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FACSIMILE TRANSMISSION

TO: Ms. Ruth Matchett, Acting Director-General

FAX NO: 221 8510

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

DATE: 18 January 1990

NO. OF PAGES: Four
(including this header)

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(07) 227 4159 IMMEDIATELY.

MESSAGE: URGENT

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Date: 3.12.2012

Exhibit number: 117

TRANSMISSION REPORT

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

18 January 1990

Ms. Ruth Matchett,
Acting Director-General,
Department of Family Services and
Aboriginal and Islander Affairs,
FAX: 221 2728.

Dear Ms. Matchett,

I refer to our telephone discussion yesterday concerning the appointment of former Stipendiary Magistrate, Mr. N. Heiner, to investigate certain staff complaints at the John Oxley Youth Centre.

I have now received your fax of even date enclosing:-

1. A draft letter from yourself to Mr. Heiner; and
2. What appears to be the terms of reference of Mr. Heiner's inquiry.

I note your instructions that Mr. Heiner was not appointed by the Governor in Council to conduct this inquiry which, of course, means that the Commissions of Inquiry Act 1954-1989 has no application to the inquiry.

The effect of this is that Mr. Heiner cannot subpoena witnesses or examine them on oath nor can he subpoena documents in the possession of any person.

It would, however, be possible under the Public Service Management and Employment Act 1988 and Regulations thereunder for the Chief Executive of your Department to appoint someone in Mr. Heiner's position to carry out an investigation such as this.

In this connexion, Section 12(3) of the Act makes it clear that there is ample power in the Chief Executive to investigate such matters.

Feb 94/22207

Section 13 empowers the delegation by the Chief Executive, either generally or otherwise by instrument in writing "to any officer in the department or to the person who for the time being holds or performs the duties of any office in the department all or any of the powers or functions incidental in the discharge of the responsibilities of the chief executive." (my underlining)

Section 34 permits the Chief Executive to engage staff other than officers and I would think that paragraph (b) in Subsection (1) of that Section could be used to cover a situation like the present one, provided Mr. Heiner has been appointed under that Section to carry out the duties on a position ordinarily held by an officer.

Regulation 63 provides:-

"63. Officers objecting to decision or treatment. (1) Any officer may submit a grievance to the chief executive arising from an administrative decision within the department, or from the behaviour of any other officer within the department towards that officer, provided that the grievance is not a matter which is the subject of consideration by the commissioner.

(2) The chief executive shall ensure that -

- (a) the aggrieved officer has the opportunity to present all aspects of the grievance;
- (b) the grievance shall be investigated in a thorough, fair and impartial manner.

Where, in the opinion of the chief executive, the grievance is of a frivolous or vexatious nature, the matter shall not be further proceeded with.

(3) The chief executive may appoint an officer to investigate the grievance. The investigating officer shall prepare a report for submission to the chief executive which shall -

- (a) summarise the investigation;
- (b) recommend appropriate action which may be taken by the chief executive.

(4) The chief executive shall advise the officer initiating the grievance and any other officer directly concerned of the determination made as a result of the investigation of the grievance."

For inquiry

The effect of all this is then that, provided there is an appropriate instrument of delegation in writing to Mr. Heiner and his appointment is in writing signed by the Chief Executive, he may carry out the investigation.

His powers would, of course, be nothing like the powers of a person appointed by the Governor in Council to conduct an inquiry where the Commissions of Inquiry Act 1954-1989 would apply.

For instance, apart from the inability to subpoena witnesses, documents, etc., he could not require anyone to answer a self-incriminating question if the person refused to do so and the possibility of defamation proceedings arising out of any information given to him would also have to be borne in mind.

In this connexion, there is an absolute privilege in respect of anything said or given to a Commission of Inquiry under the Commissions of Inquiry Act but no such absolute privilege would apply to an investigation of this nature.

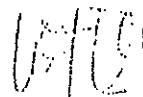
I am not suggesting that this matter ought to be the subject of a Commission of Inquiry under the Commissions of Inquiry Act and, in fact, it seems to me that it is the kind of matter that should be dealt with departmentally by a senior, experienced officer.

If as a matter of policy it is desired to appoint someone from outside the Public Service, then, provided all the formal requirements of the Act and Regulations are complied with, this can be done.

The question, of course, is whether the formalities required by the Act and Regulations have been complied with in this case and I do not have sufficient documentation before me to advise on this one way or the other.

I think you should proceed with the letter to Mr. Heiner and I do not think it necessary for any alterations to be made to it.

Yours faithfully,



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



RECEIVED

18 JAN 1990

Chief of the Director
Dept. of Family
Fax 221 2728

A COPY OF THIS
DOCUMENT HAS
PREVIOUSLY BEEN
FORWARDED BY FACSIMILE

496

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

18 January 1990

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Vol 1



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