree with that?

PARFITT: Yes.

BOSSCHER: This statement that you've sworn to be true and correct contains your very best memory of what occurred when you spoke with the man or Mr Heiner?

PARFITT: Yes.

BOSSCHER: You had an opportunity to make sure that it was as accurate as you could make it before you signed it?

PARFITT: Yes.

BOSSCHER: You don't remember some things, obviously, after the period of time that's elapsed, but as I read your statement you do have a very specific recollection of meeting with the man you believe to be Mr Heiner?

PARFITT: Yes.

BOSSCHER: You have a specific recollection of where you met him?

PARFITT: Yes.

BOSSCHER: You have a specific recollection, as I understand it, that there was no-one else present?

PARFITT: I don't recall anyone else being present.

BOSSCHER: You have a recollection of the furnishings in the room where you met him?

PARFITT: Yes.

BOSSCHER: You have a specific recollection of telling him about the incident involving Annette Harding?

PARFITT: Yes.

BOSSCHER: No further questions, thank you, commissioner.

RELEVANT EVIDENCE ADDUCED ON 13 JANUARY 2013:

(viii) From what we understand, this Inquiry must have examined the 1998/99 Forde Commission of Inquiry into the Abuse of Children archive held at Queensland State Archives. In doing so, it apparently found Ms Parfitt's March 1999 statement to Mr Hobson who was attached to that Inquiry.

(ix) We submit, to contextualize matters, that it is relevant to state that when setting up the Forde Inquiry the Beattie Queensland Government was strongly influenced in doing so when the 26 September 1989 handcuffing incident at JOYC was made public in *The Courier-Mail* on 30 May 1998. This *prima facie* abuse of children was known to be part of the Heiner Inquiry investigation by the Goss Government and disclosed its knowledge to the **Senate Select Committee on Unresolved Whistleblower Cases** ("**SSCUWC**") in a submission sent on or about 30 July 1995 by the Office of Cabinet's Director-General, Dr Glyn Davis. It became known as "the tampered-with" **Document 13.** Other documents like Crown Law advices accompanied Document 13.

(x) We submit that its purpose at the time was to embarrass and/or expose Mr Coyne as a possible 'child abuser', and at the same time to undermine the public standing of the main advocate in this matter Mr Lindeberg who was, at that time, still on friendly terms with Mr Coyne.

(xi) This incident was one of the original complaints used to justify the establishment of the Heiner Inquiry. It was known to Shadow ALP Spokesperson, Ms Anne Warner, around the time it occurred, as evidenced by her comments in *The Sunday Sun* of 1 October 1989.[36] It was provided to Mr Pettigrew by Ms Janine Walker of the QSSU under the complainant's pseudonym of ***"Very Concerned"***. He has been

[36] See Exhibit 327; Transcript, 18 February 2013, pp 17-20

subsequently identified as senior Youth Worker/AWU workplace delegate, Mr Fred Feige.

COMMISSIONER: I'm assuming that your position is that you would like to end up in a position where there was sufficient evidence or circumstantial evidence for you to put an argument that I should conclude that this witness did speak to maybe Mr Heiner about Annette Harding because by exclusion, if I accept she did speak to somebody about Annette Harding, it wasn't Mr Hobson or at least it didn't make it into the statement which you would have expected it to, therefore by a process of negative reasoning if it wasn't Mr Hobson, it must have been Mr Heiner even though she says that there was only one man in an official capacity that she spoke to about these matters. Is that right?

BOSSCHER: In a roundabout way, yes, that's right.

COMMISSIONER: Okay. It's a sort of roundabout business, circumstantial reasoning. Now, that's fair enough. It is a perfectly legitimate, reasonable position to have. We need to know, I think, before any of us can start speculating about that is to know how old Mr Hobson was and to know what the furnishings in Forbes' house was.

BOSSCHER: They were two questions I had for Mr Copley. I have no idea Mr Hobson was. There are other circumstantial pieces of evidence in her statement and also evidence she has previously given to this commission which would indicate fairly strongly that it was Mr Heiner and not Mr Hobson that she told about these matters.

COMMISSIONER: Right. And that's your angle?

BOSSCHER: Yes.

COMMISSIONER: Now, what you want to do with that is say: well, there's enough there to say that it was Mr Heiner; that it was about Annette Harding.

BOSSCHER: Yes.

COMMISSIONER: And therefore it was about child sex - well, it was about sexual abuse of a child by children.

BOSSCHER: Yes.

COMMISSIONER: And that that would fit within the terms of reference and that - the first limb of the term of reference.

BOSSCHER: Yes.

COMMISSIONER: And it would fit in the second term because if - sorry, not because - if the material about Annette Harding given by Ms Parfitt to Mr Heiner was in the archived material that was destroyed.

BOSSCHER: In relation to this witness, yes.

COMMISSIONER: So at this point in time am I right in thinking that the only apparent sexual abuse of a child evidence that we have relates to - that could have been part of the shredded material relates to Annette Harding?

BOSSCHER: That's my understanding.

COMMISSIONER: And is your position that there is any other evidence to emerge or may emerge or that you expect to emerge?

BOSSCHER: It's hard to say, Commissioner, in that we've had some evidence from other witnesses that suggests that Mr Heiner was told about the Harding incident.

COMMISSIONER: Yes, but the interest you represent - namely, Mr Lindeberg, he must know what child sex material he's been referring to all these years as having been destroyed and that it's limited to Annette Harding or someone else, possibly?

BOSSCHER: Child sex material of which we're aware, the only matter would be Harding. That doesn't mean there weren't others, but they're the only ones which we've been made aware of.

COMMISSIONER: Yes. So that when it's claimed in the media or elsewhere that child sex material was shredded with Cabinet knowledge, the only material in that category as far as you and the interests you represent are concerned is the material relating to Annette Harding and no-one else.

BOSSCHER: As I stand here now that's so, yes.[37]

(xii) Further into Ms Parfitt's evidence (at pages 39-42 on 21 January 2013), the following material was adduced which we submit safely locks up that she told Mr Heiner about the Harding Incident because the sequence of events involving her non-marital status with Mr Brad Parfitt in 1989/90 and the location of where she met, namely the Children's Court at North Quay due to its architectural design, can only point to the male inquirer being Mr Heiner.

BOSSCHER: It's okay. When you spoke to us last time I've already suggested to you that you told us that you had a specific recollection of telling us elderly gentlemen about Annette Harding and what had happened. Can you agree with that?

PARFITT: Yes.

BOSSCHER: You were also asked by Mr Copley whether you remembered the name of the girl concerned and you do remember the name?

PARFITT: Annette.

BOSSCHER: Yes?

PARFITT: Yes.

[37] See Transcript, 21 January 2013, pp 34-36

BOSSCHER: You agreed when you spoke to us last time that this was the girl that you told the man at the Children's Court about?

PARFITT: Yes.

BOSSCHER: Although you don't recall the specifics of what you told him, as I recall your evidence and as I look at some transcript now, you were asked this question, "How much interest did he show in it?" to which you replied, "Seemed quite interested. If I – well, we got to that point, so I thought to myself and I think now that for it to have got to that point there would have been – there would have to be some interest." So do you now have a specific recollection of the man – of when you were speaking to this an that he was interested in the Annette Harding incident and what you were telling him about it?

PARFITT: I'm sure that that's what the whole issue of me being there was about.

BOSSCHER: But just focus on my question. Do you still have that independent memory that he was interested in the Annette Harding incident and you telling him about it?

PARFITT: I'm saying yes, but you're making me question myself.

BOSSCHER: Sorry, say again? I missed the last bit?

PARFITT: I say yes, but you are going to make me question myself.

BOSSCHER: Well, you're questioning yourself, aren't you, because you've been referred to some documents which suggest that you've spoken about John Oxley and some things that went on there a lengthy period of time after what was known as the Heiner Inquiry?

PARFITT: Yes.

BOSSCHER: You're questioning yourself because you have no recollection of that occurring at all?

PARFITT: No.

BOSSCHER: You don't remember the man or the building. You don't know now where that building is, et cetera?

PARFITT: No, that's right.

BOSSCHER: But you do have a memory of telling somebody about the Annette Harding incident?

PARFITT: Yes.

BOSSCHER: You do have a memory of the age of that person?

PARFITT: Yes.

BOSSCHER: Approximate age. You do have a memory of where you spoke to that person?

PARFITT: Yes.

BOSSCHER: You do have a very clear memory that at the time you were not married to Mr Parfitt?

PARFITT: Yes.

BOSSCHER: Whether or not you spoke to other inquiries or people in officialdom about John Oxley, the pieces which you do remember are those which I've just taken you to?

PARFITT: Yes.

BOSSCHER: Can I put a hypothesis to you? My friend suggested that you spoke to a Mr Hobson in February 1999.

MR COPLEY: March.

BOSSCHER: March 1999, apologies. You heard him put that to you?

PARFITT: Yes.

BOSSCHER: That that interview was transcribed?

PARFITT: Yes.

BOSSCHER: I suggest to you that in that transcribed conversation that you had, therefore recorded and transcribed, that you didn't mention Annette Harding?

PARFITT: No.

BOSSCHER: Assume that to be the case. That could not then have been the time that you met and spoke with this elderly gentleman, could it?

PARFITT: No.

BOSSCHER: Thank you, commissioner.

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

COPLEY: When you spoke to the elderly gentleman and told him about Annette Harding where were you working?

PARFITT: I can't remember. I specifically remember walking in the back of what I recall is the Children's Court, because the entrance didn't face the river, it faced the back.

COPLEY: Yes?

PARFITT: And – sorry, what was your question again?

COPLEY: My question simply was where were you working at that time?

PARFITT: I can't remember. I honestly can't remember.

COPLEY: Because last time you said your gut feeling was that you had finished at John Oxley by then?

PARFITT: Yes.

COPLEY: Yes, and you finished at John Oxley in August 1990, didn't you?

PARFITT: Yes.

COPLEY: Because you started at corrective services in September 1990?

PARFITT: Yes.

COPLEY: Do you remember how you came to be there to see this man?

PARFITT: No, I don't.

COPLEY: No recollection at all?

PARFITT: No.

COPLEY: You don't recall contacting Mr Hobson, do you?

PARFITT: No, I don't.

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

HANGER: Can I just ask one - - -

COMMISSIONER: Yes, Mr Hanger?

HANGER: Where you saw this person, how many levels did the building have?

PARFITT: I can't remember.

HANGER: More than one?

PARFITT: Definitely.

HANGER: More than two?

PARFITT: I can't say.

HANGER: Thank you.

COMMISSIONER: Did you catch the lift?

PARFITT: I can't remember.

MR BOSSCHER: There is something just arising out of that, if I may, with leave of the court. The building where you met this gentleman in his 50s or 60s you describe as the Children's Court. That's your recollection?

PARFITT: Yes.

BOSSCHER: You said a moment ago that you didn't go in the part of the building that faced the river?

PARFITT: No.

BOSSCHER: You went into the other part of the building, the back of the building, which didn't face the river?

PARFITT: That didn't face the river.

BOSSCHER: Yes?

PARFITT: That's right.

BOSSCHER: So the building that you met this gentleman in his 50s or 60s, one façade of it looked over the river. Is that correct?

PARFITT: Yes.

BOSSCHER: The other façade of it where you entered had its back to the river, effectively?

PARFITT: Yes.

BOSSCHER: Thank you, commissioner.[38]

Mr Michael Joseph Ormond Roch

(i) We submit that it is uncontested that Mr Roch is accurately reported in *The Courier-Mail* article on 8 November 2001 written by journalist Mr Bruce Grundy. He is

[38] See Transcript, 21 January 2013, p42 , Points 15-35

reported as saying that Mr Heiner asked him questions about the Harding Incident when he was interviewed.

(ii) It is now known that in 2007 Mr Roch suffered a stroke which impaired his memory recall. He demonstrated that prior to his stroke that his brain and memory were functioning adequately, and cited his capacity to perform commercial flying.

(iii) We submit, however, that his sworn evidence on 13 December 2012 demonstrated a compelling level of personal integrity whereby he would not confirm something at the Inquiry, even though he may have said it earlier, because he would not say anything which he could not be now sure was true. In other words, he was what he is now and not what he was prior to the stroke, and that his oath to tell the truth overrode all other considerations.

(iv) Consequently, it was necessary for something externally authentic of his state of knowledge to be adduced which reliably captured his recall of events at the Centre before his memory was impaired by his 2007 stroke.

(v) Fortuitously that 'something' was adduced in evidence and tendered into evidence, and also obtained by QCPCI summons on Mr Grundy: the tape recording of interview between Mr Grundy and Mr Roch on or about 7 November 2001.

(vi) Accordingly, we submit that Mr Grundy's tape recording of his interview with Mr Roch which formed the basis of his 8 November 2001 newspaper article should be accepted as a perfectly valid item of evidence to know what transpired when Mr Roch met Mr Heiner.

RELEVANT EVIDENCE ADDUCED ON 13 DECEMBER 2012

(vii) The following is the relevant extract from Mr Roch's cross-examination conducted on 13 December 2012[39] which we contend goes to proving that the Harding Incident was part of the Heiner Inquiry documents:

[39] See Transcript, 13 February 2012, pp 31-35

BOSSCHER: I'm suggesting to you that the question Mr Grundy is asking you - and you don't have to agree with this - was he was asking you whether you told Mr Heiner about the rape or whether Mr Heiner asked you about the rape?

ROCH: That, I can't confirm or deny.

BOSSCHER: Perhaps I might read a little bit further for you and see if this assist you further. Mr Grundy then asks you, "He asked you about the rape," and your response was, "Yes, he knew about it already," to which Mr Grundy ask you, "What did he say?" And you responded, "Oh, I can't remember that. Oh, I really can't remember verbatim, you know," and then the next question was, "And I mean you've told him roughly what you told us," and you say, "That's right, yeah." Mr Grundy says, "Okay, that you heard about – that this girl had been raped and covered up and stuff," and your response is, "Well, this is right, we all knew. We all knew." Does that ring a bell, that conversation?

ROCH: It was the sort of conversation I say, yes. It's quite logical to assume that, yes.

BOSSCHER: But you don't have a specific recollection of it now?

ROCH: No.

BOSSCHER: If I was to suggest to you that on more than one occasion in that conversation that you were asked whether you told Mr Heiner about the rape and you agree, would you agree or disagree with that proposition?

ROCH: I would say that that would be correct.

BOSSCHER: And you recall speaking to Mr Grundy in 2001?

ROCH: I do. As I stated previously, I - that is correct.

BOSSCHER: Would it be fair to put to you that your memory in relation to what you told Mr Heiner would have been better in 2001 than perhaps it is today?

ROCH: That would be right.

Commissioner - - - ?---Stands to reason, really, you know, I had most things working then.

BOSSCHER: Commissioner, that partial transcript that I put to him is from a tape recording of a conversation purporting to be between Mr Grundy and this particular person. I do not have the original of that particular tape recording; I have a copy of it. I understand that Mr Grundy has the original and that the commission has subpoenaed any documents he has relevant to this matter. And quite properly he won't then give me the original because he is required to deliver them to this commission. At some point in time, be it now or at a later time, would be of assistance, I suspect, for that portion of the tape that I have to be put to the witness to identify that he is the person speaking at that time. I have the copy and I'm willing to do that now; or alternatively we can wait till Mr Grundy delivers the original recording and Mr Roach may need to come back to that purpose.

COMMISSIONER: I think we can do it now, can't we?

BOSSCHER: The only other issue that I have with that is it's a C90 cassette recording.

COMMISSIONER: Yes.

BOSSCHER: Which means - - -

COMMISSIONER: Nothing to me. What does that mean?

BOSSCHER: It would mean something to you, Commissioner, but not to anybody much younger than me. That's the old - - -

COMMISSIONER: That's the (indistinct) one.

BOSSCHER: - - - cassettes that police record of interviews used to come on. Now, to find blank tapes or players has been quite an effort.

COMMISSIONER: You think Mr Hanger might have won at his place?

BOSSCHER: No, I suspect Mr Hanger has the old eight-inch reel to reel.

HANGER: I have, actually.

BOSSCHER: I'm just pointing that out for your associate because playing it out loud is going to be - I'm happy to put it on his desk we should be able to hear it, but I'm just forestalling the technology.

COMMISSIONER: You just want the voice identification, do you?

BOSSCHER: At this stage. I mean, it should be – we should play the whole conversation to him. It takes a matter of minutes.

COMMISSIONER: Does it? Okay, if we can do it.

BOSSCHER: If I may, I'll just grab the recorder out of my bag and we'll try.

TAPE PLAYED

BOSSCHER: Mr Roch, is one of those two males on that tape?

ROCH: Yes, much to my surprise, I do.

BOSSCHER: That's your voice speaking bear with another person?

ROCH: It is.

BOSSCHER: Is that the conversation now, having heard it, that you - do you now recall having that conversation with Mr Grundy?

ROCH: That sounded - I must have had. It wouldn't have been fabricated, yes.

COMMISSIONER: Mr Bosscher, I'm content that the voice has been identified by the Mr Roch as his and I'm content to work on the basis of the

assumption that the other voice is Mr Grundy and therefore to play the tape so that everybody can hear it.

BOSSCHER: Certainly, Commissioner. I'm just finding the appropriate commencement point.

COMMISSIONER: All right.

TAPE PLAYED

COMMISSIONER: Was that the telephone conversation?

BOSSCHER: I don't know. That's a good question.

COMMISSIONER: Do you know, Mr Roch?

ROCH: No, I'm trying to remember. I don't know.

BOSSCHER: You said before that you spoke to Mr Grundy out the back of the house that you were staying at?

ROCH: Yes.

BOSSCHER: What did that sound like to you? Did that sound like to you that conversation you had out the back or did it sound like a phone call you had with Mr Grundy?

ROCH: That sounds more like a phone call. It does, doesn't it?

BOSSCHER: But your recollection is, and you were very clear about it, that you met with Mr Grundy at a particular place in Ferny Grove?

ROCH: Yes, that's one thing I can swear to under oath here.

COMMISSIONER: How many times did you meet Mr Grundy?

ROCH: Say again?

COMMISSIONER: How many times did you meet Mr Grundy?

ROCH: Again, that's a good question. That wasn't the first time. I have met with him before, but I can't - yes, it wasn't the first time.

COMMISSIONER: Do you know what you got your wires crossed about?

ROCH: No. No, that's left me a bit mystified.

COMMISSIONER: Were there only two people at that time of the recording, you and?

ROCH: Yes, there were.

COMMISSIONER: He said in the tape, "Did you tell him," namely Heiner, "about what you told us?" or what we - was that a reference to somebody else as well as him? He used the plural, that's all?

ROCH: Yes. I don't know, sorry.

BOSSCHER: Because your recollection was that when – or certainly in your statement when you met with Mr Grundy that he was with a female person?

ROCH: He was, yes. The last time he interviewed me before I went to Europe, yes.

BOSSCHER: You understood that that interview was with a journalist and that a story appeared shortly thereafter?

ROCH: Yes, though as I stated previously, I cannot remember actually reading it. I think I probably would have, but then again, that's assumption.

COMMISSIONER: You don't know who the female was?-

ROCH: No.

BOSSCHER: I read you the relevant parts of that story. Would you agree that they're consistent with what is said on that tape by you?

ROCH: I would.

BOSSCHER: Does that assist your memory as to whether or not – I withdraw that.

COMMISSIONER: It may be the push against an open door, Mr Bosscher.

BOSSCHER: Thank you, commissioner.

Mr Daniel Francis Lannen

(i) Mr Lannen (See Exhibit 30[40]) said the following at Points 31 and 32 "*...I think I told Barbara about the abuse of kids, including handcuffing, use of drugs and victimization of staff. Although I don't recall specifics of these conversations.....I don't recall telling Barbara anything about sexual abuse. However, I believe I would of spoken about this as it was a concern to me.*"

(ii) Earlier in his Statement at Point 12, Mr Lannen said "*...I remember back then there were a number of incidents involving detainees which were handled poorly. Once (sic) incident involved female detainee Annette Harding. This incident occurred on a outing being run by the teachers. The incident was about a sexual assault by five residents or detainees. To my knowledge nothing gone (sic) done about this incident.*"

RELEVANT EVIDENCE ADDUCED ON 5 DECEMBER 2012:

(iii) The following relevant evidence was adduced from Mr Lannen during cross-examination on 5 December 2012:

BOSSCHER: You then go on to say in your statement, "I don't recall telling Barbara anything about sexual abuse, however I believe I would have spoken about this, as it was of concern to me"?

LANNEN: Yes.

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40 http://www.childprotectioninquiry.qld.gov.au/__data/assets/pdf_file/0019/170092/QCPCI_Exhibit_30_Statement_of_Daniel_Lannen_redacted.pdf

BOSSCHER: When my friend was asking some questions earlier, and I may have misheard what you said, but I understood you to say something just a little bit different to that, in that you had a recollection of talking about child sexual abuse but that you couldn't specifically recall what instance of child sexual abuse you told Mrs Flynn about?---

LANNEN: Correct, yes.

BOSSCHER: So just to be clear, you definitely told her about child sexual abuse but you can't now remember whether you told her about one or both or either of the incidences I put to you earlier on?

LANNEN: Correct.

COMMISSIONER: Mr Bosscher, can you tell me, who first used the words "child sexual abuse" between you and Mr Lannen? Did he use the words "child sexual abuse" before you did?

BOSSCHER: The term "sexual abuse" is in his statement.

COMMISSIONER: Is there. Yes, I can see that.

BOSSCHER: You're asking me specifically, though, about child sexual abuse.

COMMISSIONER: Yes. Who added the descriptor "child", you or him?

BOSSCHER: I can't say for certain, but given it forms part, a very specific part, of the term of reference, I suggest or suspect that it may have been me. Would you like me to correct that?

COMMISSIONER: I just want to be careful about – you know, we're familiar with these things, but witnesses can be suggestible.

BOSSCHER: Certainly. Those two incidents that I asked you about earlier on involving sexual abuse, they both involved children, didn't they?

LANNEN: Yes.

BOSSCHER: Yes, so when I asked you a moment ago that my recollection was – which you agreed with - that you do recall telling Mrs Flynn about sexual abuse but you don't recall which specific instances you told her about, just to refine that then and - - -

MR COPLEY: I object to that question because it's unfair to the witness. Unless the witness is clairvoyant or was clairvoyant in those days, he cannot have told Ms Flynn in 1990 or 1989 about an incident that did not occur until 1991. Now, I would have thought my learned friend would have been aware of the dates that these incidences occurred, and the one involving Shirley Neil occurred after Mr Heiner had been and gone. Now, if that's in doubt it will proven eventually, but I thought or proceeded on the basis that that was rather common ground between us all. The heart of the matter is a different matter, but that's one incident. The Shirley Neil matter is another matter.

COMMISSIONER: That's what I was talking about, Mr Bosscher. As I say, when the witness – you've got a witness who is trying to recollect something that happened a long time ago and you ask him questions in a leading way, does it really suggest something that's not the case? He couldn't have – you're linking those two events in paragraphs 12 and 14 to what is said in paragraph 32 as being the sexual abuse that he can't recall telling Barbara anything about but believed he would have because he was concerned about them, and the two sexual related events that he says he was concerned about are those two recorded in 12 and 14, but it couldn't have been both

of them, as Mr Copley says, because one occurred after Mr Heiner had left.

BOSSCHER: I understand that, and I was aware of the date.

COMMISSIONER: Yes.

BOSSCHER: What I'm putting to the witness is – and I thought I was clear and I apologise if I wasn't. I was confirming his evidence, firstly, which was clear to me and he's now confirmed it on the record, that he told Barbara Flynn about sexual abuse.

COMMISSIONER: Yes.

BOSSCHER: He told her about abuse we've now confirmed involving children, sexual abuse involving - - -

COMMISSIONER: Well, he doesn't recall telling he but he believes he would have.

BOSSCHER: Yes, and I was suggesting to him that the type of incidents he would have told Mrs Flynn about were the type referred to in his statement but that he can't now specifically recall which identifiable incidents he told her about, but he can recall that he raised the topic of sexual abuse involving children.

COMMISSIONER: Okay, but to be perfectly clear, it could have only been one of those that would have been the type of thing that he spoke to her about – well, the one that occurred before.

BOSSCHER: Yes, but I didn't identify specific activity, it was the topic, and I was referring to the two instances he makes reference to, to assist - - -

HANGER: Well, I object to that. My learned friend is not stating the evidence correctly. He said, and I made a note of it, that, "You took these concerns about these episodes to Mr Coyne and got no

satisfaction." He put to him something that he says now he knew did not occur and the witness agreed with it. "I took this Shirley matter to Mr Coyne and he agreed with it."

COMMISSIONER: He could have taken them to Mr Coyne, because – was Coyne still there in 91? No, he wasn't. He'd gone.

BOSSCHER: And Mr Hanger is correct, he couldn't have taken that instance to Mr Coyne. I don't agree that I put that in those very specific terms in relation to that paragraph. I will stand to be corrected if - - -

COMMISSIONER: Well, I don't remember the specific terms, but I do remember the witness adopting the suggestion that he took the - - -

BOSSCHER: I think I said - - -

COMMISSIONER: - - - complaint about both paragraphs 12 and 14, got no satisfaction – zero, I think was the word.

BOSSCHER: Yes. I don't recall now whether I said Mr Coyne specifically, and I'll defer to Mr Hanger and check the transcript, or to management. It was one of the two, but clearly he couldn't have taken – well, he could have taken the incident, the second one, to Mr Coyne, but he wasn't the manager at John Oxley at the time.

COMMISSIONER: Yes, all right. Okay, so can you recast so that we avoid any confusion in the witness's mind, which is obviously suffering from the lapse of time, and we don't be too suggestive, because otherwise it's not really helpful to me, because if I think it's your evidence rather than his, what am I to do with it?

BOSSCHER: Well, that's a fair comment if you form that opinion, however – well, I'll put the questions back to him again.

COMMISSIONER: Yes.

BOSSCHER: There were a number of incidents of sexual abuse that occurred at John Oxley Youth Detention Centre that you are aware of?

LANNEN: Yes.

BOSSCHER: Some of them – at least one of them you recount in your statement that occurred at the time that Peter Coyne was the manager?

LANNEN: Yes.

BOSSCHER: And also prior to the Heiner inquiry taking place?

LANNEN: Yes.

COMMISSIONER: Are there any others other than that one that you referred to in your statement that you were concerned about when you were speaking to Barbara Flynn?

LANNEN: No.

COMMISSIONER: So when you were speaking to her there was one of them that you were concerned about that might qualify as sexual abuse. Which one is that?

BOSSCHER: That was the first one.

COPLEY: No, no - - -

COMMISSIONER: I've asked him, not you.

BOSSCHER: I apologise. I thought you were asking for clarification?

LANNEN: How do you want me to describe it? Involving several young people, that one, you're talking about?

COMMISSIONER: Which one? Which paragraph in your statement is it, sorry, the one you were concerned about that you think – you believed you would have told Ms Flynn?

LANNEN: Okay, yes. I don't know. 12.

COMMISSIONER: Okay. Thanks, Mr Bosscher.

BOSSCHER: All right. As I understood your evidence, just to clarify it, you recall telling – and I'm just going to ask you to agree or disagree with this proposition. You recall telling Barbara Flynn about child sexual abuse that occurred at John Oxley Youth Detention Centre but you don't recall specifically which incidents you told her about.

COMMISSIONER: Now, before you answer that question I want you to think very carefully about the terms of the question?

LANNEN: Yes.

COMMISSIONER: Bear in mind what you said in your statement?

LANNEN: Yes.

COMMISSIONER: Use your words - - -?

LANNEN: Right.

COMMISSIONER: - - - that you want to use. If you want to adopt Mr Bosscher's, fine?

LANNEN: Right.

COMMISSIONER: You think carefully about your answer?

LANNEN: Yes.

COMMISSIONER: Because it's your answer that's interesting to me?

LANNEN: Sure. I don't recall specifically talking to her about sexual abuse, but I believe I would have spoken to her about it.

BOSSCHER: And you believe you would have because of the level of concern that you had about that issue?

LANNEN: Correct.

COMMISSIONER: Which was the one you had concern about?

LANNEN: Paragraph 12, I believe. Yes.

BOSSCHER: Thank you. Sir, at paragraph 38 you indicate that some years after the time we were talking about you were approached by the CJC and interviewed by them and that - - -?---

LANNEN: Just a minute, please.

BOSSCHER: Sorry?

LANNEN: Go ahead.

BOSSCHER: You were approached by the CJC and interviewed by them in relation to the Forde inquiry that was about to start?

LANNEN: Yes.

BOSSCHER: Did you provide a written statement to them?

LANNEN: I believe it was recorded on a tape recorder.

BOSSCHER: Yes. Do you now recall what the content of that particular interview was about?

LANNEN: No, I don't.

BOSSCHER: Was it about firstly John Oxley Youth Detention Centre?

LANNEN: Yes, of course it was.

BOSSCHER: Was it about - did it cover child sexual abuse?

LANNEN: I don't recall.

BOSSCHER: You don't recall any of the specifics?

LANNEN: No.

BOSSCHER: But you do recall that it was tape recorded?

LANNEN: Yes.

BOSSCHER: And you do recount in here being somewhat surprised that you were not called to give evidence in the inquiry. Is that right?

LANNEN: Yes.

COMMISSIONER: Why were you surprised, Mr Lannen?

LANNEN: Because as someone mentioned - I think this gentleman I was just talking to - that I was, I guess, one of the main people who - I was bringing all these things to light. That's why I was surprised.

BOSSCHER: I've nothing further. Thank you,

Mr. David Reginald Smith

(i) At Point 11 of Mr Smith's Statement (**No 277**), he stated the following: *"...I cannot recall if I gave evidence about sexual abuse to Mr Heiner, I expect I did. If I was aware of any sexual abuse, I think I would have raised these issues with Mr Heiner because I would have had the venue and opportunity to raise these concerns. I know there was the Annette Hardy [Harding] incident."* [41]

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41 http://www.childprotectioninquiry.qld.gov.au/__data/assets/pdf_file/0006/172896/QCPCI_Exhibit_277_Statement_of_David_Smith.PDF

RELEVANT EVIDENCE ADDUCED ON 23 FEBRUARY 2013

(ii) During cross-examination by Mr Lindeberg, this relevant exchange occurred[42]:

LINDEBERG: I suggest to you that the one incident that you do know which occurred before the Heiner inquiry was set up in late 1989 was the Harding incident because that occurred in May of 1988?

SMITH: Looking at Fred Feige's statement I agree. I must have known about. I thought I did, but I couldn't - I wasn't definitive about it so I - - -

LINDEBERG: To the extent that you knew about it and in relation to what you said you would have told Mr Heiner?

SMITH: Yes.

LINDEBERG: You could not exclude that from being told to Mr Heiner?

SMITH: No, no. I'm not excluding it. No.

LINDEBERG: Look, I have no further questions. Thank you.

COMMISSIONER: Did you have some questions, Mr Copley?

MR COPLEY: No, I didn't.

COMMISSIONER: Can I just follow up that last question. Is what you're telling me this that you knew about the Annette Harding incident before December 1989 or August 1989?

SMITH: Having regard the statement from Fred Feige - I assume it was him that I read - saying that it happened then a month before the Heiner inquiry. I know it was the talking point. I mean, all the staff were talking about this. Okay. Fred and I would have been talking about this and I certainly know about it. I was aware of it. Yes.

[42] See Transcript, 23 February 2013, pp 54-55.

COMMISSIONER: So there was a coincidence between your knowledge of it and Mr Heiner's inquiry?

SMITH: No. No, I don't think they were linked.

COMMISSIONER: No?

SMITH: No, no. This was about - the question was about the general management of the centre - - -

COMMISSIONER: Yes?

SMITH: .... not about the sexual - or the management of the sexual incident. That would have taken a while to have come through. No, it wasn't connected.

COMMISSIONER: Right. I see. Even though you knew about it?

SMITH: Yes.

COMMISSIONER: ... it wasn't connected to Heiner?

SMITH: No, no, it wasn't the trigger or anything.

COMMISSIONER: Did you discuss it with Mr Heiner?

SMITH: My summons says had I known about it, I would have taken that opportunity, but my concern there was about the management of the centre and I think I would have taken that opportunity.

COMMISSIONER: If you knew about it?

SMITH: Yes. Okay. So I'm assuming I would.

COMMISSIONER: Having read Mr Feige's statement, you think you knew about it?

SMITH: Oh, certainly.

COMMISSIONER: You think you would have taken the opportunity to mention it to Mr Heiner?

SMITH: Yes.

COMMISSIONER: ... as an example of mismanagement?

SMITH: Yes, because of - what I do know is that we don't put the processes out in public. We don't put the processes out in public. We don't put heads on spikes to show people what happens. I know a lot of things happen behind the scenes. Okay. There will be investigations on people if they have been accused of something. So rather than putting it all out there and telling people how it all happens, some things are kept behind closed doors.

COMMISSIONER: Even though that gives rise to concerns or suspicions that nothing has happened?

SMITH: Yes.

COMMISSIONER: ... because you can't see behind the door?

SMITH: That still happens because you're protecting other people as well.

COMMISSIONER: But do you have any definite recollection of what you discussed with Mr Heiner?

SMITH: No.

Mr Terry Owens (Deceased)

(i) Mr Owens can no longer speak for himself being deceased, and that may be the end of the matter. However, during Mr Feige's cross-examination on 7 December 2012 at Page 61 and in his Statement (**Exhibit 17** at Point 41), he recalled his conversations with Youth Worker Mr Owens. Mr Feige said that he (Owens) intended informing Mr Heiner about the Harding Incident. Mr Owens was later interviewed by staff from the Forde Inquiry. We submit that it is open to suggest – in the interests of truth-seeking - that any

record of his sworn evidence in the witness box, may prove that in fact he did inform Mr Heiner about the Harding Incident.

(ii) Other preliminary interviews with the Forde Inquiry in 1999, if available, would have to be cautiously judged in accordance with admissibility standards, notwithstanding we note that counsel assisting brought into evidence the Parfitt/Hobbs/Forde Inquiry March 1999 statement when recalling Ms Parfitt to the witness box and it appears to have only been a preliminary statement.

RELEVANT EVIDENCE ADDUCED ON 7 DECEMBER 2012:

(iii) Nevertheless, the following bracket of evidence comes out of a cross-examination of Mr Feige:

> **BOSSCHER:** You state in that paragraph that in discussions with Terry Owens he was of the view that Peter Coyne was orchestrating the content of the reports to be provided by other staff members in relation to Annette Harding?
>
> **FEIGE:** That's what Terry said to me, yes.
>
> **BOSSCHER:** Yes, and that's as I read your paragraph and that's the best of your recollection?
>
> **FEIGE:** Yes.
>
> **BOSSCHER:** If I take you back now to paragraph 41, shortly prior to the time of the Heiner inquiry that was still very much an issue for Mr Owens?
>
> **FEIGE:** Yes.
>
> **BOSSCHER:** To the extent that he told you that he was going to raise that matter directly with Mr Heiner?
>
> **FEIGE:** Yes.

BOSSCHER: Because, as you said earlier in your statement, different staff had different issues that they wished to ventilate with Heiner?

FEIGE: That's correct.

BOSSCHER: Did you speak to Mr Owens after he gave evidence to Heiner?

FEIGE: I spoke to Terry many times; not specifically about his evidence, no.

BOSSCHER: I should have asked you this question first: I take it you're aware – sorry, are you aware that Mr Owens gave evidence to Mr Heiner?

FEIGE: As far as I know, yes.

BOSSCHER: Did you ever discuss with him whether or not he told Heiner about the issue that he told you he was going to tell Heiner about?

FEIGE: I never discussed the issue at all.

BOSSCHER: So you never discussed the evidence that he actually gave?

FEIGE: That's correct.

BOSSCHER: But you do have a very clear recollection that that was his burning issue to raise with Mr Heiner?

FEIGE: That was one of the issues and it was about the trip, the way – the difference – the way staff were being – like, youth worker staff were treated as to those people who were professional officers, if you like to call them that.

BOSSCHER: And the issues I took you back to earlier in your statement about Peter Coyne orchestrating the contents of the report?

FEIGE: That's a perception that I got from Terry as well.

BOSSCHER: Well, just have a look, sir, if you would, at the last sentence – the last two sentences of paragraph 41. I will read them to you, "Terry told me he was going to tell Heiner what he observed with regards to the

collaboration of statements regarding the Annette Harding matter," and then, "Terry Owens is now deceased"?

FEIGE: Yes.

BOSSCHER: That's your best memory when you gave this statement?

FEIGE: Yes.

WHAT WAS COMMONLY KNOWN ABOUT THE RUNNING OF THE CENTRE

2.6. By the evidence adduced from Ms Warner, [redacted] and Mr Comben, the Inquiry is being asked to believe that a state of ignorance existed in the Cabinet's minds (albeit testimony from only 2 Ministers has been tested to date) as to the contents of the Heiner Inquiry documents.

2.7. While we contend that their state of ignorance is simply not credible, this exchange occurred on 14 February 2013 at page 59 at 15-25:

THIS SECTION NOT FOR PUBLICATION

2.8. One complaint which was handed to Mr Pettigrew by the QSSU came under the pseudonym of "***Very Concerned.***" It became known as "***Unknown***" when summarized

along with the other complaints. [redacted] confirmed that she had seen this summary document dated 29 November 1989. "***Unknown***" says as follows:

> *"Reports of use of handcuffs as a restraint – chains used to attach a child to a bed – handcuffed to permanent fixtures – medication to subdue violent behaviour*[43] *– resident child attached to swimming pool fence for a whole night – all inappropriate management."*[44]

2.9. Ms Warner recognized during cross-examination that she had spoken to *The Sunday-Sun* (of 1 October 1989) about unhappy staff informing her about an incident of a child being handcuffed to a fence throughout the night and the inappropriate use of sedatives as a controlling method for residents.

2.10. The following exchange took place on 18 February 2013 at page 20 at 25:

> **LINDEBERG:** Well, can I just look at the incident itself, a child being handcuffed[45] to a fence throughout the night. In your opinion could that represent child abuse?
>
> **WARNER:** I think it would have been a very questionable action.

2.11. We submit that it is simply not credible to accept that she, along with [redacted] never linked, even by a reasonable suspicion, this legitimate staff unrest over these matters and the complaints from aggrieved staff Mr Heiner gathered when looking into the management of centre around the same time as these things were known.

2.12. Allied to this was the coverage[46] in *The Courier-Mail* on 17 and 18 March 1989 of events surrounding the serious riot at the Centre in which the Harding Incident first

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[43] Note Exhibit 100. It appears that Mr Coyne initiated Dr Nigel Collings' 19 December 1989 letter to Ms Matchett in response to the serious allegations mentioned in complaint letter signed by "*Very Concerned*" regarding the inappropriate use of medication on the children by him. She acknowledged receipt of Dr Collings letter on 22 December 1989.

[44] See Exhibit 88

[45] We acknowledge that the Commissioner quite rightly raised the point that handcuffing a child in an institution was a legitimate restraining option. However, it is submitted that this particular incident went well beyond what was permitted as was subsequently found at the 1999 Forde Inquiry investigation into the matter declaring it to be unlawful. See Footnote 14.

appeared in the public arena. While we accept that Ms Warner did not confirm her absolute recollection of this media coverage, she accepted that she may have read and taken a cutting of it as Opposition spokesperson.

2.13. Relevant to this, the following exchange took place on 18 February 2013 pp 8-12:

> **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?
>
> **LINDEBERG:** They are two articles from *The Courier Mail*, one dated 17 March and another dated 18 March.
>
> **COMMISSIONER:** Yes, Mr Lindeberg.
>
> **LINDEBERG:** Can I - - -
>
> **COMMISSIONER:** Do you want to have - - -?
>
> **WARNER:** Can I read them?
>
> **LINDEBERG:** Yes, please?
>
> **WARNER:** Thanks. Both of them. I've glanced through them.
>
> **LINDEBERG:** Do you recall reading those - - -?
>
> **WARNER:** I don't recall reading them at the time, no.
>
> **LINDEBERG:** Is it fair to suggest that given the significance of it that you may have read them?
>
> **WARNER:** I may have read them.
>
> **COMMISSIONER:** No, well, sorry, the significance of them might determine one way or the other whether she read them.

[46] See Exhibit 326

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.

LINDEBERG: Can I advance this proposition?

COMMISSIONER: Yes.

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.

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.

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.

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?

WARNER: Mm'hm.

COMMISSIONER: That is, because you were the Opposition?

WARNER: Yes, I would have.

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

COMMISSIONER: I don't know.

LINDEBERG: It's a rough road.

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

LINDEBERG: Anyway, I want to advance – I seek to tender these documents, commissioner.

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.

LINDEBERG: Thank you, Mr Commissioner.

COMMISSIONER: Then you want to argue that because she 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*.

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

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

LINDEBERG: Yes, that's precisely right.

2.14. We submit Ms Warner and [redacted] were abundantly aware of problems at the centre before both came to their respective positions of power in the department after ALP election victory. It is open to suggest Ms Warner's attempts on the one hand to reduce staff complaints about the running of the centre to the level of uncomplimentary, nasty comments of one staff member against another while on the other hand linking these problems to the root cause of such a breakdown at the

Centre as to cause a major riot in March 1989 is tantamount to being mutually exclusive. By going from the serious to the frivolous within a matter of months if not weeks makes no sense except when put in a context of a shredding that has gone terribly wrong causing everything to be thrown into nonsensical reverse.

> **LINDEBERG:** 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?
>
> **WARNER:** Well, we knew that there was disputation amongst the staff. We knew that there was a breakdown of, I suppose, order at the Centre as evidenced by the riot. We knew that things were not happy at the centre and that there was disputation going on. We know that.[47]

2.15. We submit that the complete reversal by Mr Comben of his earlier public statements to Channel 9 reporter Mr Paul Ransley and producer Mr Peter Hiscock for the *Sunday* cover story ***"Queensland's Secret Shame"*** doesn't stand scrutiny. This is the proposition that the Inquiry is expected to believe:

> **LINDEBERG:** One final question, I think. Mr Comben, you talked about going on the *Sunday* Program to – if I'm interpreting you incorrectly (sic), 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.
>
> **LINDEBERG:** Is that right?
>
> **COMBEN:** Yes. What the Commissioner has just said is correct, yes.

[47] See Transcript, 18 February 2013, Page 22-23 at 45

2.16. Mr Comben is positing that he said exactly the opposite to what he intended to say, but not presumably what Messrs Ransley and Hiscock[48] wanted him to say. That is, from "we" (as in all members of Cabinet) to "I" (from his own thinking processes), and from being told that the evidence concerned child abuse to it being low level scuttlebutt.

2.17. The evidence shows that Mr Comben said these words when appearing on *Sunday's* cover story:

> ...***In broad terms we were all made aware there was material about child abuse****. Individual members of cabinet were increasingly concerned about whether or not the right decision had been taken."* (Underlining and bold added)

2.18. The World Health Organisation ("**WHO**") defines "child maltreatment" in these broad terms:

> *"....Child maltreatment, sometimes referred to as child abuse and neglect, includes all forms of physical and emotional ill-treatment, sexual abuse, neglect, and exploitation that results in actual or potential harm to the child's health, development or dignity. Within this broad definition, five subtypes can be distinguished – physical abuse; sexual abuse; neglect and negligent treatment; emotional abuse; and exploitation."*[49]

2.19. We submit that it is quite evident in the cover story that his appearance was to counterbalance, if not expose, the implausible denials of Ms Warner who claimed to have no knowledge about evidence of any child abuse being in the Heiner Inquiry documents. Any examination of the transcript plainly shows that the thrust of *Sunday's* cover story was to expose a systemic cover-up not to dismiss it.

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[48] Messrs Ransley and Hiscock may need to be called to verify what was said on and off camera and how and why Mr Comben was made a part of the cover story if his purpose was to show that Mr Lindeberg was flogging a dead horse.

[49] http://www.who.int/topics/child_abuse/en/

ANOTHER MINISTER'S RECOLLECTION

2.20. We are aware that another relevant Minister in the Goss Cabinet, the Hon Dean Wells, has spoken in the Queensland Legislative Assembly on 24 May 2006 about what was known in Cabinet at the time the shredding decision was made.

2.21. His recollection accords with Mr Comben's 1999 recollection. That is, he has said that a state of knowledge existed inside Cabinet that the staff complaints were of such a serious character that the complainants may place their allegations before the Criminal Justice Commission or police. It stands in complete contradiction to what Mr Comben is now claiming in 2013 under oath, namely that the Heiner material concerned "*...low level scuttlebutt*".

3. Whether in reviewing the adequacy and appropriateness of Cabinet's response - that is, the decision to destroy the Heiner Inquiry documents – that it can be done fully and carefully within the requirements of Order in Council (i.e. *Commissions of Inquiry Order [No.1] 2012*) without hearing from members of Cabinet who made that decision directly.

3.1. We do not cavil with the position posited by Counsel Assisting on 19 January 2013 that it's been established that the Inquiry knows what all Cabinet members did by consensus (i.e. ordered the shredding of known material to be done to prevent its use as evidence when lawyers were seeking those records) at the relevant time, namely 5 March 1990.

3.2. We submit that the triggering elements of section 129 of the *Criminal Code (Qld)* 1899, safely found in the state of knowledge of the 5 March 1990 Queensland Cabinet members, can be neither added to nor detracted from whether or not all members of Cabinet are called and heard. In that sense, all that may be required is to ensure that the Cabinet Register shows that all members of the Cabinet were in attendance on 5 March 1990 when their consensus decision was made.

3.3. However, we contend that serious questions of procedural fairness to all parties concerned must not be overlooked. This is particularly so if adverse findings are likely, and *Ainsworth v CJC*[50] is the leading authority.

3.4. We submit that another factor to weigh up is the long-held right of any accused to face his/her accuser and to put his/her defence before the impartial decision-maker.

[50] ***Ainsworth v Criminal Justice Commission*** [1992] HCA 10; (1992) 175 CLR 564

3.5. In this case, the accuser may now not just be Mr Lindeberg but perhaps Counsel Assisting.

3.6. Also, in answering Question 3, it seems to turn on what the Commissioner needs to know and whether it needs to come from other Cabinet Ministers under oath or affirmation, and not just from Ms Warner and Mr Comben insofar as those two witnesses have satisfied the requirement to make full and careful inquiry. It comes out of this exchange on 19 February 2013:

> **COMMISSIONER:** I'm not asking you about the process of destruction, I'm asking you why Cabinet didn't see the need to keep them and therefore was contemplating them being destroyed when everyone knew that somebody's solicitor was after them?
>
> **TAIT:** Well, you need to speak to ministers about that.
>
> **COMMISSIONER:** Yes, that's what's troubling me. I'm going to have to do that, aren't I? If I want to know what Cabinet thought or said you can't help me, so I'm going to have to ask them, maybe.
>
> **COPLEY:** So is that your view, that the Commission needs to hear from ministers if they want to know the answer to these questions?
>
> **TAIT:** Well, remember, I was working for Cabinet.

3.7. It is relevant to note that in ***Ensbey,*** the Court of Appeal ruled that the word "knowing" in section 129 of the *Criminal Code (Qld)* 1899 is to mean a "realistic possibility" of future judicial proceedings. In that regard, the words of the 5 March 1990 Cabinet submission at Page 2 under the heading "**URGENCY**" plainly fulfil that meaning. They do so irrespective of any other deliberations which the 5 March 1990 Cabinet members may have had regarding evidence of child abuse or child sexual abuse being in the relevant public records.

3.8. We accept that the issue of openness, impartiality and transparency must be present in all the dealings of any tribunal or court. It is the very essence of government by the

rule of law. This demands public confidence being maintained in all deliberations by any lawfully appointed decision maker.

3.9. We suggest that Lord Denning set a benchmark in ***Metropolitan Properties Co. (F.G.C.) Ltd. v. Lannon*** (1969) 1 Q.B. 577 when he said:

> *"...The court will not require whether he did, in fact, favour one side unfairly. Suffice it that reasonable people might think he did. The reason is plain enough. Justice must be rooted in confidence and confidence is destroyed when right-minded people go away thinking: 'The judge was biased.'"*

3.10. In regard to the questions posed, it is our view that notwithstanding matters which require careful consideration to ensure that public confidence is maintained in the deliberations of this Inquiry and in government by the rule of law more generally, the uniqueness of legal/constitutional matters arising out the Heiner Affair must be faced. Currently, the beginning element of the Heiner Affair, namely the shredding, is under review pursuant to 3(e).

3.11. We wish to make it clear however that the Heiner Affair is much more than just about the shredding and matters of child abuse or/and child sexual abuse. It is about systemic failure of government by government for government to not respect, enforce and uphold the law at its most fundamental premise that documents or things known to be required in either pending or impending judicial proceedings must not be destroyed to prevent their use as evidence, and that the law must apply equally to all in materially similar circumstances.

3.12. At this beginning point, this Inquiry has now arrived at a real question that perhaps a serious crime may have been committed in the secret deliberations of a Cabinet. It is potentially unprecedented. This inevitably brings with it a serious and equally unprecedented clash between competing claims, conventions and duties. We suggest that nothing can surmount a claim that a serious crime may have been committed, let alone covered up by acts involving systemic corruption. Does the law apply equally

to those members of Cabinet in the same way it did for an ordinary citizen like Pastor Douglas Ensbey when he acted in a materially similar way?

3.13. It is therefore our position that at the very least, all Ministers, and their close political advisers who accessed the relevant Cabinet submission, should be called and heard about the information contained in 5 March 1990 Cabinet Submission 00160 at Page 2 under heading "**URGENCY**" to satisfy public confidence in our system of government, and procedural fairness considerations.

3.14. If the Commissioner rejects our application, then we would respectfully ask that if adverse findings are going to be made against members of 5 March 1990 Cabinet (or anyone else in this matter) in his report then the requirements of procedural fairness be accorded them as found in *Ainsworth* before any such report is published.

OTHERS WITH KNOWLEDGE

3.15. During cross-examination of Mr Tait, this related matter arose concerning others with knowledge jointly involved in the decision-making process which led to the shredding of the Heiner Inquiry documents. It went thus on 19 February 2013 at page 8 at 25-35:

> **COMMISSIONER:** So why would you make a presumption that not only would she do her job but the elements of her job included making the inquiry about a fact that she didn't know but you did, that is, that solicitors were after these documents?
>
> **TAIT:** It was not – as I said before, this was widely known amongst all DG's and ministers that solicitors were after these documents. This was in the Cabinet submissions and in the Cabinet – in all the Cabinet submissions.
>
> **COMMISSIONER:** I can understand then in that case that Cabinet knew it. Why would the DG's know what was going on in Cabinet other than the DG from which this emanated?
>
> **TAIT:** Because they get copies. They got copies as well of all the submissions and all the decisions.

3.16. Insofar as the Commissioner may feel obliged to call all Directors-General to establish what their role was in this matter (aside from what we know Ms Matchett knew and did at relevant times being the relevant responsible Director-General) to satisfy associated legal considerations relating to principal offenders, it is our understanding of the Cabinet bag processes that not all relevant Cabinet submissions in this matter would have reached Director-General level. Mr Tait did not explain the distribution of Cabinet Submissions to Directors-General but it is understood that in some Queensland Cabinets over the years two Cabinet bags went to some central Departments (e.g. Premier's, Treasury and other senior portfolios presumably because of the large number of submissions that the central agencies must comment upon), one for the responsible Minister and another to his/her Director-General. Other Ministers of line departments received one bag. Within that mix were categories of Cabinet submissions which may be restricted and only for Ministers' eyes and their political advisers.

3.17. In any case, briefing notes would be prepared by Directors-General with the help of senior officers whether from a discrete Directors-General bag or from the Minister's bags sent to the Directors-General from the Ministers' offices. The Minister would also have briefing notes on relevant submissions prepared by their Principal Advisers and/or Chiefs-of-staff at that 'political' level, and appropriate positions reached prior to Cabinet. Something like the Heiner Affair would have been of no administrative interest to, for example, the Directors-General of the Departments of Mines and Energy, Primary Industries, Public Works, Environment and Heritage and the like (save in the general issue to proper public recordkeeping), but the 'politics' involved in all Cabinet decisions remained a constant consideration and sole preserve of all Ministers of the Crown and their close political advisers.

3.18. We submit that it follows that if members of the 5 March 1990 Cabinet are to be called and heard, then their close political advisers, who may have played a key role in these particular deliberations, should not be overlooked otherwise the entire truth about the adequacy and appropriateness of any response of and action by government in this matter may remain unknown and unable to be fully and carefully reviewed. May it please the Commission.