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R E S T R I C T E D

C A B I N E T M I N U T E

Brisbane, 12 February, 1990

Decision No. 00101

Submission No. 00100

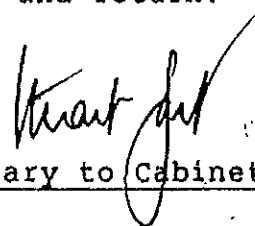
TITLE: Provision of Indemnity to Mr. N.J. Heiner from the Costs of Legal Action which may ensue from his Involvement in an Investigation of the John Oxley Youth Centre.

CABINET decided:-

1. That the Queensland Government accepts full and sole responsibility for all legal claims, including the cost of defending and settling them, against Mr. N.J. Heiner, if such claims occur as a result of his investigation of matters relating to the John Oxley Youth Centre.
2. That a further Memorandum to Cabinet be made concerning what approach should be taken regarding papers spoken of in Submission No. 00100.

CIRCULATION: Department of the Premier, Economic and Trade Development and copy to Premier.
Treasury Department and copy to Minister.
Department of Family Services and Aboriginal and Islander Affairs and copy to Minister.
All other Ministers for perusal and return.

Certified True Copy


A/Secretary to Cabinet.

CABINET-IN-CONFIDENCE

8200

SECURITY CLASSIFICATION "B"

SUBMISSION NO.

CABINET SUBMISSION

COPY NO. 20

COVER SHEET

TITLE

Provision of indemnity to Mr N.J. Heiner from the costs of legal action which may ensue from his involvement in an investigation of the John Oxley Youth Centre.

MINISTER

Minister for Family Services and Aboriginal and Islander Affairs

PURPOSE/ISSUES

Following the appointment of Mr N.J. Heiner by the former Director-General, Department of Family Services, to investigate and report on certain management matters relating to the John Oxley Youth Centre, doubts arose as to the legal status of Mr Heiner's appointment and authority.

The Crown Solicitor has advised that Mr Heiner was lawfully appointed but the nature of his appointment does not afford him any statutory immunity from legal action in relation to his involvement in the investigation.

Current Government policy provides for Crown employees to be indemnified from costs associated with legal claims arising out of the due performance of their duties.

Mr Heiner, as an independent contractor, would not be covered by this policy.

Furthermore during the course of his investigation Mr Heiner gathered information of a potentially defamatory nature.

In view of the Crown Solicitor's advice and the limited value of the investigation's continuation, the Acting Director-General has terminated the investigation and has taken possession of all documents.

(2)

OBJECTIVE OF SUBMISSION

Extension of the abovementioned policy to Mr Heiner will provide him with indemnity from the costs of future legal action which could result from his part in the John Oxley Youth Centre investigation.

Destruction of the material gathered by Mr Heiner in the course of his investigation would reduce risk of legal action and provide protection for all involved in the investigation. The Crown Solicitor advises that there is no legal impediment to this course of action.

URGENCY

Speedy resolution of the matter will benefit all concerned and avert possible industrial unrest.

CONSULTATION

Crown Solicitor

Queensland State Service Union, Queensland Professional Officers' Association.

RESULTS OF CONSULTATION

No specific objections have been raised to the proposed course of action.

FINANCIAL CONSIDERATIONS

Nil.

PUBLIC PRESENTATION

Nil.

WHAT GENERAL OR SECTIONAL SUPPORT CAN BE EXPECTED?

It is expected that the course of action will be acceptable to the majority of the parties involved.

(3)

WHAT CRITICISM IS ANTICIPATED AND HOW WILL IT BE ANSWERED?

Some staff may be dissatisfied that their concerns have not been resolved. These complaints will be addressed individually through the grievance process established under the Public Service Management and Employment Act.

RECOMMENDATIONS

● recommend that:-

- (i) the Queensland Government accept full and sole responsibility for all legal claims, including the cost of defending and settling them, against Mr N.J. Heiner if such claims occur as a result of his investigation of matters relating to the John Oxley Youth Centre;
 - (ii) all material collected by Mr Heiner in the course of his investigation, with the exception of any material forming part of official files, be destroyed.
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Anne Warner

ANNE WARNER
MINISTER FOR FAMILY SERVICES AND ABORIGINAL AND ISLANDER AFFAIRS

5th February, 1990.

CABINET-IN-CONFIDENCE

SECURITY CLASSIFICATION "B"

SUBMISSION NO.

CABINET SUBMISSION

COPY NO.

BODY OF SUBMISSION

BACKGROUND

1. On 13th November, 1989, the former Director-General, Department of Family Services, following consultation with the former Minister for Family Services, appointed Mr N.J. Heiner, a retired Stipendiary Magistrate, to investigate and report on certain matters relating to the John Oxley Youth Centre. The investigation was initiated following representations by the Queensland State Service Union relating to concerns raised by some of its members over certain management practices at the Centre.
2. Subsequent to the commencement of the investigation, a number of doubts emerged as to the legal basis and authority for Mr Heiner's appointment, the establishment of the investigation and hence the conditions under which it was being conducted. Accordingly, the Acting Director-General, Department of Family Services and Aboriginal and Islander Affairs, sought the advice of the Crown Solicitor on the matter.
3. Advice received from the Crown Solicitor indicated that, although Mr Heiner had been lawfully appointed as an independent contractor to perform his tasks, there were certain practical considerations which made it inadvisable for the investigation to continue. An important consideration was the lack of statutory immunity from and thus exposure to the possibility of legal action against Mr Heiner and informants to the investigation, because of the potentially defamatory nature of the material gathered by Mr Heiner in the course of his investigation.

OBJECTIVE

4. There currently exists a Statement of Policy issued by Cabinet in 1982, and distributed via Public Service Board Circular No. 13/82, in respect of Crown acceptance of legal liability for actions of Crown employees. This Statement provides, inter alia:-

"It is recognised that many Crown employees have difficult and delicate duties and functions and that in the diligent carrying out of them they are exposed to claims for damages.

It is not desirable that such employees should be restricted in the carrying out of their duties and functions by any fear that they may have to make payment out of their own pockets in respect of any claims arising out of the due performance of these duties and functions.

The Crown will accept full and sole responsibility for all claims including the cost of defending or settling them, in cases where the Crown employee concerned has diligently and conscientiously endeavoured to carry out his duties."

5. It is by no means certain that Mr Heiner, in his capacity as independent contractor would be covered by a policy applying to Crown employees. However, as there is no doubt that Mr Heiner acted in good faith in performing his task, it is considered inequitable for him to be exposed to the risk of incurring costs associated with future legal action which may ensue. It is therefore proposed that Mr Heiner be indemnified from any such costs, in keeping with the Statement of Policy applicable to Crown employees, should legal action result from his part in the investigation into the operations of the John Oxley Youth Centre.

(6)

6. Having considered the Crown Solicitor's advice and the limited value of its continuation, it has been decided to terminate the investigation. This will to some extent reduce the risk of legal action for all concerned. However, the fate of the material collected by Mr Heiner in the course of his inquiries has yet to be determined. This material has been handed in sealed boxes to the Acting Director-General, Department of Family Services and Aboriginal and Islander Affairs. It has been stored in a secure place and has not been perused by the Acting Director-General.

7. The Crown Solicitor has advised that, as the material gathered by Mr Heiner does not constitute a public record, there is no legal impediment to the Acting Director-General destroying it. This advice does not apply to material removed from official files, which should be returned, nor would it apply in the event of legal action requiring production of the material being commenced. To date, no such action has been initiated.

As this material relates to an investigation which has been terminated and therefore has no further purpose, it is recommended that all material, with the exception of official material mentioned above, be destroyed. Such action would remove doubts in the minds of all concerned that it remains accessible or could affect any future deliberations in relation to the management of the John Oxley Youth Centre.

URGENCY

8. Speedy resolution of this matter will benefit all concerned, and avert possible industrial unrest.

CONSULTATION

9. Discussions have been held with the Queensland State Service Union and the Queensland State Service Union and the Queensland Professional Officers' Association, both of which have members affected by the investigation. Neither Union has raised any specific objections to the proposed course of action.

(7)

PUBLIC PRESENTATION

Nil.

FINANCIAL CONSIDERATIONS

11. Nil other than legal costs if action is taken by any person.

RECOMMENDATIONS

12. I recommend that:-

(i) the Queensland Government accepts fully and sole responsibility for all legal claims, including the cost of defending and settling them, against Mr N.J. Heiner, if such claims occur as a result of his investigation of matters relating to the John Oxley Youth Centre; and that

(ii) all material collected by Mr Heiner in the course of his investigation, with the exception of any material forming part of official files, be destroyed.

Anne Warner

ANNE WARNER
MINISTER FOR FAMILY SERVICES AND ABORIGINAL AND ISLANDER AFFAIRS

5th February, 1990.