



## SPARK AND CANNON

### TRANSCRIPT OF PROCEEDINGS

Telephone:

Adelaide	(08) 8110 8999
Brisbane	(07) 3211 5599
Canberra	(02) 6230 0888
Darwin	(08) 8911 0498
Hobart	(03) 6220 3000
Melbourne	(03) 9248 5678
Perth	(08) 6210 9999
Sydney	(02) 9217 0999

---

THE HONOURABLE TIMOTHY FRANCIS CARMODY SC, Commissioner

MS K McMILLAN SC, Counsel Assisting  
MR M COPLEY SC, Counsel Assisting

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

BRISBANE

..DATE 14/03/2013

Continued from 19/02/13

DAY 26

WARNING: The publication of information or details likely to lead to the identification of persons in some proceedings is a criminal offence. This is so particularly in relation to the identification of children who are involved in criminal proceedings or proceedings for their protection under the *Child Protection Act 1999*, and complaints in criminal sexual offences, but is not limited to those categories. You may wish to seek legal advice before giving others access to the details of any person named in these proceedings.

THE COMMISSION COMMENCED AT 10.01 AM

1

COMMISSIONER: Good morning, everyone.

MR COPLEY: Good morning, Mr Commissioner.

COMMISSIONER: I'll take appearances this morning, I think.

MR COPLEY: Thank you. I appear with my learned friend Mr Woodford as counsel assisting.

10

COMMISSIONER: Mr Hanger.

MR HANGER: I appear with my learned friend Mr Selfridge for the state of Queensland.

COMMISSIONER: Thank you. Mr Keim.

MR KEIM: Thank you, Commissioner. I appear with my learned friend Ms Tuhasz on behalf of Ms Matchett, a witness, and we're instructed by Guest Lawyers.

20

COMMISSIONER: Thank you. Mr Harris.

MR HARRIS: Good morning, Commissioner. I appear on behalf of Ms McIntosh and Ms Neil.

COMMISSIONER: Thank you. Mr Lindeberg.

MR LINDEBERG: Your Honour, I'm representing myself this morning.

COMMISSIONER: Thank you. Yes, Mr Copley.

30

MR COPLEY: When we last adjourned it was for the purpose of all those with authority to appear making submissions to you about three issues.

COMMISSIONER: It was. Listen, before we get onto that, though, I just want to deal with the Newnham clarification. Should I do that now?

MR COPLEY: Well, if you're referring to the letter that he wrote to the commission - - -

40

COMMISSIONER: Yes.

MR COPLEY: - - - in which he claimed that his evidence was erroneous in various respects, then it is an appropriate time to deal with that now.

COMMISSIONER: Yes. I want to put it on the record. I'll do that now. Thanks. On 24 January counsel assisting

14/3/13

50

called Ms Noel Newnham, a former police commissioner, to give evidence considered to be relevant to paragraph 3(e) of the order in council. Mr Newnham was questioned about interviews he'd conducted with two deceased people, Mr Rudi Pekelharing and Mr Noel Heiner. He was also asked about an opinion the witness had expressed in paragraph 15 of exhibit 286.

1

On 25 January those with authority to appear cross-examined Mr Newnham and elicited opinions from him about the sufficiency or otherwise of the police investigation in what has been referred to in these proceedings as the Annette Harding incident. On 1 February Mr Newnham wrote to senior counsel assisting and asked Mr Copley to draw to my attention a letter that Mr Newnham had addressed to me which was dated 31 January 2013.

10

The correspondence was submitted via email. On 5 February commission staff advised Mr Newnham that his correspondence had been received. Subsequently Mr Hanger - well, counsel representing the state raised with Mr Copley the fact that they'd received correspondence from Mr Newnham. On 21 February Mr Newnham sent correspondence to me via email apparently from New Zealand. In each of those letters Mr Newnham advised that parts of his testimony identified in the letter of 31 January contained inaccuracies.

20

He advised that he wanted to change answers he'd given at transcript day 15, page 133, line 24 and at transcript day 16, page 30, line 21. I'm putting these events on the record because it seems that Mr Newnham, as a witness who's represented by Mr Hanger, has sought directly to communicate with the commission, which admittedly is to correct what he regards as inadvertence, but the commission takes the view that it shouldn't directly correspond with witnesses about their testimony and allow them to informally change it.

30

So I've raised this for purposes of putting it on the public record and to let everybody know that the commission will only have regard to the evidence tendered before it and tested by cross-examination and evidence that's been given on oath. Now, Mr Copley, let's get back to 3(e).

MR COPLEY: Yes. As I said, proceeding had been adjourned so that written submissions might be prepared on a number of issues.

40

COMMISSIONER: Yes.

MR COPLEY: The submissions were prepared and filed by the due date and you have been provided with copies of them by the commission. But because all proceedings in this matter have been conducted in a public forum and all evidence and submissions from the bar table have been able to be heard by all those with authority to appear, it is in my

14/3/13

COPLEY, MR

50

submission appropriate that the written submissions that each lawyer has made or layperson has made should be tendered as exhibits in the proceeding. 1

And so first of all I tender the submission under the hand of Mr G.R. Cooper, crown solicitor, which was submitted for the state of Queensland dated 1 March 2013.

COMMISSIONER: The crown's written submissions will be exhibit 337.

ADMITTED AND MARKED: "EXHIBIT 337" 10

MR COPLEY: I tender the submission made on behalf of Ms Ruth Matchett by her counsel, Mr Stephen Keim SC, and Ms Kate Tuhasz dated 1 March 2013.

COMMISSIONER: Ms Matchett's submission will be exhibit 338.

ADMITTED AND MARKED: "EXHIBIT 338"

MR COPLEY: I tender a submission which is not signed but which is clearly and demonstrably made by Mr Kevin Lindeberg dated 1 March 2013. 20

COMMISSIONER: Mr Lindeberg's submissions will be exhibit 339.

ADMITTED AND MARKED: "EXHIBIT 339"

MR COPLEY: And I tender the written submissions made and signed by myself and Mr Woodford on 1 March 2013 as counsel assisting.

COMMISSIONER: Counsel assisting will be exhibit 340. 30

ADMITTED AND MARKED: "EXHIBIT 340"

MR KEIM: Commissioner, excuse me. May I just indicate that I'll have some applications to make in due course with regard to exhibit 339 about non-publication of certain paragraphs.

COMMISSIONER: Okay.

MR KEIM: I'm sorry to interrupt my learned friend. 40

COMMISSIONER: That's okay, thanks.

MR COPLEY: It seemed logical to tender the submissions at this point rather than tender further evidence because it makes it plain that the submissions have been based on the testimony - - -

COMMISSIONER: Existing - - -

14/3/13

COPLEY, MR

MR COPLEY: - - - and the exhibits that preceded their making. 1

COMMISSIONER: Yes.

MR COPLEY: And so now it would be appropriate to tender some further evidence.

COMMISSIONER: Yes.

MR COPLEY: The first document that I tender is a document that has two attachments. It's dated 21 June 1982 and it's a circular instruction number 19 of 1982 concerning the legal liability of crown employees signed by a person called H. Atkinson. Attached to it is a statement of policy and a guideline. 10

COMMISSIONER: What's the effect of it for the record, Mr Copley?

MR COPLEY: The effect of the document is that on 3 June 1975 and again on 7 June 1978 cabinet decided that the crown would accept full and sole responsibility for all claims, including the cost of defending and settling them in cases where crown employees had carried out their duties diligently and conscientiously but had been made the subject of a legal action. 20

COMMISSIONER: And the relevance of that is that subject to the preconditions of the indemnity, the crown employees of the John Oxley Centre were already indemnified under the policy.

MR COPLEY: Arguably, yes. And in fact if you look at paragraph 6 on the second page: 30

*The crown will indemnify any office who as a consequence of the carrying out of his duties has been the subject of a claim for defamation.*

COMMISSIONER: Is your position that this covers employees but not Mr Heiner?

MR COPLEY: Yes.

COMMISSIONER: All right. I'll mark that exhibit 341.

ADMITTED AND MARKED: "EXHIBIT 341" 40

MR COPLEY: And I'll just provide a copy of that to everybody here.

The next document I tender is a newspaper article. It's photocopied from a paper called The Sun dated 11 April 1990 and it concerns reporting about the cabinet decision to destroy the documents. It's tendered only for this purpose, to demonstrate that the destruction of the documents was a matter that came to public attention very soon after the destruction occurred. That's the only point of tendering the document.

1

COMMISSIONER: Thank you.

MR COPLEY: It's not relied on in terms of for the truth of anything it contains about what anybody said.

10

COMMISSIONER: The Sun article of 1 April - unfortunate date - exhibit 342.

ADMITTED AND MARKED: "EXHIBIT 342"

MR COPLEY: Mr Commissioner, paragraph 3E of the order in council requires you, amongst other things, to review any allegations of criminal conduct associated with government responses, I say, connected to allegations of child sexual abuse so the question arises, what allegations is it that you're reviewing? Where have they - have they been made at the commission of inquiry? My submission is that one would struggle to find in the transcript any allegation of criminal behaviour that's been put to Ms Warner or Mr Comben or any of the people that prepared the cabinet submission for them so it becomes necessary, to understand what the term of reference might be directed to, to go back and look at the history of the matter over the past 23 years to see what allegations have been made.

20

That task has been undertaken and I'm going to tender three documents, or four documents, rather, concerning the matter of allegations. The first document I tender is a letter to Mr J.P. O'Sullivan, the commissioner of the Queensland Police dated 15 September 1994 which is signed "Lindeberg" with the name Kevin Lindeberg above it.

30

COMMISSIONER: Mr Lindeberg's letter to Commissioner O'Sullivan will be exhibit 243.

ADMITTED AND MARKED: "EXHIBIT 243"

MR COPLEY: You will see on page 2 of the letter in the fourth paragraph down it says:

40

*Accordingly, I wish to place the following 12 indisputable facts before you as police commissioner which illustrate that the destruction of those public records was done deliberately in order to obstruct Mr Coyne's known course of justice of court proceedings in which the crown was to be the only respondent.*

14/3/13

COPLEY, MR

50

So the allegation at that time - at that time - seemed to be that the cabinet had enabled destruction so as to prevent Mr Coyne from exercising some sort of legal rights.

1

COMMISSIONER: And that was four years after the event.

MR COPLEY: Yes. The next document that I tender is a document headed Special Submission to Parliamentary Criminal Justice Commissioner Julie M. Dick SC entitled The Shredding and the foot of the document says it is a submission by Mr Kevin Lindeberg. The end of document at page 20 contains the name Kevin Lindeberg but it is not signed.

10

COMMISSIONER: The special submission to the parliamentary commissioner will be exhibit 344.

ADMITTED AND MARKED: "EXHIBIT 344"

COMMISSIONER: Now, that's dated 8 October 1999 so we've moved forward five years from the last exhibit.

MR COPLEY: Well, it bears two dates. At the end of it it is dated 8 October 1999 but one each page at the foot of it it is dated 8 October 1998 and on the first page it's dated 8 October 1999.

20

COMMISSIONER: So we've moved ahead four or five years.

MR COPLEY: Yes. If I can direct your attention to page 14 of that document under a paragraph headed Unlawful Hidden Motives - - -

COMMISSIONER: Sorry, what page was it?

MR COPLEY: Page 14.

30

COMMISSIONER: Yes.

MR COPLEY: You will see there in the last sentence after that paragraph it's said:

*Moreover, there are other suspicions attached to why the real reason behind the shredding when as Minister Warner told parliament in May 1993 why cabinet orders it.*

There there appears to be what might be a quote from Hansard and then it is asserted:

40

*There plainly existed within the Queensland government at the time a reasonable suspicion that the material gathered contained evidence of suspected child abuse being inflicted on children held in the care of the crown by crown employees.*

*Indeed, it was the reason for relocating Mr Coyne, because of his conduct.* 1

Then it is said:

*No government acting lawfully could legally order the shredding of such evidence to protect the careers of those who may have been perpetrating such illegal conduct.*

So the point is that by October 1998 or October 1999 the allegation had become that cabinet had acted illegally because it had destroyed evidence of child abuse and that it was illegal to destroy evidence of child abuse. 10

COMMISSIONER: Child abuse by whom?

MR COPLEY: Well, possibly by Mr Coyne.

COMMISSIONER: But not sexual, child sexual abuse, at this stage.

MR COPLEY: Well, I don't know what the author intended to encompass by that phrase. 20

COMMISSIONER: But the words aren't used, yes.

MR COPLEY: No.

COMMISSIONER: Okay.

MR COPLEY: But, of course, by that time there had been an allegation made - - -

COMMISSIONER: In fact. 30

MR COPLEY: - - - that the purpose of the inquiry was to investigate, amongst other things, allegations of sexual abuse - no, sorry, child sexual abuse, because by that time, by October 1998 - prior to October 1998 Mrs Beryce Nelson had provided a statement to Mr Noel Newnham in which she'd alleged that.

COMMISSIONER: Yes.

MR COPLEY: That statement been made, from memory, exhibit 285 in these proceedings. 40

COMMISSIONER: All right. So up until 1998 or 1999 had the allegation been made that the shredding of the documents was to cover up allegations of child sexual abuse?

MR COPLEY: Beyond the allegation I've referred to you before in exhibit 285 we've not been able to in the



material we've seen find an earlier time when that was  
alleged. 1

COMMISSIONER: Okay.

MR COPLEY: So what exhibit number was that one?

MR .....(indistinct).

MR COPLEY: Thank you. The next document is a letter  
dated - a letter addressed to his Excellency Major General  
Peter Arnison, governor of Queensland, dated 13 May 2002,  
and the letter is signed "Lindeberg" or stamped "Lindeberg"  
with the name Kevin Lindeberg under it. 10

COMMISSIONER: So we've moved ahead three and a half years  
from the last exhibit. I'll make the petition, or the  
letter referred to as the Lindeberg petition to the  
government, exhibit 345.

ADMITTED AND MARKED: "EXHIBIT 345"

MR COPLEY: In this letter in the third paragraph the  
point is made that the information was unquestionably about  
the abuse of children and criminal paedophilia occurring in  
a state-run institution. The governor was informed that he  
had to personally investigate such matters, and in the last  
paragraph reference is made to this petition again which  
contained, according to the author, serious allegations  
against Mr Peter Beattie and others concerning the  
obstruction of justice, interference with the right to a  
fair trial, abuse of office, misleading parliament and  
covering up abuse of children in a state-run institution by  
means of destroying the evidence. 20

30

40

In the last paragraph on the second page it says:

1

*Fourth, by way of underpinning further the substance of my petition's contents and the claim of a cover-up in respect of the offence of rape and criminal paedophilia against a 14-year-old female Aboriginal inmate while in the care and custody of the crown at the John Oxley Youth Detention centre and the allegation that the right to a fair trial in Queensland is now in jeopardy by the crown's hands if the Heiner document shredding stands in the face of something called the McCabe decision.*

10

COMMISSIONER: What's that?

MR COPLEY: I don't know. I haven't looked it up. So by this time the allegations seem to be pretty clear that the cabinet had destroyed evidence of rape.

COMMISSIONER: Of the Harding incident, we would call it.

MR COPLEY: It must be a reference to the Harding incident because Ms Harding was 14 and she was described as an Aboriginal and she was an inmate at John Oxley.

20

COMMISSIONER: And it's the only incident that it could possibly be on the evidence that I have heard.

MR COPLEY: Yes.

COMMISSIONER: Yes.

MR COPLEY: So that would be exhibit 345, I think.

COMMISSIONER: That is exhibit 345.

MR COPLEY: Right. The next document I tender is another letter dated 13 February 2003 to his Excellency Major General Peter Arnison, the governor, and it bears the stamp Lindeberg and the name Kevin Lindeberg at the end of it.

30

COMMISSIONER: The letter to the governor from Mr Lindeberg referring to the Heiner affair and the Lindeberg petition will be exhibit 346.

ADMITTED AND MARKED: "EXHIBIT 346"

COMMISSIONER: That's nine months later after 345.

40

MR COPLEY: Yes, and if you go to page 3 of the document under the heading of Widespread Cover-Up, the author asserts that:

You -

meaning his Excellency -

14/3/13

COPLEY, MR

50

*held evidence of a widespread cover-up revealing systemic corruption of the highest order engulfing and involving the executive and legislative arms of the Queensland government for unlawful purposes involving inter alia the destruction of evidence known (a) to be required in a judicial proceeding and (b) to contain evidence about the abuse of children held in the care and custody of the state.*

1

COMMISSIONER: Now, reading that in context or the historical context we can take that to be a reference to child sexual abuse and for the purposes of this inquiry to be a reference to the Harding incident, at least.

10

MR COPLEY: Yes, both of those propositions are correct and it's made more obvious at the foot of page 4 in a paragraph beginning:

*Further, in unicameral Queensland your executive government with the acceptance of the legislature, using Heiner as the benchmark, is declaring to the judiciary that whenever it has public records in its possession and control (even including known evidence of abuse of children in a state-run institution going to the crime of criminal paedophilia which the executive knows is required in an anticipated/foreshadowed judicial proceedings) it will deliberately destroy them up to the moment of a writ being filed/served to prevent their use by the judiciary pursuant to its constitutional obligations to deliver justice to and for the people according to law -*

20

et cetera, et cetera. So there it seems to be an assertion that the executive government knowingly destroyed evidence of criminal paedophilia.

30

COMMISSIONER: Okay. So McCabe seems to be a decision of the Victorian Supreme Court in 2002 about shredding documents in legal proceedings.

MR COPLEY: Possibly.

COMMISSIONER: Yes, it seems to be, according to that anyway.

MR COPLEY: Yes.

COMMISSIONER: I have already given that a number, 346.

40

MR COPLEY: The last document that I tender is just to clarify something that we heard suggested in the evidence that Mr Lindeberg had employment at the John Oxley Youth Centre. I tender this document under the hand of Paul Carter, centre manager, John Oxley Youth Detention Centre, dated 15 December 1997 addressed to Mr Lindeberg. It records that he has been appointed and given authority to

14/3/13

COPLEY, MR

50

work at the John Oxley Youth Centre as a casual program support officer. 1

COMMISSIONER: All right. That appointment will be exhibit 347.

ADMITTED AND MARKED: "EXHIBIT 347"

MR COPLEY: Would you just give me a moment to provide everybody with copies of those exhibits?

COMMISSIONER: Sure. 10

MR COPLEY: The last matter that I wish to mention at the moment is this for the record: the commission is aware from the public record that on 16 March 2004 Mr Heiner gave evidence to a standing committee of the House of Representatives and, among other things, said, "I vehemently deny anybody having spoken to me about a pack rape."

COMMISSIONER: Is that the only reference on the public record the commission can find where Mr Heiner is making a public statement about what he did and didn't find in the course of his investigations? 20

MR COPLEY: Yes, and that statement was made in response to questions asked of him. So that is all the material that I propose to tender this morning. The purpose, of course, of today's proceedings was, amongst other things, for you to determine whether or not you wish to hear further submissions from anybody about any aspect of their written submissions that you thought it might be necessary for them to elucidate.

COMMISSIONER: There are some issues that I want to canvass, but can I just record my understanding of the written submissions? Yours, for example, I take to be that unless there's an established nexus to the probability standard on the Briginshaw test between an allegation and/or a response of government and an allegation of child sexual abuse, then the commission should proceed no further. 30

MR COPLEY: That's correct.

COMMISSIONER: Mr Keim, you agree with that proposition, I think. 40

MR KEIM: We do.

COMMISSIONER: Mr Hanger, I think you're not as definitive as that.

MR HANGER: We make no further submissions beyond what we would carefully write.

14/3/13

COPLEY, MR

COMMISSIONER: Thank you. Mr Lindeberg, can I just address you now to understand your position? I have carefully read your submission. It seems to me that in paragraph 1.3 you at least impliedly seem to accept that the Harding incident is an incident within the meaning of the term "historic child sexual abuse" in a youth detention centre as used in the Order in Council.

1

MR LINDEBERG: Yes, that is my - - -

COMMISSIONER: That's your position.

10

MR LINDEBERG: Yes.

COMMISSIONER: And it's the only one that would qualify on the basis of the evidence presented to me. Is that right?

MR LINDEBERG: That is our position, yes - my position, yes.

COMMISSIONER: Yes, but is your position the same as Mr Copley's and Mr Keim's, that is, that in order for me to review, which I take to include making findings about the decision to destroy and the subsequent shredding of the so-called Heiner documents, I would have to be satisfied to a standard that the documents were a - sorry, those actions were a government response to allegations of historic child sexual abuse in a youth detention centre.

20

MR LINDEBERG: No.

COMMISSIONER: So could you just tell me what your position is in that respect? Now, I want you to bear this is in mind: what I'm asking you to do - and this is the test that I'm applying so everyone knows. I'm conducting a search of the purpose of the executive government in appointing this commission, that is, what did the government want me to do as ascertained by the words it used in 3E. So you tell me what the government's purpose was in establishing me to inquire into the matters referred in 3E.

30

40

50

MR LINDEBERG: I don't - what's the word - cavil with the proposition that you are captured by child sexual abuse and consequently if that threshold is not met - which we say it has been - - - 1

COMMISSIONER: Yes, I see that. That's a separate question.

MR LINDEBERG: I understand that - then it doesn't permit you to make a decision about the response of government to child sexual abuse. However, what we say is in the course of this inquiry evidence of a serious prima facie crime has come to your attention which we submit that you are not in a position to ignore and we would submit that that matter ought to be a referral back to the government for a separate inquiry. 10

COMMISSIONER: Okay, you'd better tell me what that crime is.

MR LINDEBERG: The crime is the destruction of documents required for judicial proceedings going to potentially - under 129 of the Criminal Code, potentially going to 132, of a conspiracy to defeat justice. 20

COMMISSIONER: Whether Heiner had any connection with historic child sexual abuse at a youth detention centre or not. Is that right?

MR LINDEBERG: That's right.

COMMISSIONER: So that seems to me to be a restatement of your pre 2002 position.

MR LINDEBERG: Sorry, would you mind saying that - - - 30

COMMISSIONER: Up until 2002 your position was that - - -

MR LINDEBERG: Sorry, yes, that's precisely right, Mr Commissioner.

COMMISSIONER: Okay

MR LINDEBERG: I responded to your question, Mr Commissioner, but - - -

COMMISSIONER: Yes, that's fine. That's what I thought. That's what I expected you to say. 40

MR LINDEBERG: But I did want to make one comment in relation to Mr Copley in terms of the history of this. I mean, the history of this, and I was going to do an oral presentation, is that I lodged a complaint with the Criminal Justice Commission in 1990 which went to the effect of the illegal destruction of documents.

COMMISSIONER: Yes. 1

MR LINDEBERG: But at that point in time it was about the simple offence of destroying documents required for a judicial proceeding.

COMMISSIONER: Yes.

MR LINDEBERG: It's been through this journey that these different levels have been found.

COMMISSIONER: That's right. 10

MR LINDEBERG: As they've come to me I have responded accordingly.

COMMISSIONER: Well, when you say "found", it has changed its character.

MR LINDEBERG: Precisely. That is precisely right.

COMMISSIONER: It's changed its character, I gather, because the nature of your information about what Heiner was about changed, that is, you spoke to Mr Roch, for example. 20

MR LINDEBERG: Indeed.

COMMISSIONER: Yes, and so in respect of whether Heiner had any connection with historic child sexual abuse, which I should say for the record I take to mean notable rather than in the past, you're as good as your information.

MR LINDEBERG: Well, nobody was there to witness what was said. 30

COMMISSIONER: Right.

MR LINDEBERG: But we do suggest that there is evidence to say that he did take that.

COMMISSIONER: Yes, I know. You say, "Look, it's" - so I gather what you're saying is that if - when you started agitating it seems to me that you wanted the shredding of the documents and the cabinet's decision to do that investigated because it was either inappropriate or illegal. 40

MR LINDEBERG: Correct.

COMMISSIONER: Right.

MR LINDEBERG: Against the background that my handling of it had been used as an instrument for my sacking.

COMMISSIONER: Okay, and then child sexual abuse, or historic child sexual abuse, at a youth detention centre developed into a description of what the Heiner inquiry was about rather than describing what you wanted investigated.

1

MR LINDBERG: Yes, that's correct. I mean, in regard to that, Mr Commissioner, it has been alleged by Mr Coyne in evidence that I knew about the child sexual abuse from a very early stage, and to that effect I say that's not true and I have a statutory declaration which I wish to tender which may - which indicates the evolution of this situation, which goes back to the original point that when I started on this it was about destroying documents required for a judicial proceedings.

10

COMMISSIONER: Yes, I think you're pushing against an open door there, Mr Lindeberg. You don't need to convince me of that. It seems consistent with all the material that we've got.

MR LINDBERG: Okay.

COMMISSIONER: So when this inquiry was established term 3E was drafted to inform me as the commissioner what the executive government wanted me to look into and reach conclusions about, and in doing that it's used the words "child sexual abuse" largely based on your vociferous public allegations that it did.

20

MR LINDBERG: Well, let me clarify that.

COMMISSIONER: Okay.

MR LINDBERG: Now, whether or not - I wasn't at the drafting. Whether they had - - -

30

COMMISSIONER: No, no, but we're interpreting something.

MR LINDBERG: I understand that.

COMMISSIONER: We're making assumptions and implications from the words and the historical context.

MR LINDBERG: Yes. I suppose the point I want to make is that my agitation on this over the years has taken it to various levels.

COMMISSIONER: Yes.

40

MR LINDBERG: The fact at one level where it has been reached of child sexual abuse doesn't mean to say the other levels aren't serious as well.

COMMISSIONER: No-one is suggesting that, but the problem is that if your allegations are relied upon by somebody to describe the Heiner affair and the subject matter of my

14/3/13

LINDBERG, MR

50



inquiry, if you have over-reached the number delivered on that then I've got nothing to do, if Mr Copley's right, just because you've made an allegation that you couldn't support or substantiate. 1

MR LINDEBERG: Well, you know, the inference that I have over-reached - I stand by the fact that in the Heiner inquiry documents was evidence of historical child sex abuse.

COMMISSIONER: I know that, and that's a separate question and we'll get to that. 10

MR LINDEBERG: Yes.

COMMISSIONER: But unless you're right about that and if Mr Copley and Mr Keim are right about 3E I've got nothing to do today.

MR LINDEBERG: I accept that, but what I did say in the course of this inquiry, we suggest that evidence of a serious crime has come to your attention in relation to the destruction of documents which ought to be addressed by referral back to the government. 20

COMMISSIONER: Right, well, you know, I don't refer things to the government. I don't see that in my terms of reference anywhere. You're the one who has been referring things to government and it's been acting on the basis of your say-so in drafting terms of reference about what it wants me to do, and if you've been wrong and they've - well, see, I went back to the newspapers to work out - one of the things I've got to work out is we've come all this way, we've heard all this evidence, we've investigated all these things, and at the eleventh hour it looks like - we haven't yet determined it, I've made no findings yet, but it one of the things open on the evidence is there's not a skerrick of evidence of child sexual abuse at a youth detention centre, historic or otherwise. If I was to reach that conclusion 3E would be done and dusted, wouldn't it? 30

MR LINDEBERG: Mr Commissioner, you have said that my agitation with the government in relation to this issue  
- - -

COMMISSIONER: Yes.

MR LINDEBERG: My agitation with the government is to  
- - - 40

COMMISSIONER: Well, publicly, not with the government, necessarily.

MR LINDEBERG: Well, then publicly.

COMMISSIONER: Publicly.

14/3/13 LINDEBERG, MR

MR LINDEBERG: Was for an investigation into the Heiner affair. 1

COMMISSIONER: Which has been characterised based on your say-so since 2002 as relating to child sexual abuse.

MR LINDEBERG: No, with respect, it's not just my say-so. I mean, I did that at the point when the issue came to me or came to public awareness via Mr Roch that when he met with Mr Heiner, Mr Heiner asked him questions about child sexual abuse. 10

COMMISSIONER: That's right. Now, Mr Roch is your high-water mark, isn't he?

MR LINDEBERG: No, he's not.

COMMISSIONER: Isn't he? Well, who is?

MR LINDEBERG: No, I suggest - well, he's one of the water marks, but I suggest Mr Irene Parfitt is a high-water mark as well.

COMMISSIONER: Okay, right. They're the two witnesses you say would satisfy me to the appropriate standard of satisfaction that Heiner had something to do with child sexual abuse. 20

MR LINDEBERG: That's what we are saying, yes.

COMMISSIONER: All right, well, we'll deal with that in a minute, but if you're wrong about that - I just want to understand your submission for the moment. If you're wrong about that then you say I can't proceed further on 3E, along with Mr Copley and Mr Keim. Is that right? 30

MR LINDEBERG: Yes, we would have to agree with that, because, you know, it was our position that if there was to be an inquiry it should have been into the Heiner affair.

40

COMMISSIONER: I see. And that purpose - what you wanted has been lost in the web of words by adding child sexual abuse. 1

MR LINDEBERG: Because we say that in the evidence that had been presented we reached the threshold of evidence required for a judicial proceedings, which triggers prima facie 129 and/or 32. Then you have child - - -

COMMISSIONER: You might have been better off leaving at that, Mr Lindeberg. You might have got what you wanted, an inquiry into that instead of inquiry into something that's got to be connected with historic child sexual abuse. See, with the two things that we've got to do here, we have to act in public. Your campaign has generated a lot of media print and commentary from the commentariat about what Heiner was all about and what the Goss government was all about in destroying its documents; about cover-ups and child sexual abuse; about denial of natural justice; about conspiracies; about shredding documents to defeat somebody's litigation rights. 10

A whole bundle of theories and allegations about the cabinet's motivation, isn't there? It's grown over time from 1990 to now into all those things. 20

MR LINDEBERG: It has grown as matters have come to my attention. My fundamental point right from the beginning was that documents were destroyed at a moment when they were known to be required for foreshadowed judicial proceedings.

COMMISSIONER: Yes. And that's what you thought was inappropriate and possibly illegal.

MR LINDEBERG: And irrespective of it, I say to you, if this matter is not (indistinct) it doesn't take away from that prima facie piece. 30

COMMISSIONER: So what you want now is if 3(e) just doesn't go far enough because it picked up on your allegations of child sexual abuse and cover-ups by cabinet, you want another inquiry - - -

MR LINDEBERG: Commissioner, you seem - - -

COMMISSIONER: - - - to get to the real nub of it. 40

MR LINDEBERG: You seem to be working on the premise that I had something to say in terms of setting up the terms of reference. I didn't.

COMMISSIONER: No, I don't say that. What I say is that what the Heiner inquiry was, what it was about, what the documents contained, what the Goss government was doing in

just shredding the documents goes back to allegations you've been publicly making with the assistance of some people in the media about illegal government action in just covering up evidence of child sexual abuse - post-2002, anyway.

1

MR LINDEBERG: And child abuse.

COMMISSIONER: And child abuse.

MR LINDEBERG: Yes. Which is not doubted.

10

COMMISSIONER: But - - -

MR LINDEBERG: In terms of child abuse.

COMMISSIONER: So, you see, one of the things we have to meet, and I'm sure one of the things the government wants to meet in three years, put this to bed once and for all; have it fully, publicly investigated, tested, so that people can say, "Well, now we're not left wondering any more what Heiner was all about. We know now." But that's not going to be achieved by 3(e) if you're right, is it?

20

MR LINDEBERG: Commissioner, my main item of evidence, if I may call it, is the Rofe audit of the Heiner affair.

COMMISSIONER: That's not evidence, that's someone's opinion.

MR LINDEBERG: Well, the matter that will be submitted to you is based on the premise of destroying documents when they're required for judicial - - -

COMMISSIONER: It's not evidence. I haven't got it. I've got it, but it's not evidence in this inquiry because it's just somebody's opinion, and the government actually hasn't asked that person for their opinion, they've asked me for mine.

30

MR LINDEBERG: I understand.

MR COPLEY: It was only made an exhibit on the recusal application.

COMMISSIONER: Yes.

MR COPLEY: It wasn't made an exhibit in these proceedings and it hasn't been tendered. And if it was to be tendered that would raise other issues.

40

COMMISSIONER: All right. So understanding your submission, what you're saying now is that, "Okay, well look, if I'm wrong about the child sexual abuse allegation I've been making clearly and loudly since 2002, that's an

14/3/13

LINDEBERG, MR

50

end of 3(e) but that's not an end to the inquiry. We can have another one into why the Heiner documents, whatever they contained, were shredded. And not only do we investigate that inquiry, what the cabinet did in 1990, but what cabinets since then have done and what all governments and departments have done since 1990 to investigate the shredding." Is that what you say?

1

MR LINDEBERG: Well, let me repeat what I understand. What I'm saying is yes, that there is the fundamental offence of destroying documents required in court - - -

10

COMMISSIONER: By the Goss cabinet.

MR LINDEBERG: That's right.

COMMISSIONER: And then after that there's been a failure of subsequent successive governments and agencies of governments and cabinets to do anything about it. Is that right?

MR LINDEBERG: Yes. And the letter that my original complaint to the CJC was on that basis; my letter to the police commissioner, which has been tendered today, was on that basis.

20

COMMISSIONER: And the letter to the Governor and everybody else, none of them have done anything that you regarded as good enough to put the shredding-gate scandal to bed. Is that right, effectively?

MR LINDEBERG: Well, that's right.

COMMISSIONER: Okay. That's all right, you don't need to justify, I'm just trying to understand your position. And what you say now is that the government should set up another inquiry to investigate the shredding, not because it was a cover-up of child sexual abuse now, but because it was just plain wrong to do it when they knew that somebody wanted those documents and that they were public records and he might want to use them in litigation.

30

MR LINDEBERG: I haven't moved from that position since day one.

COMMISSIONER: Right.

MR LINDEBERG: We haven't settled yet the issue of whether or not evidence of child sexual abuse went to Mr Heiner. I'm prepared to argue that.

40

COMMISSIONER: Yes. Well, you're going to have to.

MR LINDEBERG: I understand that.

COMMISSIONER: You're going to have to successfully argue it. 1

MR LINDEBERG: And I appreciate that. I came in here on the understanding when we came that in fact Mr Heiner had indeed received evidence of child abuse. I didn't know that - or if it is in fact true - none of us knew that until there was an investigation.

COMMISSIONER: Well, I don't know about that.

MR COPLEY: Well, with all due respect, Mr Lindeberg knew this in February 2003 in exhibit 346 where he told the Governor - - - 10

COMMISSIONER: It was criminal paedophilia.

MR COPLEY: - - - that it was criminal paedophilia and he told the Governor that the Governor needed to advise the executive to appoint a special prosecutor to investigate it.

COMMISSIONER: Yes. 20

MR COPLEY: He told the Governor that if the executive didn't do what the Governor said they should do then the Governor should exercise his reserve powers to dismiss the then executive and appoint the leader of the opposition to pass a law.

COMMISSIONER: And those sort of submissions or petitions weren't based on tentative views about whether it might have been child sexual abuse. You didn't want the Governor to dissolve the government of the day on the basis of the possibility that Heiner was all about child sexual abuse, did you? 30

MR LINDEBERG: Mr Commissioner, when the word criminal paedophilia is mentioned it is mentioned on the basis of a letter that I received from the Crime Commission which indicated that on the facts as presented it could reach the business of criminal paedophilia. What I was asking for was an investigation to establish that.

COMMISSIONER: That's not what you said in the letter, though, Mr Lindeberg, and that's the problem with some of the public statements you've been making. There is no qualification or things like, "Oh, I'm not too sure. Let's have an investigation to find out," it's, "This is a cover-up of child sexual abuse allegations." 40

MR LINDEBERG: I think that you will find that many of my documents talk about prima facie.

COMMISSIONER: Many don't, too. But getting back to what the government purpose was, and I think it is also

14/3/13

LINDEBERG, MR

important to understand that the public has an investment in this; they're paying for this inquiry, they will have an expectation of what it is supposed to do. 1

I think both the public - well, I think the government will be surprised to learn that there may not be any evidence of child sexual abuse, subject to the conclusions I reach about that - but I think the public will be shocked to think that they invested all this money in coming this far to find out that there might not be anything to investigate because there's no evidence of child sexual abuse when really what everybody wanted - as you set yourself - wanted put to bed was why the Heiner documents, whatever they were, were shredded. That's the real question, isn't it? 10

MR LINDEBERG: That is the fundamental question.

COMMISSIONER: That's the one you've always wanted answered.

MR LINDEBERG: That's right.

COMMISSIONER: And 3(e) isn't going to do it for you unless it is connected with child sexual abuse, is it? 20

MR LINDEBERG: No, but I wasn't party to drafting those specific terms of reference.

COMMISSIONER: No, I know that.

MR LINDEBERG: I would have had it into the Heiner affair.

COMMISSIONER: Yes. Now, I've just gone back to some of the - public expectations are based or informed largely by what the media reports about things and the media acts on the sources of information, and in many cases, you. Andrew Fraser writes - I'll go back to when the inquiry was called. This is an article by Michael Madigan on 30 June. That's the date the inquiry was announced. Is the Courier Mail: 30

*The inquiry's terms of reference include the adequacy and appropriateness of government response to various allegations concerning children. These include historic allegations of child abuse in youth detention centres, a direct reference to the Heiner affair, one of Queensland's most enduring conspiracy theories. Heiner refers to the 1990 shredding of evidence into child sex abuse at the John Oxley Youth Detention Centre at Wacol.* 40

Now, that may or may not be correct, but that's what you were asserting as at 30 June 2012, weren't it?

MR LINDEBERG: Where did I assert that? 1

COMMISSIONER: I'm asking you: is that what you were asserting?

MR LINDEBERG: Mr Madigan didn't talk to me.

COMMISSIONER: No, but does he correctly state that you were - sorry, does he correctly pick up your assertion that Heiner refers to the 1990 shredding of evidence into child sexual abuse at the John Oxley Youth Centre? 10

MR LINDEBERG: As it was understood at that point in time, but it was certainly the shredding of documents which were required for judicial proceedings which I understand is quite a serious offence under the Criminal Code.

COMMISSIONER: I'm sure it is. This is Rosanne Barrett from The Weekend Australian 30 June 2012 about the Heiner affair and inquiry sites:

*The terms of reference also allow a formal review of the response to allegations of criminal conduct associated with government responses into historic child sexual abuse in youth detention centres and not to the Heiner controversy. The Heiner affair centres on the 1990 shredding of documents from an inquiry that had allegedly detailed mismanagement at a youth detention centre following the alleged rape of a 14-year-old girl in care.* 20

That is a slight variation on Mr Madigan's explanation of Heiner but not inconsistent with things you have said about Heiner in the past, is it?

MR LINDEBERG: Nor, for that matter, inconsistent with a line of evidence that was put before this Commission of Inquiry. 30

COMMISSIONER: Then the premier has quoted about the inquiry being open and transparent and that it was:

*At Mr Carmody's discretion to determine what would be investigated. Our position is that if someone brings something forward that is new and hasn't been looked at before, it should be looked at and it shouldn't be swept under the carpet. A failure to do that would have been essentially trying to muzzle this inquiry because there might be other things that came up.* 40

So that goes to the width of 3E, I suppose, and the Courier-Mail on 2 July 2012 under the heading Heiner Affair a Distraction from Today's Issues - it's an editorial:



*Mr Carmody's terms of reference also include yet another examination of the long dead Heiner Shreddergate affair. This relates to the Goss government decision more than two decades ago to shut down the Heiner Commission of Inquiry into child abuse established by the previous National Party government and shred evidence on legal advice that the inquiry had not been properly empowered.*

See, that's another variation of what Heiner is all about.

MR LINDEBERG: Am I to be responsible for that, Mr Commissioner? 10

COMMISSIONER: No. I'm just saying that when you talk about the Heiner affairs, you have got to say: what is it?

MR LINDEBERG: That's precisely the question you asked at the beginning of this inquiry.

COMMISSIONER: Yes.

MR LINDEBERG: That's why, if I had anything to say with it - and I didn't - it would have been an inquiry into the Heiner affair rather than this because it doesn't fail if you don't find the threshold of 3E in terms of the allegations that have been made - - - 20

COMMISSIONER: I didn't say that I was satisfied that Mr Copley and Mr Keim were right about that yet.

MR LINDEBERG: No, sorry, I don't want to prejudge that, commissioner.

COMMISSIONER: Actually while we are on that we might go to that. Mr Copley, just tell me if I'm right or wrong about this so far and if any other lawyers at the table want to disagree with any of these propositions, they are very welcome. Executive government sets up inquiries for their purposes. 30

MR COPLEY: Correct.

COMMISSIONER: To advise them on policy or issues or events that they're concerned about.

MR COPLEY: Yes.

COMMISSIONER: They tell the inquiry what is expected of it by the words they use in the terms of reference. 40

MR COPLEY: Yes.

COMMISSIONER: The terms of reference indicate, sometimes not as clearly as other times, both the purpose and the scope of the inquiry.

MR COPLEY: Yes. 1

COMMISSIONER: And also the subject matter of the inquiry. That's expected.

MR COPLEY: That's right.

COMMISSIONER: 3E falls into that category.

MR COPLEY: Yes.

COMMISSIONER: So what I'm to work out - and let's also state this: they cost a lot of money. They take a lot of time. They put a lot of people at a lot of inconvenience. People are compelled to leave their daily lives to come here and answer questions about things that happened 20 years ago in this case. 10

MR COPLEY: Yes.

COMMISSIONER: The last thing the inquiry is expected to do is not to deliver what the executive government wanted of it. 20

MR COPLEY: That's correct.

COMMISSIONER: Equally, the commission can't stray off track and investigate things the government never intended or expected it to.

MR COPLEY: It can't go outside its terms of reference because if it does, it runs the risk that a court will pass upon what it has done with, of course, further public expense and inconvenience caused if the inquiry's findings are set aside because they're outside its remit. So the inquiry has to be very careful not to step outside the ambit of its terms of reference. 30

COMMISSIONER: Yes, all right, and I'm to find the purpose, the subject matter and the ambit of my inquiry in the web of words in 3E.

MR COPLEY: Yes.

COMMISSIONER: Now, you say - and Mr Keim agrees and I think Mr Lindeberg agrees so we will call this consensus view - that historic child sexual abuse in a youth detention centre is a jurisdictional fact. 40

MR COPLEY: Yes.

COMMISSIONER: You say that I have to be satisfied of that jurisdictional fact to a degree of satisfaction that takes into account the seriousness of the allegation and the consequence of any adverse finding. Is that right?

14/3/13

COPLEY, MR

MR COPLEY: That's correct. 1

COMMISSIONER: Which means in order to make that finding of a threshold the evidence has to reach a point of sufficiency that would justify the finding that the jurisdictional fact existed.

MR COPLEY: Yes.

COMMISSIONER: You say that the evidence available to us is too inexact, imprecise - - - 10

MR COPLEY: Indefinite.

COMMISSIONER: - - - indefinite and unreliable to satisfy me to that necessary standard.

MR COPLEY: That is so.

COMMISSIONER: Now, Mr Lindeberg says otherwise.

MR COPLEY: Yes.

COMMISSIONER: He says that there is evidence what at 1.6 is sufficient to reliably hold that the material he lawfully gathered by the Heiner inquiry was evidence of the Harding incident. 20

MR COPLEY: Yes.

COMMISSIONER: Okay. Now, before we get to that we need to work out whether your proposition is right that 3E had a pre-condition or a limit. The outer limit is defined by historic child sexual abuse in youth detention centres and for that purpose read the Harding incident. 30

MR COPLEY: Yes.

COMMISSIONER: If we take the terms of reference, it says, "Reviewing (1) the adequacy and appropriateness of any response of and action taken by government to allegations," right, and then there's a comma.

MR COPLEY: Yes.

COMMISSIONER: And then it says "including any allegations of criminal conduct" so that's not excluding other allegations of other kinds. 40

MR COPLEY: No.

COMMISSIONER: "Associated with government responses" and then there's another comma and then comes the preposition "into historic child sexual abuse in youth detention centres".

MR COPLEY: Yes. 1

COMMISSIONER: Now, do I understand your reading of that to be that term 3E is limited to reviewing the adequacy and appropriateness of - just paraphrasing here - government responses to allegations into historic child sexual abuse in youth detention centres.

MR COPLEY: Yes.

COMMISSIONER: That's one link. 10

MR COPLEY: Yes.

20

30

40

COMMISSIONER: "Into" might not be the most felicitous word. What should qualify "historic" on that interpretation would be "allegations of", wouldn't it? 1

MR COPLEY: Yes.

COMMISSIONER: And then the next way of reading it is historic child sexual abuse not being connected to "allegations" but being connected to "government responses".

MR COPLEY: Yes. 10

COMMISSIONER: Is that right?

MR COPLEY: Yes.

COMMISSIONER: So when it's used in the sense of being connected to a government response it includes any allegations of criminal conduct associated with government responses.

MR COPLEY: Yes. 20

COMMISSIONER: Now, why couldn't it be - and this is a reference, it seems, at least inclusively to Mr Lindeberg's own allegations of criminal conduct associated with the Goss government response.

MR COPLEY: Because the term of reference is sensibly to be bred this way: that you're to review the adequacy and appropriateness of responses or action taken by government to allegations of child sexual abuse in youth detention centres.

COMMISSIONER: Yes. Let's take that as one - - - 30

MR COPLEY: That's one, yes.

COMMISSIONER: - - - clear interpretation that's open on the wording.

MR COPLEY: "Including any allegation of criminal conduct associated with government responses." So what it is saying is if you find that there have been any government responses to child sexual abuse, consider the adequacy and appropriateness of the government's response to those allegations; and while you're at it, consider whether or not there have been made, and review any allegations of criminal conduct - - - 40

COMMISSIONER: Associated with those responses.

MR COPLEY: - - - associated with the government's responses or actions to child sexual abuse.

COMMISSIONER: Right. Let's agree that that's an interpretation that is open as well. Why isn't, though, the interpretation open that 3(e) authorises a review of the adequacy - and then I will add the words here because otherwise you get confused - I do, anyway - "the adequacy and appropriateness of any response of government to Mr Lindeberg's allegations of criminal conduct by the Goss government in responding to the Heiner inquiry."

1

MR COPLEY: Well, you've effectively added another paragraph to the order in council.

10

COMMISSIONER: Have I?

MR COPLEY: Yes.

COMMISSIONER: Why? It says, "The adequacy and appropriateness of any response of" - now, that would include lack of response, wouldn't it?

MR COPLEY: Yes.

COMMISSIONER: Right - "by government to allegations" - why doesn't "allegations" include what Mr Lindeberg has been complaining about?

20

MR COPLEY: Because it's to be read as allegations into historic child sexual abuse in youth detention centres.

COMMISSIONER: But why? What's an allegation into something?

MR COPLEY: An allegation with respect to or an allegation in relation to or an allegation connected with.

COMMISSIONER: But "into" is a sort of word that - like, you might use "an inquiry into" or "an investigation into" but you wouldn't use "an allegation into" or "a response into", would you, normally?

30

MR COPLEY: Well, you wouldn't put the word "historic" before "child sexual abuse" either, when speaking of an allegation. All allegations relate to something that occurred in the past.

COMMISSIONER: What is the comma after "responses" in the second-last line doing there? What is it supposed to signify?

40

MR COPLEY: Well - - -

COMMISSIONER: It breaks it up, doesn't it? It disconnects "government responses" from "child sexual abuse", rather than connects it.

MR COPLEY: It's perhaps signifying that you're to inquire into the adequacy of government responses into child sexual abuse and also any allegation that the government behaved criminally when responding to those allegations. 1

COMMISSIONER: And also the appropriateness of any government response to allegations of child sexual abuse.

MR COPLEY: Yes.

COMMISSIONER: So it's three. 10

MR COPLEY: Okay, yes.

COMMISSIONER: Righto. Now, what Mr Lindeberg says in 1.4 is that 3(e) is wide enough for me to investigate the adequacy and appropriateness of other cabinet responses and actions in this matter if the order in council is to be fully and carefully complied with. Why is he wrong about that? Why can't I look at subsequent governments' responses or lack of it to the shredding by the 1990 Goss cabinet under 3(e)?

MR COPLEY: Well, if you could look at subsequent cabinet responses you'd only be doing so if they were responses that were in fact related to child sexual abuse. 20

COMMISSIONER: But why can't you read - why do you have to connect "responses" to "historic child sexual abuse" if "allegations" in the previous line is already connected to "historic child sexual abuse"? Why do both allegations and responses have to be connected to child sexual abuse? Why can't it be just allegations of child sex abuse and government responses to it; or just government responses, which might include the shredding of the Heiner documents regardless of what they contained? What does it have to be a government response and historic child sexual abuse? 30

MR COPLEY: It was the understanding of the word "responses" before the comma takes its meaning from "response" in the first line.

COMMISSIONER: Yes? Well, it is a different response, though, isn't it? It's a response to a response in the first line, rather than a response to an allegation.

MR COPLEY: You have to review the - well, just forget about "appropriateness", it makes it easier just to read it this way: that you've got to review the adequacy of any response - forget about "action" as well - just the adequacy of any response of government to allegations - - - 40

COMMISSIONER: Okay, let's just stop there, "to allegations".

MR COPLEY: Yes.

14/3/13

COPLEY, MR

COMMISSIONER: And so - - - 1

MR COPLEY: To allegations of what?

COMMISSIONER: Well, exactly. And we find that answer in the last line.

MR COPLEY: Yes.

COMMISSIONER: Because after "allegations" there's a comma and then it says "including", right? 10

MR COPLEY: Yes.

COMMISSIONER: By way of example; and then there's another comma after "responses".

MR COPLEY: Yes.

COMMISSIONER: So you can connect "allegations" to - into, but really "allegations of historic child sexual abuse".

MR COPLEY: Yes. 20

COMMISSIONER: Because you've got that break in the - - -

MR COPLEY: Yes.

COMMISSIONER: But in between those two commas there's a phrase that qualifies the allegations or expands on the word "allegations" used in the second line.

MR COPLEY: Yes.

COMMISSIONER: "Including any allegations of criminal conduct associated with government responses." 30

MR COPLEY: Yes.

COMMISSIONER: Now, that's Mr Lindeberg right there.

MR COPLEY: Well, if you read it this way: reviewing the adequacy of any response of government to allegations into historic child sexual abuse in youth detention centres, including any allegations of criminal conduct associated with government responses. So therefore if you read it like that, which is a sensible way of reading it - - - 40

COMMISSIONER: It is.

MR COPLEY: - - - you see at once the link.

COMMISSIONER: Look, I'm not saying it's not sensible way of reading it. My question is: is it the only way of reading it?



MR COPLEY: These are just ordinary English words - - - 1

COMMISSIONER: Yes, it's the way they're collected together that makes them difficult.

MR COPLEY: - - - and they've been put together in a strange fashion, but one should not, as a commission of inquiry, tried to torture a meaning of the words, to stretch and strain the words.

COMMISSIONER: No. But the search we're on - the quest is to find the purpose in those words, the executive government purpose in those words. We shouldn't - be given the cost, the investment, and colluding notional investment of many people, in the outcome of this inquiry - we shouldn't be easily distracted from finding, if we can, in the thicket of the words here, what the true object of the government was and whether it was, as Mr Lindeberg contends: just investigate the Heiner inquiry; whatever it was, put it to bed once and for all so that we can all get on about our business and not be - why should it will depend on whether Mr Lindeberg is right when he says Heiner was about a cover-up or child sexual abuse based on what Mr Rofe says? Why should that be the determinative of all the work and effort that's been put in to this stage? 10 20

MR COPLEY: Well, if you look back at the matter from an historical perspective, the people that are presently in power, they, or some forerunner of their parties, were in power in 1996. They set up an investigation into what was colloquially called the Heiner matter called the Morris-Howard investigation. That investigation investigated, admittedly on the papers, and made a report. That government didn't do anything further as a result of that report. 30

COMMISSIONER: That's right.

40

MR COPLEY: Now, we've received evidence that it was in 1998, as far as anyone can ascertain, that it was first alleged that one of the purposes of the Heiner investigation was to investigate child sexual abuse. 1

COMMISSIONER: Yes.

MR COPLEY: You wouldn't know that from reading the terms of reference, I'd submit, but that's what's contained in exhibit 285.

COMMISSIONER: Yes. 10

MR COPLEY: Then in 1999 a cabinet minister said, "Well, we all knew it was to do with abuse." We now know that he's got a different - or an interpretation of what that means that's not consistent with what it seems to mean on its face, whatever abuse was. Then we know about media reports asserting that Mr Heiner knew about child sexual abuse in 2000 and 2001 - in 2001, and then we move forward from there where we've got a person writing to the governor, asking the governor to appoint a special prosecutor to investigate those allegations. So what has changed since the last time the government was in power to now, what has changed is that it's come to light since the Morris-Howard report that the Heiner matter might be connected to sexual abuse of children. 20

So if you look at it from that perspective then that fortifies the conclusion that the present executive government might take the view that if a previous cabinet wittingly or unwittingly destroyed evidence of child sexual abuse, no matter how long ago, that is a serious matter that should be investigated from a social - - -

COMMISSIONER: But no-one would disagree with that. 30

MR COPLEY: From the perspective of the public simply knowing whether or not that allegation was true.

COMMISSIONER: Was true.

MR COPLEY: Because that is a really serious allegation to make about people in public life.

COMMISSIONER: Absolutely.

MR COPLEY: Whether they did it knowingly or unknowingly. 40

COMMISSIONER: Absolutely, but there's Mr Lindeberg's original allegation, which is equally - well, perhaps not equally, but very serious indeed, that the Goss government acted unlawfully in destroying the Heiner documents, not because it was about child sexual abuse but to deny Mr Coyne access to documents that he may have been able to use to his advantage in litigation against the government.

14/3/13

COPLEY, MR

MR COPLEY: Well, I mean, the simple and easy answer to that is that if that had been the current executive government's purpose, term of reference 3E would simply have said, "We'd like you to review the adequacy and appropriateness of the response of the Goss cabinet of March 1990 in enabling the destruction of whatever documents it was that Mr Heiner gave it."

1

COMMISSIONER: But, see, that's my point. What's happened in the interim is that the characterisation of the Heiner documents as involving or relating to child sexual abuse has become so over-blown and arguably under-supported that it's deceived everybody into thinking that Mr Lindeberg really knew what he was talking about when he said it had anything to do with child sexual abuse, when really he was only going on what Mr Roch and Ms Parfitt said, which we've now seen the quality of that.

10

MR COPLEY: Yes.

COMMISSIONER: See, we're in an advantaged position to anyone else. We've seen the quality of the evidence upon which this allegation of a cover-up of child sexual abuse has been based.

20

MR COPLEY: That's true.

COMMISSIONER: We're the first ones to have seen it of all the 11 inquiries, as I understand it.

MR COPLEY: It depends how you characterise some of them, but it is perfectly the case that this investigation is the first that has seen people give evidence under oath and seen them tested in cross-examination as seen fit about what they said they did or didn't say to Mr Heiner. It's also the first investigation that's been able to compare what those people say with documents that they might have written at or about the time of the Heiner inquiry. It's also the first investigation that's able to compare and contrast what the people say with statements that were made at or around the time of the inquiry by the men who set it up and the woman who set it up and by the man himself who conducted it.

30

COMMISSIONER: And it's the first inquiry that's reached the point that would enable the public, or some sections of the public, who are interested in it to form the view, "Okay, Heiner wasn't about child sexual abuse. Carmody's shown that, but what the Goss government did to those documents was not necessarily appropriate or even lawful."

40

MR COPLEY: Yes.

COMMISSIONER: "But he can't tell us the answer because his lawyers and other lawyers say that he's not allowed to because of 3E." How happy are they going to be?

14/3/13

COPLEY, MR

50

MR COPLEY: Well, I can't comment on how happy those people might or might not be. 1

COMMISSIONER: No, I know, but we wouldn't need any more evidence to allow me to take that next step, would we?

MR COPLEY: Sorry?

COMMISSIONER: We wouldn't need much more evidence to allow me to take the next step and say - doing what Mr Lindeberg says he's always wanted, just make a finding about the appropriateness or lawfulness of the shredding. 10

MR COPLEY: No, you wouldn't need much more evidence.

COMMISSIONER: Because we've got it all.

MR COPLEY: Arguably, yes.

COMMISSIONER: Except for the question that brought us all here, and that is should the members of the Goss cabinet be either called or at least given the opportunity if they want to to say why they did it. 20

MR COPLEY: Well, that's another issue.

COMMISSIONER: Hey?

MR COPLEY: That's another issue?

COMMISSIONER: It is, but then again, maybe that's only necessary, on reflection, if any of them want to contradict Mrs Warner.

MR COPLEY: Mrs Warner's evidence was that it was a consensus decision. 30

COMMISSIONER: Yes.

MR COPLEY: The consensus was - - -

COMMISSIONER: For these reasons.

MR COPLEY: - - - (indistinct) "We will enable destruction."

COMMISSIONER: Okay, well, then if she's right and no-one wants to contradict her or put forward any other explanation or, you know - then we don't need anything more. 40

MR COPLEY: No.

COMMISSIONER: Right, so all that - - -

MR COPLEY: Well, no-one has put to Ms Warner - just on that point, nobody challenged Ms Warner's evidence on the proposition that it was a consensus decision.

1

COMMISSIONER: No, including Mr Hanger who acts for the crown.

MR COPLEY: Who is not representing the ministers.

COMMISSIONER: Aren't you?

MR HANGER: No.

10

MR COPLEY: He's not representing the ministers, no, so he wouldn't have been conflicted, he would have - - -

COMMISSIONER: Okay, well, I won't draw any inference from that.

MR COPLEY: No.

COMMISSIONER: Okay.

MR COPLEY: Well, I suppose an inference can still be drawn from it.

20

COMMISSIONER: But not against - - -

MR COPLEY: Not against - well, see, if he represents the state - - -

COMMISSIONER: No useful one can be drawn.

MR COPLEY: If he represents the state, the state - - -

COMMISSIONER: Yes, but at that time the inquiry wasn't about that. It may never become about that, depending on 3E.

30

MR COPLEY: Okay, right, yes.

COMMISSIONER: So you couldn't, really. If we all were agreed that it included the appropriateness of the shredding itself, or the decision to shred, quite apart from whether Heiner was related to child sexual abuse or not, I could understand it, but it wasn't. So this is where I'm at. In 3E, without straining the English language, if I could genuinely find the true purpose, almost in spite of the words, being to look at the Heiner affair, that is, the shredding of the documents of the investigation and the decision to do so, then I would do that.

40

MR COPLEY: It's a very - - -

COMMISSIONER: But you say I can't.

14/3/13

COPLEY, MR

50

MR COPLEY: Well, it's a very difficult and uncertain process to try to discern the purpose of executive government. 1

COMMISSIONER: I could ask them. There's nothing wrong with the commissioner asking the executive government that appointed him what it wanted him to do, is there? Is there any in principle objection to that?

MR COPLEY: No, but then again - - -

COMMISSIONER: Professor Fox did it in 1980. 10

MR COPLEY: But don't forget, one doesn't want to get too far ahead. Even if one was to ask, "What was your purpose?" the inquiry would then - only able to go down that path if the terms of reference were sufficiently broad to enable it to do so.

COMMISSIONER: I wonder about that, because let's not treat the terms of reference as, you know, a piece of legislation. They're a guide to the commissioner to keep him on track and I'm not so sure that they really amount to jurisdictional facts. I suppose they are reviewable if I go off and make a finding about someone that was doing something completely off track, but as I remember it, I don't think there's ever been a case where terms of reference has been used to restrict the scope of an inquiry. I've seen it used to - not to - for example, in the Gibbs Royal Commission into the National Hotel he took a very literal view of his terms of reference. 20

MR COPLEY: Yes.

30

40

COMMISSIONER: Most commentators have criticised lawyers for having that tendency when they're conducting inquiries as opposed to other professionals who conduct government inquiries who tend to take a more flexible approach, including Mr Fitzgerald. In his inquiry he took a rather robust interpretation of his terms of reference and had them amended from time to time.

1

MR COPLEY: That's the point, isn't it? He had them amended. He must have - - -

COMMISSIONER: No, he didn't always. He just interpreted them the way he thought that they were capable of being interpreted and really that's where we're at here. Unless the only way I can interpret 3E is as you and Mr Keim suggest, then - it would have to be the only way and I would have to have found that there's no possible earthly conceivable way that I can interpret them to allow me to proceed to take further evidence on or hear submissions about and make findings about the shredding itself because Heiner started out as the Shreddergate affair. It had nothing to do with child sexual abuse.

10

MR COPLEY: No.

20

COMMISSIONER: Then it has morphed into this thing that everybody - again I don't want to be too harsh on Mr Lindeberg but he's been the main public campaigner and he seems to have convinced everybody that that's what it was about on very little evidence.

MR COPLEY: Yes. In my submission, when you look at the ordinary words there in paragraph E, there's a supposition waiting to be explored by you that the government response was to shred evidence of child sexual abuse, "Tell us finally once and for all, can one be reasonably satisfied of that or not?"

30

COMMISSIONER: Or it's been alleged that the Heiner affair was connected with historic child sexual abuse. That sort of has characterised the Heiner affair of late, "Investigate that affair." Do you really think the government said, "Look, if it's not about child sexual abuse, pull up stumps"?

MR COPLEY: That is not necessarily as far fetched as your querulous tone might suggest because - - -

40

COMMISSIONER: My querulous tone.

MR COPLEY: - - - this Commission of Inquiry is an inquiry into Queensland's child protection system and you must bear that in mind or it must be borne in mind that some effect must be given to that consideration when interpreting paragraph E.

14/3/13

COPLEY, MR

50

COMMISSIONER: Because that's why they use youth detention centres. That connects it to the child protection system generally. 1

MR COPLEY: It does generally but, of course, these things weren't even called detention centres at the time of Heiner, but that's neither here nor there probably.

COMMISSIONER: Yes. I think it's one of those things we needed to have a full and frank about the purpose, the intended purpose, if I can find it in 3E, and then for me to give effect to it. 10

MR COPLEY: Yes.

COMMISSIONER: I accept your general proposition that I can't rewrite the thing to suit what I think the government should have been asking me to do or even imply what they would have liked me to have done if they had realised that the evidence was going to pan out the way it has. See, no-one knew how it would pan out and that's often the problem with commissions of inquiry. They go in directions unexpected. All right. I just needed to understand your definite position on 3E. 20

MR COPLEY: Okay, thank you.

COMMISSIONER: Thanks, Mr Copley. Mr Keim?

MR KEIM: Yes, can we say something briefly about that, your Honour?

COMMISSIONER: Yes.

MR KEIM: In our submission, your Honour has no liberty. The construction that counsel assisting and we have argued for is the only construction on the words available. With regard to, your Honour - commissioner, you raised some questions with regard to the comma in the second-last line. 30

COMMISSIONER: I was just trying to do a bit of parsing, Mr Keim.

MR KEIM: Yes.

COMMISSIONER: An old-fashioned art that has been lost even in the drafting. 40

MR KEIM: In answer to that process, in our submission, the phrase "including any allegations of criminal conduct associated with government responses" - the commas at either end of it are essentially parenthetical, equivalent to brackets.

COMMISSIONER: Should be in brackets.

14/3/13



MR KEIM: Yes. It's true, and there seems no doubt, that they qualify allegations so it's "including any allegations of criminal conduct associated with government responses", but those allegations are no broader than the other qualifier which is the phrase that comes at the end which is what we all agree to be relating to or should be read as relating to historical child sexual abuse in youth detention centres.

1

COMMISSIONER: You say that's the outer limit.

MR KEIM: Yes. We say the first limitation is the allegations must relate to historic child sexual abuse in youth detention centres and the words "including any allegations of criminal conduct associated with government responses" is just to indicate that "responses" used there are also the same concept as the word "response" used in the first line. So just in case you thought that "response" was defined very narrowly, no responses could be as broad as responses or lack of responses that might be criminal.

10

COMMISSIONER: Could I quibble with that, because "response" in the first line and "action taken by" is singular? "Responses" is plural. So why use the word "responses" if you wanted to limit it to that response?

20

MR KEIM: Because both "response" and "action" are qualified by "any" so by using the word "any" that indicates that there may be thousands of them or thousands of lack of them.

COMMISSIONER: Which brings me back to Mr Lindeberg's point. What do you say about that? Let's assume that it is a jurisdictional pre-condition or threshold that it be about historic child sexual abuse at a youth detention centre. Let's assume that's so. If it is, why isn't Mr Lindeberg right when he says, "Well, one of the things 3E requires you to do is look at how governments" - the way I have interpreted it meaning executive governments - "have dealt with my complaints about the shredding over the years"? Why is that outside 3E as including an allegation of criminal conduct about responses into historic child sexual abuse which the Goss cabinet decision and the shredding would be, wouldn't it, if I was satisfied that it met that test?

30

MR KEIM: Because his allegation is not an allegation of historic child sexual abuse in youth detention centres. His allegation is the allegation of destruction of documents.

40

COMMISSIONER: I don't know about that. I think he has been making both sorts of allegations. That was partly why I went through some of this - had these exhibits

14/3/13

KEIM, MR

accepted because he has been making allegations of criminal  
paedophilia as well as making allegations of inappropriate  
cabinet conduct for a long time. 1

MR KEIM: His submissions to you this morning - and it's  
plain - - -

COMMISSIONER: Yes, don't limit him to his own  
submissions. He is acting for himself.

MR KEIM: Yes, but his submissions are first and foremost  
- sorry his allegations are first and foremost about the  
destruction of the documents. 10

COMMISSIONER: Yes; yes.

MR KEIM: About the destruction of the documents and he  
says as a particular of aggravation that it was  
particularly serious that those documents were shredded  
because there were some allegations about child sexual  
abuse contained in the Heiner - - -

COMMISSIONER: Yes, that's right, but I think it goes  
further than that and he says, "Well, I've been complaining  
since 1990 about the way the Goss cabinet dealt with those  
documents, whatever they contained, and no-one has been  
listening to me. I've written to the governor. I've gone  
everywhere with this complaint and I've got nowhere and we  
need 11 public inquiries into it effectively and now we  
need another one because we still haven't got to the bottom  
of it." 20

MR KEIM: Yes.

COMMISSIONER: So why isn't he within 3E as a subject  
matter in his complaint as a government response or  
inadequate government response to an allegation by him of  
criminal conduct associated with a response to or an  
allegation of child sexual abuse? 30

40

MR KEIM: The allegation has to be an allegation relating to child sexual abuse. 1

COMMISSIONER: Yes. Or the response does, doesn't it? Does it have to be both?

MR KEIM: It has to be a response to an allegation.

COMMISSIONER: Yes. Of child sexual abuse.

MR KEIM: Yes.

COMMISSIONER: Righto. Say it is; on the evidence, say that it is open on the evidence that he is allegation - Mr Lindeberg's allegation is that there was historic child sexual abuse at a youth detention centre; that's one; and the appropriateness of government responses, including from the Goss cabinet through the years is examinable; and not only that, I'm making an additional complaint of a criminal nature against the Goss government's shredding of those Heiner documents. Why isn't he making both of those? 10

MR KEIM: He's making an allegation - - -

COMMISSIONER: Of criminal paedophilia to the Governor. 20

MR KEIM: Yes, but you're not appointed to find out whether his allegation of that is true or not.

COMMISSIONER: No. But the fact that he's making it and how government has responded to the making of it is within 3(e), isn't it? And it's not limited on his argument to the Goss government, it's limited to government responses, which I've interpreted to mean the executive government responses and they're not limited in time under 3(e). That's the way I read it, anyway, but - that's why I raised it, so I can be - my querulousness can be dealt with openly. Am I wrong or right? 30

MR KEIM: We say in you're wrong, Commissioner.

COMMISSIONER: Okay. Convince me.

MR KEIM: Because the primary allegation has to be an allegation of historic child sexual abuse.

COMMISSIONER: All right, let's deal with that. Let's accept that could be true. Why isn't Mr Lindeberg making such an allegation at this stage, anyway; since 2002? 40

MR KEIM: Because his allegation is about the way in which the Heiner documents were dealt with.

COMMISSIONER: That's certainly one of his complaints, yes.

14/3/13

KEIM, MR

MR KEIM: Which only becomes relevant if the destruction of the documents was a response to allegations of historic child sexual abuse in youth detention centres.

1

COMMISSIONER: I agree with that.

MR KEIM: His allegations don't arise until 2002.

COMMISSIONER: That's right, but they exist in 2013.

MR KEIM: You can perhaps investigate his allegations of responses that have been made to him since 2002, since he first made the allegation.

10

COMMISSIONER: That's my point, although he disavows that. But I'm the Commissioner, I interpret it the way the words suggest. But that's exactly right, isn't it? He's got two sorts of allegations: pre-2002 - or post-1990 and then post-2002.

MR KEIM: It won't take you very long because - - -

COMMISSIONER: That goes to the merit.

20

MR KEIM: - - - you'll be able to find the government responses were perfectly appropriate because he made those allegations without any reliable evidence at all.

COMMISSIONER: Well, as you might ultimately be right about that but that's still a question to be investigated. That's really where we're at at the moment. We're not going beyond whether that's within my remit or not. I just want to know if it is. Do you think it is?

MR KEIM: If you then go back to say, "Well, what was the government really" - interpret the words to say, "What's the intention of the words?" Our submission would be that's clearly not what the words intended; that is a possible but very stretched few of what those words mean.

30

COMMISSIONER: And that would have strength if you didn't know the historical context of this thing.

MR KEIM: But you can't use what you say is the permission to investigate allegations since 2002 into child sexual abuse to then go back and say the government responses in destroying documents was in fact a response to allegations of child sexual abuse, because there were no allegations of child sexual abuse in the inquiry, if you make the finding.

40

COMMISSIONER: Yes.

MR KEIM: So that doesn't assist you with all with regard to the section 129 or section 132 propositions that Mr Lindeberg wanted to make findings about, it only allows

you to investigate what governments have done with regard to unsubstantiated allegations of criminal paedophilia since 2002. So that if you end up by stretching words with this very dislocated sort of set of findings that one can confidently say was never intended by the words which the government chose.

1

I wanted to say one thing further with regard to something that you said, Commissioner, and that is that one doesn't treat the words as legislation. That may be true, but you do treat them as if they were part of a legal document. So it's really no different to construing perhaps a contract or whatever, you're still restricted by the words which have been used and the intention of the executive government is its intention as exhibited in the words it used.

10

COMMISSIONER: If I sent something different to that then I was wrong. I accept that that's exactly what I have to do. I have to fight the purpose, implied or express, it in the words, not in my own words.

MR KEIM: Yes.

20

COMMISSIONER: I understand that.

MR KEIM: And in terms of seeking a broader remit by seeking further terms of reference, you're in no different situation, in our submission, than any other ordinary citizen. You may be the first among equals of ordinary citizens - - -

COMMISSIONER: No, no, I accept that, too.

MR KEIM: Yes.

30

COMMISSIONER: Look, the way I see terms of references are they're my instructions.

MR KEIM: Yes.

COMMISSIONER: And I have to comply with them.

MR KEIM: Yes.

COMMISSIONER: And if I misinterpret them either to fall short of what was required or over reach beyond what was required, I've done the wrong thing.

40

MR KEIM: Yes.

COMMISSIONER: I don't want to do either of those things.

MR KEIM: Yes.

COMMISSIONER: That's the whole point of this discussion, I want to make sure that I find the proper purpose or the intended purpose of the executive government; that I fulfil that purpose based on the evidence and the submissions that I hear; and I don't fall too short nor go too far.

1

MR KEIM: Yes. So if we can just summarise, we say taking the stretched view it doesn't really help you to settle all of those issues because it really just takes you into the post-2002 situation, which doesn't really help anybody very much.

10

COMMISSIONER: Yes, okay.

MR KEIM: They're our submissions, thank you.

COMMISSIONER: Thanks, Mr Keim. Mr Copley.

MR COPLEY: Could I just be heard on that last matter you asked Mr Keim about?

COMMISSIONER: Yes.

MR COPLEY: I noted when this submission came from Mr Lindeberg that for the first time in this commission of inquiry the tentative suggestion that the terms of reference were broad enough to now go off and investigate the response of every cabinet down through the past generations - - -

20

COMMISSIONER: Yes, that's 1.5 or 6.

MR COPLEY: - - - to these allegations.

COMMISSIONER: Yes.

30

MR COPLEY: The submission that I prepared on that point, which I would have given to you and which I'll now give to you is this, is that it is for you to determine the scope of the inquiry, that you must stay within the terms of reference.

COMMISSIONER: Yes.

MR COPLEY: But as long as you - and I'll be quite blunt - do something, then the extent of what you do does not, subject to procedural fairness considerations, concern courts. Support for that proposition can be found in a number of cases which I'll just read into the record.

40

COMMISSIONER: Yes.

MR COPLEY: Because it is sometimes helpful to just bear in mind that there is some law on these things: re Vo v the Criminal Justice Commission (1993) 1 QAR 167 at 172.

14/3/13

COPLEY, MR

50

COMMISSIONER: That's about the CJC exercising or not exercising its functions to review the adequacy of legal aid funding, isn't it?

1

MR COPLEY: Well, in that particular case they had not exercised their function and affidavit material suggested that they had no intention of exercising that function.

COMMISSIONER: And Justice (indistinct) said, "No, you can't do that. You can't not do something you're required to do, but when you do it and the priority you give it is a matter for you."

10

MR COPLEY: Yes. And the other authorities that I'd refer you to would be a judgment of Marceau J in Dixon v Canada (Governor in Council) (1997) 3 FC 169; and in the matter of Fergusson v Cole (2002) FCA 1411 at paragraph 74, which concerned Royal Commissioner Cole:

*The nature and extent of the commissioner's inquiries will be influenced by the time frame within which he is required to work and the resources provided to him.*

20

30

40

50

So your time frame was to report by April 30. Already that date has been extended by another two months to June 30. The position surely comes down to this: if the cabinet's decision to enable destruction in 1990 was, to use as neutral a term as possible, wanting, then the failure of subsequent cabinets to be willing to investigate it speaks for itself. If the decision of cabinet in 1990 was not wanting, then it matters not that subsequent cabinet's declined to act upon complaints about the cabinet decision of 1990. 1

So if that's the view you take and if you are cognisant of the time constraints that have been imposed upon you, you would surely conclude that whatever the outer ambit of paragraph 3 might be you would be perfectly entitled not to explore to the outer ambit of the paragraph having regard to those considerations. 10

COMMISSIONER: So what you mean is even if I could go there, I don't have to go there.

MR COPLEY: That's correct.

COMMISSIONER: And practical constraints like time and resources and other pressing priorities would mean that I wouldn't. 20

MR COPLEY: That's right.

COMMISSIONER: Okay, thanks. Mr Hanger, can you help me about the degree of satisfaction that I need to reach in order to find that the Heiner inquiry was into allegations of historic child sexual abuse in youth detention centres?

MR HANGER: Do you mean whether it's just on balance or whether there's a Briginshaw test? 30

COMMISSIONER: Yes. What do you say about that?

MR HANGER: I suspect the Briginshaw test applies at all times, but as to whether the inquiry was about that - really it's a fifty-fifty as to whether it was about that.

COMMISSIONER: So you say Briginshaw is more for testing evidence rather than finding jurisdiction.

MR HANGER: Yes. 40

COMMISSIONER: But at the same time I wouldn't find jurisdiction on a doubtful basis, would I?

MR HANGER: Of course not.

COMMISSIONER: I would be silly.

MR HANGER: Right.

14/3/13

COPLEY, MR



COMMISSIONER: Especially if there was an easy remedy available. 1

MR HANGER: Yes.

COMMISSIONER: All right, thank you. Mr Lindeberg?

MR LINDEBERG: Commissioner, (indistinct) trying to keep up with it. There is something that - you know, you fought with your terms of reference but equally what was in the mind of the government when it set it up, as I understand it. 10

COMMISSIONER: Yes, that's what we're looking for through the words. As Mr Keim points out, I can only find the purpose through the words, not through the looking glass.

MR LINDEBERG: Yes, I understand. I suggest to you that the issue that is in the people's mind is about the Heiner affair and - - -

COMMISSIONER: Do you mean the government's or the people generally? 20

MR LINDEBERG: I'm saying the government and I - I don't have the paper here in front of me, but I understand it was the government's commitment to review the Heiner affair and it didn't qualify, whatever, notwithstanding within the Heiner affair is the issue of child sexual abuse based on what I and others believed was a reasonable thing to say.

COMMISSIONER: You mean the Heiner affair is what it is and they didn't mean to limit it to child sexual abuse just in case there was no evidence on it.

MR LINDEBERG: Exactly, and again, as you well know, I'm not a lawyer, but understand the word "includes" is a word which expands. 30

COMMISSIONER: Yes.

MR LINDEBERG: To that extent notwithstanding I accept the words that were there, but it would be my strong suggestion that the government wanted the Heiner affair to be finally put to bed. Now, whether or not you could actually do it within your time frame was raised right at the very beginning of the thing and arguably what counsel assisting was saying is that in terms of your definition of government which we - - - 40

COMMISSIONER: Accepted.

MR LINDEBERG: We initially accepted - - -

COMMISSIONER: Reluctantly.

14/3/13

LINDEBERG, MR

MR LINDEBERG: - - - but notwithstanding you made a ruling and we have said that we thought that somewhere in the process you were going to run into some problems. I'm not sure but this may be the problem that we're talking about here now in terms of the narrow definition of "government", but it seems that you did take into account the time constraints under which you had to review this thing. 1

COMMISSIONER: Yes.

MR LINDEBERG: Equally, the other comment from one of the learned gentlemen was that you were put in to review child protection of Queensland and - - - 10

COMMISSIONER: Mr Copley said that.

MR LINDEBERG: Indeed, and within that it was felt by the government that the Heiner came under child protection, rightly or wrongly, as I have perceived in reading things. Now, we don't really cavil with that or question that, but the Heiner affair is both an up and a down thing. Inasmuch as it has a form base on construction of documents, it goes to another level of child sexual abuse. For instance, Mr Copley made comment about the Morris/Howard report, I think, that the former government investigated the matter. I don't want to put words in his mouth but I think he said they didn't. 20

COMMISSIONER: On the papers.

MR LINDEBERG: On papers, but we certainly have questions to say about that particular issue in terms of the advice that was got which stopped the government proceeding as it may want to do.

COMMISSIONER: Yes, but let's just go back. What you say is what you intended, you think the government might have intended and what the public wants is to put the Heiner affair - fully investigate it; reach conclusions; make findings about it; fully explore it whether it was about mismanagement, child sexual abuse or the state of the nation. 30

MR LINDEBERG: Precisely, and my record shows that in terms of when I started off on this, I have limited myself, I believe, strictly. As the evidence has evolved, I have then built on it in terms of the notion that - - - 40

COMMISSIONER: You have certainly built on it.

MR LINDEBERG: I believe that - - -

COMMISSIONER: No, look, I understand what you mean.

MR LINDEBERG: And it did come out.

COMMISSIONER: I think what I'm going to do is I'm going to stand it down. I'm going to think about overnight what I'm going to do. I'm not going to go into the question of whether there is sufficient evidence of child sexual abuse yet. I'm just going to work out what I think these words mean, the purpose that they're trying to convey, the scope, the subject matter that they're identifying and the ambit of my inquiry.

1

MR LINDEBERG: Am I allowed to submit that it may be in the interests of the greater public interest that some clarification is sought from the government in regard to this matter to assist you, whether it was the Heiner affair or just one specific element of it?

10

COMMISSIONER: Yes, certainly you can submit that, Mr Lindeberg.

MR LINDEBERG: Thank you.

MR KEIM: I have an application, commissioner.

COMMISSIONER: Yes, you did.

20

MR KEIM: It relates to Mr Lindeberg's submissions or Mr Bosscher's submissions on his behalf. It's an application that certain paragraphs - - -

COMMISSIONER: Sorry, I'm with you.

MR KEIM: Anyway, it's with regard to the submissions date 1 March 2013. Commissioner, you may recall that Mr Copley raised a matter and you then had some questions of Mr Bosscher. These appear at pages 2384 to 2385 of the transcript.

30

COMMISSIONER: Right.

MR KEIM: I will just read a couple of them to save everybody getting them up. After Mr Copley had a discussion with you, commissioner, you said:

*I'll talk to Mr Bosscher. Mr Bosscher, do you understand what Mr Copley is trying to avoid?*

MR BOSSCHER: Yes, I do.

COMMISSIONER: Do you want to respond to that?

40

MR BOSSCHER: No, I have nothing to put to the witness, commissioner.

COMMISSIONER: Right. I'm assuming when you say you have nothing to put to the witness, it's because there is nothing that you could legitimately put to her.

MR BOSSCHER: *That's so.*

1

COMMISSIONER: *And therefore Ms Matchett can leave the witness box, it never having been suggested and I would be entitled to accept that she didn't fail in any responsibility in connection with anything arising out of the terms of reference of 3E.*

MR COPLEY: *Can I just hasten to add perhaps beyond whatever criticisms may have been contained in my cross-examination?*

10

COMMISSIONER: *Yes, I mean, from Mr Bosscher's point of view.*

MR BOSSCHER: *Nothing additional to that.*

COMMISSIONER: *In addition to what - but do you adopt what might be the implications of Mr Copley's cross-examination?*

and so on.

20

30

40

50

Now, what we say is that the contrast to the undertaking, or the indication that Mr Bosscher has given there, the submissions, the written submissions, seek to have you draw a number of adverse conclusions with regard to our client's conduct which weren't put to her. They appear at page 11 in paragraphs 1.30, 1.31 and 1.32 and they relate to our client should have taken steps to discipline John Oxley Youth Centre staff once it came to their attention the way in which staff were managing detainees. We would say that the propositions probably also fall outside 3E, but in addition to that we rely on the indication given by Mr Bosscher. There's a further set of paragraphs at page 16, commencing at page - - -

1  
10

COMMISSIONER: Mr Keim, I'll hear your submissions on it but I won't make any rulings on it yet, because I think it's sort of a little further down the track than where I'm thinking at the moment.

MR KEIM: Yes. I simply wanted to put it on the record at this stage.

COMMISSIONER: Yes, that's fine.

20

MR KEIM: The second set, they appear at page 16. They're paragraphs 1.46, 1.47 and 1.48. The transcript appears at 1.45 on which the submissions rely. The third set are at pages 60 and 61. They're paragraphs 2.6, 2.7, 2.8 and 2.11. The fourth paragraph is paragraph 64 - sorry, paragraph 2.1.4 at page 64. The submission is that so far as they relate to allegations against - or submissions seeking that the inquiry make adverse findings about our client Ms Matchett, that they should not be published, or they should be the subject of a non-publication order, because it involves unfairness to Ms Matchett because no cross-examination was pursued with regard to those sorts of findings. That's the submission.

30

COMMISSIONER: So you want me to suppress those paragraphs of the submission.

MR KEIM: Yes, except we don't make the application with regard to Ms Warner, to the extent that Ms Warner is included in that. We obviously have no interest in raising that. In some of them it may just mean deleting any reference to our client, but where they relate only to our client there should be non-publication orders with regard to the whole paragraph.

40

COMMISSIONER: Thanks, Mr Keim. What do you say, Mr Copley?

MR COPLEY: I think the starting point is does Mr Lindeberg consent to that.

COMMISSIONER: Are you agreeable to that course for the moment, Mr Lindeberg? We can reopen it later on, but what Mr Keim just wants at the moment is not for his client to be criticised by you publicly when the opportunity to put these propositions to her in person wasn't taken by Mr Bosscher and she hasn't answered them. He wouldn't want the public to get the wrong idea, that there was something more to your assertions than meets the eye.

1

MR LINDEBERG: Look, I accept procedural fairness is the right of everyone, and especially - you know, Ms Matchett included. I would - just for a point of clarification, you haven't settled as to whether you're going to take it out or whether you might just take out Mr Keim's client's name.

10

COMMISSIONER: I think I'll just suppress Mr Keim's client's name.

MR LINDEBERG: Yes. Well, I mean, I would accept - I think I would accept that, yes.

COMMISSIONER: All right. Anyone else want to be heard? I direct that Ms Matchett's name in paragraphs 131, 132, 146, 147 - sorry, 1 point - why do we use points in this one? It's just an extra stroke on the computer. 1.31, 1.32, 1.46, 1.47, 1.48 of exhibit 339, and also paragraphs 2.6, 2.7, 2.8, 2.9 and 2.14. Is that right, Mr Keim?

20

MR KEIM: Not quite, commissioner.

COMMISSIONER: No.

MR KEIM: You omitted 1.30, I thought.

COMMISSIONER: I might have too. So I'll include 1.30.

30

MR KEIM: Yes, please.

COMMISSIONER: Yes, I did.

MR KEIM: Then the third lot was 2.6, 2.7, 2.8 and 2.11.

COMMISSIONER: Okay. I had 2.9.

MR KEIM: Yes.

COMMISSIONER: So it should be 2.11 in lieu of 2.9.

40

MR KEIM: Yes, and the last one was 2.14, an extra - - -

COMMISSIONER: I'll include 2.14. Thank you. Is there - no, I'll leave that for a later date. One thing I'm - no, I'll leave it. It may not arise. All right, well, I'm going to think about it and I'll publish something on the questions that I raised the other day and that were dealt with in submissions, the written submissions, from the

14/3/13

50

parties as soon as I can. Thank you very much for your help. Sorry to take so long. 1

MR HARRIS: If you could - excuse me for a moment, commissioner - - -

COMMISSIONER: Yes, Mr Harris.

MR HARRIS: My apologies. Commissioner, on 19 February I made an undertaking to present the currency of the documents that I wished to tender on that day. 10

COMMISSIONER: Yes.

MR HARRIS: I've now provided that material to counsel assisting. I'd seek to have that marked for identification until - - -

MR WOODFORD: If it can just be marked for identification at this stage. We've just received that affidavit this morning and it's about, like, that thick, so we'll need some time to go through it. We can deal with it being converted to an exhibit at a later date. 20

COMMISSIONER: Okay, thanks.

MR HARRIS: Further, commissioner, I'd like to - - -

COMMISSIONER: I'll just mark it, Mr Harris. It will be MFI 9.

ADMITTED AND MARKED: "MFI 9"

MR HARRIS: Thank you, commissioner. I seek to tender as an exhibit correspondence from the attorney-general to me with respect to my representation of Ms McIntosh and Mrs Farquhar. In the correspondence the attorney-general says that he's unable to agree to our request to expend public funds for representing her. I'd like to just put that on the record. 30

COMMISSIONER: That will be exhibit 348, Mr Harris.

ADMITTED AND MARKED: "EXHIBIT 348"

MR HARRIS: Thank you.

COMMISSIONER: Mr Lindeberg? 40

MR LINDBERG: Mr Commissioner, can I understand where we're at in regard to the question of whether or not 3E has reached - in that are you going to go away and consider - you're going to let us know when the next hearing is going to be?

COMMISSIONER: I'm going to go away and think about everything that's been written on 3E and its width and everything that's been said about it today and decide the question, or I'll decide what I should do, how I should proceed further.

1

MR LINDEBERG: It's just that I've got a couple of statutory declarations I wanted to tender, but I thought that may be done during the - if I had to talk about whether or not the threshold had been reached, but they could, if it's possible - - -

10

COMMISSIONER: Yes, look, we only need to deal with that if I reach the conclusion, which I haven't yet - - -

MR LINDEBERG: Yes, I understand.

COMMISSIONER: - - - that Mr Copley and Mr Keim are right and that the only interpretation I can reasonably put on 3E is that it has to be an allegation or a government response to historical child - well, the Harding incident, in effect. I haven't reached that conclusion. They might be right. If they are then we'll deal with whether you've reached that threshold or not, or whether that threshold has been reached by the evidence that's been presented.

20

MR LINDEBERG: I see. So, I mean - - -

COMMISSIONER: But if you don't have to reach that threshold because it's wider than - - -

MR LINDEBERG: I take your point.

COMMISSIONER: - - - that proposed interpretation, then I can proceed.

30

MR LINDEBERG: I didn't want to lose the opportunity, for completeness' sake, to table two statutory declarations, but it looks like - - -

COMMISSIONER: Have you shown Mr Copley what you want to tender? Why don't you do that and then we'll work it out from there, but you don't really need to do it for today's purposes.

MR LINDEBERG: All right. Look, that's okay. I just wondered. Thank you very much.

40

COMMISSIONER: Yes, thanks, Mr Lindeberg. Okay, thanks, everyone.

THE COMMISSION ADJOURNED AT 12.01PM