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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 19/02/2013

Continued from 18/02/13

DAY 25

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THE COMMISSION COMMENCED AT 10.08 AM

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COMMISSIONER: Good morning, everyone.

MR COPLEY: Good morning, Mr Commissioner.

TAIT, STUART PETER:

COMMISSIONER: Good morning, Mr Tait. Yes, Mr Copley.

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MR COPLEY: Thank you. Mr Tait, after cabinet - or at the time that cabinet decided on Monday, 19 February 1990 to defer a decision to allow you to liaise with the archivist, did the cabinet give you any instructions about how you should undertake that process of liaison?---No.

Did any member of cabinet take you aside afterwards and explain to you what they wanted them?---No.

So it was just a matter left for you to work out as best you could?---Yes.

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Could the witness be shown exhibit 169, please. Now, that letter was sent by you on Tuesday, 20 February 1990, wasn't it?---Yes.

And it bears your signature, doesn't it?---Yes.

And did you type it or dictated for it to be typed?---I can't recall that now but I had a personal secretary who would have typed it, yes.

Yes, but that person probably wouldn't have put the detail in there, would she, off her own - - -?---Generally speaking I hand-wrote the material I wanted to send, she then typed it up for me, I then proofread it and signed it and sent it out.

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All right. So you state to Mr O'Shea that you refer to previous correspondence concerning documents gathered by Mr Heiner?---Yes.

Now, that can, so far as you were concerned, only have been a reference to your letter to Mr O'Shea requesting advice about whether documents could withstand a writ and Mr O'Shea's reply, couldn't it?---I think so, yes, but once again, it's 23 years after the event. But yes, I would think so.

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Because you hadn't - well, do you have any recollection of writing any letter to Mr O'Shea other than a short letter directing him to ring Mr Littleboy?---No.

Okay. And you only got one letter back from Mr O'Shea as at the 20th?---That's my recollection, but once again - I may be wrong but I don't think so. That's my recollection, yes.

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All right. Now, you say in the last paragraph of the letter in 169 that Mr O'Shea's advice was being sought in regard to the letter's suitability, especially in relation to the archivist not being seen to be pressured by the government. Now, why did you put that paragraph in the letter?---Well, I didn't want to colour - the archivist had duties to perform under her act and I didn't want to be leading her in any way so I sought Crown Law advice to make sure that my letter to her was suitable under her Act of Parliament and not in any way trying to lead the decision one way or the other.

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Well, would you agree with me that it would have been a good idea to put into the letter the fact that a solicitor had been seeking access to the documents?---No.

Why not?---Well, I presume that when the archivist got this letter from me after getting the clearance from Crown Law, that she would have sought Crown Law advice in her own right.

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Why would you assume that?---Well, this is a relatively important matter for someone who is an archivist and I would assume that she would do her duty under her act and seek competent advice.

But it was within your power to let her know that a solicitor had been seeking access to the documents?---All I can say to you is that I sought advice of Crown Law in respect of the letter I sent to the archivist and the Crown Law wrote back and said that they thought that it was appropriate and I sent it off on that basis.

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Well, the crown solicitor wrote back - and I'll show you exhibit 172.

COMMISSIONER: Would the fact that a solicitor was seeking access to the documents have been a relevant fact for the archivist in determining whether these documents were public and should be preserved?---I'm sorry, is that a question to me?

Yes?---Could you just repeated again, sir?

40

Was the fact that a solicitor seeking access to these documents seen by you as a relevant fact for an archivist deciding whether or not the document is you were asking about qualified as public documents and therefore needed to be preserved?---No, because my role is not a deliberative one, my role as cabinet secretary was like a super-duper paper shuffler, as you will. I was just trying to make

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sure that the will of cabinet was the highest possible standard and met the Premier's requirements for more information so that he could sort through in his own mind and the mind of his ministers what was the right course of action to take.

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They want to know whether there was any legal impediment under the Libraries and Archives Act, or whatever the relevant piece of legislation was then, to the destruction of these documents?---Correct. And I would have presumed that the state archivist would have taken legal advice from Crown Law - - -

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But how would taking legal advice help her if the fact that a solicitor was seeking access to them relevant because she didn't know that; and her adviser wouldn't know that either?---Well, you've got to put this in context: there was no secret to the fact that solicitors were after this information. I think it was mentioned in each of the cabinet submissions. So all of the CEOs of all of the government departments and all of the ministers were aware that the solicitors were seeking access to the Heiner material. That was not disclosed in any of the correspondence that I can recall.

20

So the archivist would know what cabinet was told?---Well, should do. All she had to do was bring her CEO up - her director general up - and the director general would have been completely aware of what the case was. I mean, this was an attempt to try and work out the best way to do things and the fact that solicitors were after these documents was widely known amongst both ministers and directors general of government departments.

So did you think about the relevance of it to the archivist and say no to yourself, "No, this is widely known, I don't need to tell her something she probably already knows or could easily find out," or did you just not think about it?---Look, I'm sorry, I can't - I really can't answer that question honestly.

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Fair enough, you can't remember what you thought about 23 years ago, neither can I. What about the fact that in seeking her advice you were after something more than just an interpretation of legislation, weren't you? You need to know in context whether these documents could lawfully be destroyed?---Yes.

40

Right. Now, for her to tell you that answer she needed to know what the context was?---Yes.

And you didn't tell her but you're saying to me she could have found out by an inquiry to her DG?---Absolutely.

Okay.

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TAIT, S.P. XN

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MR COPLEY: Is that the same way that Mr O'Shea could find out what you really wanted advice about by ringing Mr Littleboy?---No. 1

See, I suggest to you that you deliberately didn't put into the letter to the state archivist the fact that a solicitor was seeking access to the documents?---Well, that's not my recollection.

Well you see, Mr Littleboy came here and he said that there were two explanations for why didn't go in there: one was it could have been overlooked, or the other was that you might have perhaps told him not to put in their?---I've read Mr Littleboy's -the summary of what he said to the commission and - - - 10

Sorry, summary?---His transcript, I've read it. So I'm aware of what he said that I don't agree with his summary.

Let's just be clear: a summary, if you have a summary of it, wasn't one prepared by the commission?---I'm sorry, transcript was the word I wanted to use - I've read the transcript. 20

Okay, yes?---That's not my recollection.

That's not your recollection?---No.

So it wasn't a matter that you told Mr Littleboy to leave it out?---No.

But it was a salient fact for the state archivist to know, wasn't it?---I presumed that the state archivist would seek appropriate advice on advising the Premier and Cabinet about her duties under her act. 30

So why did you bother to tell her that early in November 1989, Mr Heiner began an investigation?---It was up to her to do the - she was the responsible officer operating under her act. She was responsible for doing her work properly.

Yes?---It's not for me to direct her how to do her work. I was not a deliberative officer. I was - - - 40

You were just a super-duper paper shuffler?---That's what cabinet secretariats are.

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That's what you said you were?---Yes.

Yes, so being a super-duper paper shuffler, wouldn't you want to make sure that the consent that the archivist gave was a complete and proper consent after she knew all the relevant facts?---I presumed that the archivist would be competent in giving advice to the government.

COMMISSIONER: How would you know that? How would you know that she had gone and asked the DG about a salient fact? So how would you know that what she gave back to you was not going to mislead the premier or cabinet or the government?---I just didn't think that that would happen. I just presumed she would do her job properly.

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All right, but didn't you say before that your job was to ensure that cabinet decisions were rigorous and made on the best information available? If that was your job, didn't you have to go that extra yard to find out - not to trust someone else to do that job that you could have done?---That's not my recollection of the events. The recollections are that I wrote a letter to the state archivist that I thought fairly asked her the questions for her to answer under the act. I checked with Crown Law about whether that was an appropriate letter to send to her. Crown Law responded that it was and I sent the letter to her.

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You did more than that because one of the things you went out of your way to do was ensure that it wasn't seen that you were putting pressure on her. That wasn't part of your role either really, was it, as a paper shuffler?---Well, my role is to try and make sure that the machinery of government works as best as possible - - -

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Exactly?--- - - - and I did presume that she would do her duty under her legislation in an effective manner.

So the way you did your duty was to presume that somebody else would do theirs?---You have to have a certain amount of trust in government, yes.

But you can't leave something as important as this, destroying public documents wrongly, to chance, can you? ---Well, if that was the case, I would have expected Crown Law to advise me that the letter should have been adjusted and matters should have been added to it. That wasn't the case.

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We have heard evidence from the ministers to say, "Look, this was really unusual, this cabinet decision. It wasn't a matter of policy. We deferred it twice in fact to make

sure that we weren't - we were destroying public documents. We had to make sure that they were destroyed according to Hoyle"?---Yes. 1

And they relied on you to make sure that the standards that they had to meet were met, didn't they?---No, they relied on the advice of the state archivist under her act.

But didn't you say to me before that your job was to ensure things met standards?---To the best of my ability, yes, and that's why I sought the advice of Crown Law before sending that letter to the state archivist. 10

MR COPLEY: And you deliberately didn't tell the archivist that a solicitor wanted these letters, didn't you?---No, that's not my recollection. I cast the letter as fairly as I - my memory is I cast the letter to the state archivists as fairly as I was able and there were no secrets about solicitors seeking access to these documents. It was widely known amongst ministers and directors-general.

Yes, but she's just the woman out at Dutton Park in the archives?---Yes, and when she receives a letter like that regarding her legislation, I would have thought the first thing she would've done is arranged a meeting with her director-general and also sought legal advice about what response she should give under act. 20

Not only did you fail to tell the archivist that a solicitor wanted the records, you made out to her that they were of no value whatsoever because you put this sentence in, "The government is of the view that the material is no longer required or pertinent to the public record"?---That was the view of - that was the view of the cabinet, yes.

No, it wasn't; no, it wasn't, otherwise they would have destroyed it?---It wasn't theirs to destroy. It had to be if it was going to be destroyed, it had to be destroyed by the archivist and after making a deliberation about whether the documents should or should not form part of the public record. 30

Yes, it wasn't the view of the cabinet that they should be destroyed unless the archivist consented, was it?---Could you just repeat that?

The cabinet was not prepared to destroy these records themselves, were they?---No. 40

They wanted to know, amongst other things, what the archivist thought about it?---Yes.

And you would have to concede, wouldn't you, that your premier and treasurer and all the rest of them would have expected that you would have told the archivist the full

facts?---No, I don't concede that. Are you saying to me that we know that the archivist did not seek any legal advice in giving that advice to cabinet?

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I'm sorry, I can't answer your questions?---Right. It would be a remarkable thing if an archivist who receives a letter like that from the secretary of cabinet did not seek legal advice. That would be my - - -

COMMISSIONER: How do you say that? What's the basis of you saying that that would be so remarkable? Why did you believe that?---Because clearly this was an issue of some importance. She had to make a decision under her act. She was empowered to make that decision and I would've thought she - I would expect a person in that position would seek legal advice about it.

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But what experience did you have in order to have a set of expectations for a state archivist? Did you have any idea how she would go about her job?---I presumed that she would do it competently.

Sure, but why did you presume that that included going to her DG? What had you done before this? Was this the first time you had ever asked a state archivist to destroy public documents?---It was the first time I'd ever been involved in this.

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Exactly?---Yes.

So why would you make a presumption that not only would she do her job but the elements of her job included making the inquiry about a fact that she didn't know but you did, that is, that solicitors were after these documents?---It was not - as I said before, this was widely known amongst all DG's and ministers that solicitors were after these documents. This was in the cabinet submissions and in the cabinet - in all the cabinet submissions.

30

I can understand then in that case that cabinet knew it. Why would the DG's know what was going on in cabinet other than the DG from which this emanated?---Because they get copies. They got copies as well of all the submissions and all the decisions.

All right. Now, why would the archivist speak to her DG about whether or not the documents were public and should be preserved? Why did you think that would be part of her process?---Well, the first thing you would do, I would have thought, in making a determination - you would've got all the facts - - -

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Exactly?--- - - - and the first thing to do is to speak to your director-general and then take Crown Law advice. It was not for me to tell her how to do her job.

MR COPLEY: Telling her that a solicitor wanted access to the records wasn't telling her how to do her job, was it? ---That's why I sought Crown Law advice, to make sure that my letter was done as honestly as possible and as fairly as possible, and all I can do - I mean, in a situation like I was in all you can do is seek the advice of the highest legal officer in the land who was Ken O'Shea. I spoke to him directly about and he wrote back to me saying the letter to go to the state archivist was fine and on that basis I sent the letter off.

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You sought advice regarding the letter's suitability, especially in relation to the archivist not being seen to be pressured by government?---Yes.

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That's what your letter to O'Shea said?---Yes.

And he responded to you saying that he could see nothing in the draft which is objectionable?---Yes.

That he could see no harm in the letter going as drafted? ---Yes.

You didn't ask him for advice as to whether he thought all relevant and salient circumstances had been disclosed to the archivist, did you?---What I wrote to Mr O'Shea and how he responded to me is on the public record. I did the best I could at the time.

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In the letter that you wrote to the archivist you didn't leave things simply neutral. You told her that the government's view was the material was no longer required or pertinent to the public record?---Yes, that was the view of cabinet.

COMMISSIONER: At that time, was that the view? Where was cabinet at? Just remind me of the date.

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MR COPLEY: Cabinet had been told that solicitors were seeking access to the records and they, cabinet, deferred the decision pending the state cabinet secretary liaising with the state archivist about it.

COMMISSIONER: Where did you get the idea that cabinet was of the view that the documents were not pertinent to the public record? Where did you get that idea from? ---Actually I might be wrong in saying that.

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MR COPLEY: That's what you wrote?---Say that again.

That's what you wrote?---May I see that document?

I think it's before you?---What paragraph are we looking at?

Just have a look through?---I'm sorry, I've only got
Mr O'Shea's letter back to me. I haven't got my letter to
Mr O'Shea.

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What's underneath that one there? Have a look on page 2,
the second paragraph. How could you possibly state - how
could you possibly honestly state that the government's
view was that this stuff was no longer required or relevant
to the public record when cabinet was aware that a
solicitor was seeking access to it?---That is my
understanding of the will of cabinet at the time and that
paragraph reflects what I believe to be the case.

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COMMISSIONER: I asked you what your basis of belief was? 1
---The discussions in the cabinet room.

That you were present for?---Yes.

What were the discussions?---Oh, I mean, to remember back
23 years, that's really hard work.

Yes. You can remember back what the basis of your belief
was that made you state in that letter to an archive as to,
"Had a public duty to advise the government about whether
or not a document was to be kept or not, what the will of 10
the cabinet was." You can remember, surely, what gave you
that impression from the discussions?---I really am
struggling on that. I'm sorry. 23 years later, you
know - - -

When you say "cabinet" you mean the majority of cabinet, do
you?---No. Cabinet always makes decisions unanimously.

Right. So cabinet unanimously made a decision that those
documents were not necessary for the public record?---Once
again, you know, I can't remember something I can't
remember in detail. I'm under - - - 20

MR COPLEY: But you just said cabinet always make
decisions unanimously?---- - - oath. That was my
recollection at the time.

COMMISSIONER: Well, no, let's have a - I know you're
under oath. Let's have a look at it. You're asserting as
a fact in a letter that you got legal advice to send that
cabinet, which only acts unanimously as you just said, had
actually reached a conclusion about the value of these
documents. Do you assert now on your oath that that is a 30
true reflection of the state of affairs at the time you
wrote that letter?---I certainly assert that that's what I
believed at the time. I can't recall the exact discussions
in the cabinet room so - - -

I'm not asking you for the exact. I'm asking you for your
basis of belief to make that assertion?---That's my belief,
yes.

So, therefore, let's have a look at that. One of your
options would be, "Well, I saw the cabinet vote by
consensus. I heard the discussion and I could feel the
sense in the room was that everyone was of the same view," 40
or, "I didn't have a clue what they thought, but I thought
I would say that anyway"?--Cabinet doesn't. It's a
general discussion.

Consensus?---Yes.

They discern a consensus. So for you to say that they had reached a discern of consensus about that fact, you must have had some sense of what they were thinking?---At the time I believe I did.

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So it must have been based on what they had said because you didn't know what they were thinking unless they expressed it?---That would be right at the time, but once again I just can't remember the exact conversations
23 years - - -

What I can take about it, even though you can't remember the exact conversations, whatever they were, they led you, the cabinet secretary, to believe that it was truthful to say to a public officer that the cabinet as a whole didn't see any public relevance or didn't see these documents as being relevant to the public record any more. Is that your evidence?---That's my evidence.

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Thank you.

MR COPLEY: And, see, I suggest to you that you either deliberately or simply negligently left out of the letter to Ms McGregor this important fact that a solicitor wanted these documents?---That's not correct.

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But you would agree with the benefit of hindsight, wouldn't you, that for the archivist to make an informed judgment, it would have been a relevant fact for her to know whether anyone wanted the documents?---I would agree that the archivist needed to take advice on all the matters that were contained in the letter and I presumed that she did; that she would have spoken to her director-general and she would have spoken to Crown Law.

COMMISSIONER: All right. So it was a relevant fact that you could find out you didn't need to state. Is that your position on that part?---Yes.

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What was relevant to her knowledge to do her duty about what cabinet thought? Why did she need to know that?---I just tried to get the letter to the - word it the best I could based on the judgment of cabinet at the time and had it checked by Crown Law.

Why did you want to tell her what cabinet thought, but not tell her what a solicitor wanted?---Because I presumed that she would take advice from both the director-general and from Crown Law in respect of giving advice under her act.

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But one of the things you asked Ken O'Shea about was to make sure that the letter didn't look like you were putting pressure on her and yet one thing that could very well look like that is telling her what cabinet wanted?---And that's why Ken wrote back and said, "I don't think the letter is pressuring her."

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TAIT, S.P. XN

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MR COPLEY: Why did you think it was necessary to tell the archivist that the crown solicitor didn't think there could be a claim for crown privilege on these documents because that would have been a matter she could have found out herself by getting in touch with Ken O'Shea?

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COMMISSIONER: Can you just remind me what paragraph we're looking at this first time?

MR COPLEY: Read the first paragraph on page 2?---I'm just quoting back there the original advice from Crown Law.

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But why bother? She can find that out herself. She's competent. She's presumed to be competent. She can get in touch with the crown solicitor and find it all out herself.

COMMISSIONER: She could find it out the same time she can find out if the solicitor is looking for them. When she makes that inquiry, she will find out the answer to the other one?---Well, I mean you would have to go back to what was in my mind when I drafted this letter 23 years ago.

MR COPLEY: Yes, and - - -

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COMMISSIONER: That's what we're trying to do.

MR COPLEY: You knew by April 11, 1990, that it had really blown up, this whole issue, didn't you?---No, not really.

Didn't you read the front page of the paper to see that it was a controversy on April 11, 1990?---It might have been a controversy in the media. It was not controversy in my mind.

It was, wasn't it, because you actually took steps to physically execute, to physically carry out a cabinet decision, didn't you?---I was required to carry out a cabinet decision, which I took steps to do. Yes.

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I'm sorry. Did cabinet direct you that you had to personally, or someone from your office personally, ensure the documents were destroyed?---I think there's a cabinet decision that - if I remember correctly, there is a cabinet decision saying that the documents be delivered to the crown solicitor - to the office of the state archivist for destruction.

Be handed to the state archivist for destruction?---Yes.

40

Right?---That's what cabinet decided.

I see. So if cabinet says, "Be handed to," you thought that meant that someone from your office actually had to hand them over personally?---Yes.

And then accompany that person all the way up the street to the Family Services building to where they were going to be destroyed?---Yes. 1

How come they weren't destroyed in the cabinet office where the documents were?---Because they were on - it was the responsibility of the state archivist to destroy them, not us.

But why couldn't they just be destroyed in your office? ---Well, I don't know what was inside the boxes. 10

Of course not. You didn't look, did you?---No, I did not look.

No.

COMMISSIONER: But I thought that the state archivist said exactly the opposite. She said it wasn't her obligation to destroy the documents.

MR COPLEY: She did.

COMMISSIONER: It was her obligation to consent to their destruction and after that she had done her job. You think otherwise?---I had a cabinet decision directing me to do something. I just told Ken Littleboy to take the documents up to Family Services, make sure that they go back to the state archivist and they're destroyed in accordance with the decision. 20

MR COPLEY: But Mr Littleboy went out and collected Ms McGuckin from the archive office, didn't he?---I can't answer that. I don't know. I just gave the job to Ken to do. I didn't really - it had to be done by somebody. 30

It wasn't a matter you took - - - ?---I gave the job to Ken.

It wasn't a matter you took a great deal of interest in, this document destruction issue, was it?---Once cabinet had made the decision, my interest was to fulfil the decision.

It would have been easier to get the state archivist's consent, if you didn't tell her the documents were wanted for legal action, wouldn't it?---I presumed that she was going to do the research that - you know, to fulfil her duties under her act. 40

Can I suggest to you that you deliberately - I suggest to you you deliberately left that fact out of your letter? ---No, that's not correct.

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I suggest to you that there is discernible - a certain
vagueness in your correspondence to other public officials
around this time?---Well, I don't believe that's correct,
but - - -

For example, in the letter to Mr O'Shea dated 13 February
1990, you state:

*Advice is sought as to what action might be taken
should a writ be issued to obtain information
considered to be part of the official records of
cabinet. The information was gathered during the
course of a departmental investigation and will be
submitted to cabinet and retained in the cabinet
executive. Mr Ken Littleboy may be contacted on
this telephone number for further information.*

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TAIT, S.P. XN

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Why didn't you put in that letter to Mr O'Shea that the cabinet wants advice about whether or not the documents gathered by Mr Heiner could become cabinet documents if they were submitted to cabinet?---I mean, 23 years later it's hard to - I mean, you're quoting a letter - can I see that letter? 1

Show him exhibit 158, please. You didn't bother to tell Mr O'Shea in writing what it was you wanted advice on, did you?---I spoke to Ken O'Shea about that. He knew exactly what it was about. 10

So why was it necessary for him - that is Mr O'Shea - to pick up the phone to ring you or Mr Littleboy?---Because that was just to tidy up any details - administrative details that arose out of the seeking of advice.

Well, have you read what Mr O'Shea wrote on that note? ---I must admit I find it a bit hard to - - -

That's okay, I'll read it because we know what it says, it's been read into evidence by someone they could read it:

I rang Ken Littleboy. They (cabinet secretariat) have large sealed box containing all Noel Heiner's - 20

that could be tapes or pages, et cetera -

Want to know whether they would become cabinet docs and thus be secret.

Now, if Mr O'Shea knew that prior to getting this letter, why would it be necessary for Mr O'Shea to ring Mr Littleboy and then for Mr O'Shea to write down that piece of unimportant information?---Presumably this was written after he received the letter; Ken's notes on the file are after he received the letter. 30

That would stand to reason?---Yes. I just can't see - what is it you're asking me precisely?

If Mr O'Shea knew all about this, hence it wasn't necessary to put in the letter that it concerned the Heiner matter, why was it necessary for Mr O'Shea to ring Mr Littleboy? Your response to that was, "Oh, if he needed to know any administrative details" and yet we read that when Mr O'Shea rang Mr Littleboy, this is what Mr O'Shea discovered and he regarded it as important enough to make the file note about it?---There was no hiding the fact that this was about the Heiner matter. 40

So why didn't just go in the letter?---I can't answer that. I don't know.

How old were you in 1990?---38, 39.

Righto. And you were writing a letter to the crown solicitor?---Yes. 1

The government's top legal man, leave aside the solicitor general who may or may not have been appointed at that time?---Yes.

And you don't bother to give you any detail, you simply say, "You - You, O'Shea, can ring my Mr Littleboy if you want to know anything further"?---I didn't know whether Ken was dealing with this himself. He was dealing with this but I can't see anything unusual about that. 10

Can't you?---No.

Okay, so you'd agree, though, that if Mr O'Shea got this letter he'd be none the wiser about what it related to until he phoned Mr Littleboy to find out?---This letter was written after the various cabinet submissions had been circulated once or twice. He would have seen those. He would have known about those matters.

How do you know that?---Well, I had spoken to Ken personally about these issues. He knew exactly what it was about. It was about the Heiner matter, absolutely. 20

I see. So why not just put that in the letter?---Well, I mean, I can't see any reason why wouldn't have. The letter is drafted. I think it achieved the objective of wanted it to achieve and it got Ken thinking about the issue and any details that he needed in addition to the material he already had, he got from Ken.

Why were you so active in getting the advice from Mr O'Shea? Why wasn't it left to the so-called first law officer of the crown, the attorney general, to do?---I'm not so sure about that. Cabinet want me to tidy up this matter and it was given to me to do. 30

Who gave it to you?---Who gave - - -

Who gave it to you to do?---Cabinet.

When you say, "It was given to me to do"?---The cabinet.

COMMISSIONER: But how does cabinet give you a job? What's the process? How do you know that cabinet has just given you a job?---Because the Premier leads to his left and says, "Stuart, I want you to sort this out, please. Get onto Ken and - - - " 40

MR COPLEY: I see, so Wayne Goss tells you to get onto Ken and sort this one?---I can't remember him saying, "Get onto Ken," but he - - -

Well, you just said that?--- - - - but he - - -

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You just said that?---He would have turned to me and said, "Stuart, I want you to sort this one out, please." 1

Well, before you said he did say it and now you're saying he would have said it?---Whether he mentioned Ken by name or not or whether he mentioned the Crown Law, I don't know, but he was very concerned about the first cabinet submission and the idea that we could just destroy documents without it being done in accordance with the law, and I was given the job of tidying this up.

COMMISSIONER: And he was relying on you to make sure he didn't fall into error and destroy something that he should be destroyed and you left it to the archivist to make all relevant inquiries that she needed to make?---Correct. 10

Is that right?---Yes.

MR COPLEY: Even though Mr Goss personally told you he wanted you to sort this out because he was very concerned about it?---Yes.

And you didn't even bother to tell the archivist, "Look, what's worrying cabinet here is that a solicitor sent letters wanted the documents"?---I presumed that the archivist would take advice from Crown Law in respect of the legislation. I did presume that. 20

COMMISSIONER: Can I take it from what the evidence you just gave me about how cabinet gives you a job that the way that cabinet didn't see any ongoing value in these documents was because the Premier leaned over to you and said, "Stuart, we don't need these documents and more. Tell the archivist that"?---No, that would have been the case. He wouldn't have been so specific. 30

Righto. So how would it - I now know how you know that cabinet gives you a job; how do you know what cabinet is thinking?---There's general discussion around the table and try to pick up the theme of what is required.

So you sort of interpret what everyone is saying and say, "Ah, now, that is a unanimous decision of cabinet which I can put in letter"?---Yes.

MR COPLEY: So you discerned from the discussion that cabinet view was that these documents just weren't required or pertinent to the public record?---I think cabinet had its doubts whether they were or not, but they wanted to seek the advice of the state archivist under her act. 40

And so being aware that cabinet had its doubts about it, why didn't you tell the state archivist that cabinet is concerned about destroying documents a solicitor says he

wants?---Because Ken O'Shea was aware of that and I presumed she would take, under her act, advice from Crown Law.

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But you must have realised by now that these public servants work towards an expected them to be because you'd had to endure the frustration of the crown solicitor waxing and waning about whether they were public records?---No, that's not correct at all.

It was irritating, wasn't it?---No, it was not.

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You even rolled your eyes yesterday when you told me that, that, "Oh, Crown Law officer changed its view about this." You rolled arise in the witness box to me?---I don't recall rolling my eyes and that was not my - - -

Don't you?---It was not my intention to indicate cynicism - - -

Okay, so that was just an in voluntary reaction, was it? --- - - - or anything like that and I was certainly not frustrated by any of the actions of Ken O'Shea. I always regarded him as a very professional officer.

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And you couldn't even show him the respect of telling him in a letter what was you wanted advice about, you just said, "Ring my Ken Littleboy"?---In regard to the details and administrative matters I thought Ken would almost certainly get a senior officer to assist him.

Yes?---The fact that Ken did it himself - - -

Well, that wouldn't surprise you, would it, because it was cabinet are sensibly asking for the advice?---Correct.

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It's a very important body, isn't it, cabinet?---Yes.

You were very important and in it, weren't you?---Not particularly, no.

You were just a humble servant as well, were you?---I did the best I could in the circumstances that I was operating, I believe I did my duty in this regard.

What would a super-duper paper shuffler write to Ken Littleboy on 23 February saying, "KL, please destroy records as per above" - the word "prior" is crossed out and the word "after" is written above it - "to cabinet on 26 February 1990"?---Yes. I think the cabinet once again delayed the decision to a later date. If I recall it was March when those documents were eventually destroyed.

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Why would a super-duper paper shuffler write, "KL, please destroy records as per above prior" - crossed out - "after

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to cabinet on 26/2/1990," signed by you 23/2/1990?---Well, we wouldn't have destroyed them until cabinet had made a decision for their destruction.

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Why would you be telling him to do it prior to?---I recall that I think one cabinet submission got pulled. I can't remember now but - the date's a bit unusual. I can't quite recall why that date is in there.

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How would you presume to know that cabinet was going to decide the following week to destroy?---That's why I said "after cabinet". 1

"Please destroy records as per above after to cabinet"?
---"After to cabinet", yes.

I see; so this was just a note that if by chance cabinet decided to destroy, you can get onto destroying?---Correct.

Just have a look at exhibit 175A. You anticipated full well that cabinet would destroy the documents and you knew that cabinet would give that authorisation. That's why you wrote that?---That's why I put "after" - not "prior"; "after". 10

Why did you write "prior"?---It was crossed out. I can't recall now.

It's a reflection of the certainty or the sureness that you had in your mind on 23 February that they would be destroyed, isn't it?---No, that's not my recollection.

Why on the afternoon - - -?---We certainly wouldn't have destroyed any documents without cabinet's approval. 20

So why would you be giving him instructions to do something before cabinet makes a decision?---That's why I've got "after" on the document.

Why would you be writing an instruction to him about what he's to do before cabinet has decided to do it? You were so much more than a super-duper paper shuffler, weren't you?---No.

You orchestrated the opinion from the state archivist to get the outcome that you thought was desirable, didn't you?---I most definitely did not. 30

And that was a quick decision to destroy?---No.

And you wanted the decision to be quick because it was anticipated to go before cabinet on Monday, 26 February 1990, wasn't it?---That's why I used the word "after", "after cabinet meet".

Okay. So on exhibit 175A the archivist has whipped in her advice at 144 on 23 February, hasn't she?---Which document am I looking at now? 40

175A. It's up there somewhere on it?---Yes.

The state archivist has faxed in the advice at 1.45, hasn't she?---I can't see the date stamp. Is it at the top?

You're a businessman, aren't you?---Yes.

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You know how to read faxes?---I can see it now, yes, that's correct. 1

Yes. So she gets a letter from you on 23 February 1990 and then by 1.45 that afternoon she's got a written reply into your office, hasn't she?---What date did my letter go to her?

23 February 1990, according to its date?---Could you just refer me to the document - to that document, please?

Do you want to see a copy of the letter you wrote to the archivist?---Yes, please. 10

Exhibit 173. If you don't have it, we'll get it. Now, you're not going to tell me that was sent the day before, are you?---I'm sorry, I'm just trying to refresh my memory here. Your question again, please?

You sent the letter to the archivist on 23 February 1990, exhibit 173?---Yes.

And the archivist had a reply back into you by 1.44 on 23 February 1990?---It would appear so, yes. 20

Because it was all urgent, wasn't it, because it was anticipated cabinet would be considering this the following Monday, the 26th? You thought it was urgent?---I haven't got the word - have I got the word "urgent" in my letter to the state archivist?

I'm suggesting to you that you considered it to be urgent because you anticipated that cabinet was going - - -? ---No, that's not my recollection but - that's not my recollection. 30

Well, look at exhibit 175A. It's the one with your handwriting on it. Have you got that yet?---Yes.

As at 23 February 1990 you must have had a belief that cabinet was going to consider these documents the following Monday, the 26th?---It there was a draft - I think there was a cabinet submission lodged that was subsequently pulled. That's my recollection but I might be wrong there.

So it was a matter to get urgent advice from the archivist on on Friday, 23 February, wasn't it?---Well, no, that's not my recollection. I don't think there was - there was no use of the word "urgent" or anything like that. 40

Okay. So in exhibit 173 in the second-last paragraph where it says "and your urgent advice is sought as to the appropriate action to be taken in this regard" - is there something wrong with my eyes?---Which paragraph again, please?

The second-last paragraph on page 2 of exhibit 173?---Okay. I've given you incorrect information. I do apologise. The word "urgent" has been used. 1

And you have had the opportunity to peruse these exhibits, haven't you?---Well, there are a lot of them.

You have had the opportunity to peruse these before you came to court, haven't you?---Yes, I gave you an erroneous answer. I do apologise, but, yes, I can see the word "urgent" has been used. 10

And in fact when you were first contacted about giving evidence in this matter, one of the preconditions that you purported to lay down was that you would need three or four hours to peruse any relevant documents?---That's right.

But because they have all been put up on the Internet since they have been tendered, you have had months to peruse these documents, haven't you?---No, I have not.

Why is that?---Because I was only advised of being called her several weeks ago and I was overseas. 20

You were advised in December that you would be wanted as a witness and you said you were in the Antarctic?---And I only got back from overseas at the end of - at the start of February.

And one of the preconditions to giving evidence was that the commission had an onus to satisfy you that Wayne Goss consented to you talking?---It's normal that cabinet secretaries get the approval of the then premier to give - that wasn't about giving evidence here. That was about giving a statement to the police. 30

And you haven't claimed a reasonable excuse for not testifying here, have you?---No, I've been summonsed.

Because once you looked on the Internet, you could see that all the relevant consents by whoever needed to give them had been given a long time ago, hadn't they?---Well, I didn't really notice that but that could be true.

No. So anyway the advice - - -

COMMISSIONER: Sorry, Mr Copley, I'm just going to ask a question while I think of it. 40

I know that you can't pinpoint now why you knew that cabinet didn't see any value in the documents and that you mentioned that to the archivist without trying to pressure her or influence her decision, but why didn't cabinet see any value in keeping these documents? What did you pick up

during their conversation, their to and fro, about why they didn't think it was worth keeping them?---I really can't - I really - you're asking me to recall detailed discussions and I can't recall. 1

No, I'm just asking you to recall the effect of the discussions. You are able to say, "That's a decision in cabinet. They don't want to keep them." Surely at sort of around that same time you would have had an idea about why they didn't think they were important to keep, bearing in mind what had been said in cabinet about them?---I mean, I'm reflecting on what I recall was the general tone of the discussions of the cabinet at the time. 10

Yes; yes, like, for example, you said the fact that the solicitor was after these documents was a well-known fact around the place?---Yes.

Was that a factor in cabinet's decision that they didn't need to be kept?---No, I don't believe it was.

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Now, why do you not believe that it was going back to the same discussion in cabinet that occurred 23 years ago when you can't tell me what it was that led you to believe that they didn't want to keep them or what their reason was? So you can remember what they didn't discuss but you can't remember what they did. How is that possible?---Well, the original cabinet decision was put in by Family Services and it related to - it's my recollection that it related to the Heiner inquiry being closed down. At that stage Crown Law had advised that the documents should not form part of the public record and should just be destroyed. Cabinet was uncomfortable about that advice, wanted to know on what basis it was made by Mr O'Shea and on what legal basis documents could be destroyed and sought my assistance in finding out. We went back through both the department and directly to Mr O'Shea, who subsequently changed his advice and said the documents in his view do form part of the public records and accordingly they should be - if there's a question of destruction they should be referred to the state archivist for a determination under her act. That was the course of events that took place over I think about three or four weeks while cabinet was determining the matter. My recollection is that there was not a - I can't recall any specific discussion about these being sought by solicitors or anything like that. That was not really one - - -

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Well, that's not what you said - - -?---That was not the motivating factor in cabinet's deliberations.

That's more like what you said. You see, you're so positive about what wasn't the motivating factor and yet you can't help me about what might have been?---Well, what - - -

Yet this occurred at the same discussion we're talking about, 23 years ago?---Well, I think the motivating factor from my perspective was process, making sure that the process was lawful and in accordance with any legislation that might have existed at the time.

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I'm not asking you about the process of destruction, I'm asking you why cabinet didn't see the need to keep them and therefore was contemplating them being destroyed when everyone knew that somebody's solicitor was after them? ---Well, you need to speak to ministers about that.

Yes, that's what's troubling me. I'm going to have to do that, aren't I? If I want to know what cabinet thought or said you can't help me, so I'm going to have to ask them, maybe.

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MR COPLEY: So is that your view, that the commission needs to hear from ministers if they want to know the answer to these questions?---Well, remember, I was working for cabinet.

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Yes, but anyway, you agree now that you conveyed to the
archivist in the letter that her advice was needed
urgently, didn't you?---Yes, I did. 1

She, very obligingly, was able to provide urgent advice by
1.44 on the 23rd?---Yes.

You were, I suggest, supremely confident that the following
Monday cabinet was going to authorise destruction of the
records and with that confidence you gave an instruction
to Mr Littleboy, "Get onto destroying those after cabinet
on Monday, Ken"?---I'm not sure if that's exactly what
happened. I thought that the documents - I thought the
cabinet submission was going to come up earlier than it
did. 10

Yes?---Cabinet made its decision later than what I
presumed. That's why I changed the wording to - "prior"
to "after", but we would have always waited on cabinet to
make its final determination about what it wanted to do.

There was always going to be a cabinet meeting on
26 February 1990, wasn't there?---Well, most Mondays - just
about all Mondays there were cabinet submissions - cabinet
meetings, yes. 20

This note on the Friday suggests that there was going to
be a meeting on the Monday, on exhibit 175A, doesn't it?
---Yes.

It also betrays supreme confidence on your part that the
records would be able to be destroyed after cabinet met on
Monday, because you knew what cabinet was going to decide?
---Well, one never really knows what cabinet is going to
decide. That's just - that's something that ministers
would - occasionally you think you know what they're going
to decide, but you never really do. 30

Well, see, I'm suggesting to you there you're probably
giving me a Sir Humphrey answer. You knew on the 23rd what
cabinet was going to decide. That's why you told Littleboy
he could get cracking with destruction after cabinet on
Monday?---After; after the decision is actually made.

Is that good administrative practice, is it, to give a
subordinate an instruction to do something in case cabinet
decides to make a decision along those lines on Monday?---I
really can't recall. I mean, you're asking me to go back
23 years and find out, you know, what I - try and remember
what I told Ken. 40

COMMISSIONER: No, he's not, he's asking you about your
practices in telling him in advance that he should do
something in the event that something happens in cabinet?
---Well, once we had the advice from the state
archivist - - -

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That's all you needed, wasn't it? That was the last piece of the jigsaw?---I suppose I was presuming that cabinet would decide to take the advice of the state archivist, but whether it did or not is still - I mean, it still had - the cabinet meeting had to happen.

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MR COPLEY: Of course. Cabinet would exercise an independent judgment, et cetera, et cetera, et cetera, but on the afternoon of 23 February 1990 you were supremely confident cabinet was going to destroy, so confident that you told Littleboy that he could get onto this after cabinet on Monday?---Well, I can't tell you how confident I was 23 years later. Once the state archivist advice was in I would have presumed that cabinet would have taken the archivist's advice.

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Yes?---But you can't be - you can never be sure about how cabinet will decide.

Did you have any discussions with anyone in or connected to the cabinet, to the ministry, in arriving at some degree of confidence cabinet would take the archivist's advice?---We would have had discussions prior to the cabinet meeting on the Monday when we met in the premier's office.

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Right, and who would be present for that meeting?---The head of premier's department, the head of treasury department, the treasurer, from time to time the leader of the house, and myself.

So on this particular Monday, the 26th, do you recall that meeting?---Not specifically.

What happened on the Monday that caused cabinet not to process this matter that day?---I can't specifically recall that. I'm not sure whether it was pulled by the minister or whether it was pulled by the premier or he wanted more time to think about it. I don't know.

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Okay, well, I'll just get you to have a look at exhibit 175C. This is a letter you wrote on 26 February 1990, isn't it?---Look, can I just go back to one other matter?

No, just answer the question?---Okay.

This is a letter you wrote on 26 February 1990, isn't it? ---Yes.

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It's soliciting a further submission from the Department of Family Services on the question of destruction, isn't it? ---Yes.

Was that letter drafted before or after cabinet on Monday the 26th, do you remember?---No, I can't remember.

Is it possible, having a look at the content of the letter, especially the second paragraph, that the matter might have been mentioned in cabinet on the 26th and someone there thought, "Well, we might be best off waiting for a further submission from the department concerned before we act on what the archivist has said"?---It might well have been. I can't recall, but I would say that one of the issues to do with the earlier letter was that it was received - - -

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Well, now you're answering another issue, are you?---The archivist's advice arrived - what we always try to do is have seven days, six or seven days, for all ministers to consider cabinet submissions, and I note the archivist's advice came in very late. The premier was very uncomfortable about ministers getting submissions too late for them to give it due consideration so that might have been one of the issues, I don't know.

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In any event, you asked Ms Matchett to have a further submission prepared?---Yes.

Whose writing is it at the bottom of that?---I think it's Ken Littleboy's, but I can't be sure.

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Of course, another submission was duly prepared, wasn't it? ---Yes.

You've probably got a copy there in your folder, have you? ---Yes, I probably have.

All right, but we'll show you the one that we understand to be the relevant one. Exhibit 181, please.

COMMISSIONER: While that's being got out, did you want to say something? You wanted to add something before when Mr Copley was in the throes of another question?---I was just - I noticed the date on the state archivist's letter and I just - the premier was very unhappy about things going out at the last moment.

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Right?---That could well be the reason that particular submission was pulled.

Because it was - he didn't want to do it in haste?---Yes.

MR COPLEY: So your concern about the need for urgency mightn't have perhaps been shared by the premier?---That could well be the case. I don't know. You'd have to ask the premier about that - the then premier.

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Sorry?---The then premier.

So now the submission that you sought was duly given and signed apparently on 27 February 1990, wasn't it?---Yes. 1

And so therefore when the matter came back before the cabinet on 5 March 1990 it came back via a submission from the sponsoring minister?---Yes.

So the cabinet could then be sure that the Department of Family Services was still desirous of having cabinet considered the documents from the point of view of destruction if it got a submission from the department, wouldn't it?---Yes. 10

Yes. And then the decision was that the documents be handed to the state archivist for destruction?---Yes.

And it was based on that decision that you decide that you had to have Mr Littleboy actively play an active role in that process, didn't you?---Yes.

How many other decisions of the cabinet as a cabinet secretary did you or your staff visibly involve yourself in, in terms of executing?---That was not unusual. Sometimes we'd have goal decisions where ministerial action was required urgently and we would have deliver - Ken would have deliver the material to DGs or to ministers. 20

Yes. Hand-deliver cabinet decision, you mean?---Yes.

Yes. This was so much more than just hand-delivering a cabinet decision to Family Services, wasn't it?---It was abiding by a decision that cabinet had made and there was a box of material that needed to be destroyed in accordance with cabinet's directions and I made sure that that was done. 30

But when cabinet decides, for example, to use a hypothetical example, that the treasury would allocate some money to another government department or provide some funding for some program in another government department - you and Mr Littleboy didn't hare off down to the treasury and procure a cheque from the treasury and that accompany the treasury official around to the department to give it to an officer of the department and that accompany that officer to the bank to bank it, did you?---No.

No. So what was it about this matter that required the active dissipation and oversight of someone from the cabinet office?---We had a box of material that was securely - a secure box of material that needed to be destroyed by the state archivist. I wanted to make sure that the box was delivered to the archivist and destroyed in accordance with the cabinet decision. 40

But there'd be no need for you to do that, would you, because you operated on a presumption that people like the archivist were competent, professional, and knew how to do their job. That's why they didn't need to be told things they could find out through other sources, like the fact a solicitor wanted the letter. You didn't need to have someone supervise the process of destruction, did you? ---The cabinet submission says the material was to be given to the state archivist for destruction. The material was in either the cabinet room or my office, I don't really recall which, and I made sure it was delivered to them and I got Ken to do it.

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Yes. So to make sure it's delivered they bring a woman from state archives up, "Here is the box. Take it away." That would be complying with the cabinet decision, wouldn't it?---Yes.

But that's not what occurred, was it?---How Ken went about delivering the box to state archives - the archivist, I don't recall. I asked him to do it, to make sure it was given to them. Whether he rang them and got them to pick it up or whether he took it down, that was up to him.

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If he went off down the street carrying a box for Ms McGuckin to Family Services, that was a matter entirely that he decided to do himself as far as you were concerned?---Yes.

Right. Did he tell you that he'd done that?---I can't recall. I can't specifically recall. You know, I get the impression when he came back or when I saw him in the office that afternoon he said yes, it had been given to state archives, but I can't really specifically recalled the discussion.

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And did he tell you it had been destroyed?---I can't recall, but I presume it would be destroyed because it was given to the state archivist and there was a cabinet decision for it to be destroyed.

But you would have wanted to know that it had been destroyed because you were very concerned to carry out the cabinet decision, weren't you?---That was up to the state archivist.

Yes, but you would have wanted to know whether or not she'd actually done what cabinet had decided?---Well, I don't think I thought of that, I just presumed she would do what she was given the task of doing.

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So why not just leave it to her to come and get, just ring her up and say, "Well, they're here. Come and get them"? ---Ken could have well asked her or somebody from her office to do that. I didn't give specific instructions to Ken, "Pick up the box. Take it down the road. Give it to

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the state archivist." I just said, "Ken, this needs to go to state archives and could you make sure it happens." 1

Did you give him specific instructions that destruction wasn't to occur in the cabinet office?---No.

Is there any reason why they couldn't have been destroyed there?---Well, I didn't know what was in the box. It might have been tape-recordings. We had shredders - paper shredders - but we didn't have any means of destroying tape-recordings or any other - I didn't know what was in the box. 10

But you could have - - -?---There could have been hard disks or hard drives from computers.

You could have opened the box to see whether or not they could be destroyed there, couldn't you?---Well, I could have but I did not.

Why not? Why didn't you ever look in the box?---
Because - - -

Well, you laugh. You laugh as though it's a silly question?---Because the - - - 20

Cabinet has decided on 5 March it's to be destroyed, it's just a matter of mere mechanics now how it's done. Why were you so adverse to looking in the box?---I wasn't adverse to looking in the box but there was no - the documents did not form part of the public record and the archivist had made a determination that they were accordingly to be destroyed and there was no reason why a public servant should look at documents of that nature.

Now, I'll just put this to you so that you understand exactly what is being put to you and I'll give you another opportunity to comment on it. I'm suggesting to you that on 23 February 1990 in order to ensure that the archivist provided the opinion he was seeking as quickly as possible, you deliberately failed to tell her that a solicitor was anxious - desirous of getting the documents?---That's not the case. 30

You were only the acting cabinet secretary at that time, weren't you?---Yes.

You would have been keen to make a good impression on the cabinet?---There were many people acting in the public service after a change of government. 40

Yes. What, are you saying, that you really didn't care less whether you stayed as the cabinet secretary or not? ---Well, everyone has ambitions in life. I had mine.

Yes, and your ambition was to be the cabinet secretary, 1
wasn't it, at that time?---Yes.

And so one way of impressing the cabinet would have been
to have sorted out this frustrating mess left by the
previous government, wouldn't it?---Well, I don't think I
was attempting to impress anybody. There were many issues
coming across the cabinet's table. There were 20 cabinet
submissions per meeting, this was one of them.

Yes, but you see Mr Comben said yesterday that this was 10
an unusual one because it was the first time they were
asked to step outside what he characterised as policy
matters into a technical matter. Would you agree with
that?---Well, not always. I think the incoming government
had only been operating for a few months. There are many
issues that cabinet gets involved in; some of them are
technical, some of them are policy - - -

COMMISSIONER: Know, is this the first time that this 20
cabinet got involved in something technical as opposed to
policy?---I'd have to go back and refresh my memory. I
think prior to this particular - there was 100 decisions
prior to this one, the 120 by the time it was concluded,
and I'd need to look at them all to really give you an
honest answer about that.

MR COPLEY: No further questions.

COMMISSIONER: Thank you. Mr Hanger.

MR HANGER: Just a couple.

Mr Tait, do you still have exhibit 181 in front of you?
That's exhibit 181 you're looking at?---Yes. Yes, I do. 30

All right. I see that in exhibit 181 the objective of the
submission was made fairly clear:

*Destruction of material gathered by Mr Heiner in the
course of his investigations would reduce risk of
legal action and provide protection of all involved
in the investigation?*

---That's correct.

That's why the concern was expressed to destroy?---Yes. 40

Yes. And looking at the second page there, I see that -
first of all, let me precede that by saying you've been
asked a number of questions by my learned friend about
urgency and you conceded you made a mistake about urgency
and corrected it. There's a heading there on the second
page, "Urgency: speedy resolution of the matter will

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benefit all concerned and avert possible industrial
unrest"?---Yes. 1

What's that a reference to?---Remember, I didn't draft this
cabinet submission, it was drafted by the department for
Anne Warner. That's their view about urgency.

Was there any discussion in cabinet about the possible
industrial unrest?---Look, I really can't recall that, no.
I don't think there was.

Okay?---I can't recall. 10

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Again the author of the document drew to cabinet's attention that the documents were wanted. Do you see there? Look at the document under the heading of "Urgency"?---Yes. 1

There's no misleading of cabinet under - - -?---Absolutely none.

But then saying, "No formal legal action seeking protection had been - seeking protection in the documents" - sorry, I will read that again, "No formal legal action seeking production of the material has been instigated"?---Yes, that's correct. 10

Yes?---That's in the submission, yes.

Yes, and you understand that to be correct advice? ---Absolutely.

Did you understand that to be an important aspect?

COMMISSIONER: Why does it matter what he understood whether it was important or not, Mr Hanger? 20

MR HANGER: His integrity has been challenged, but if you don't think it's relevant, I won't pursue it.

COMMISSIONER: I don't think it is, but you might ask him - I might ask him, did cabinet regard the word "formal" legal action as a key word, as opposed to "informal"?---I really can't answer that. Honestly, I can't recall whether the word "formal" was discussed, no. It may well have done. I don't know.

MR HANGER: I think you will recall that there was a High Court case after this that bears on it and some English common law that relates to it, but opinions might have differed at the time. 30

COMMISSIONER: Yes; no, that is why I was asking the question whether they saw any significance in the addition of the word - whether the word "formal" made any difference to cabinet and I just thought Mr Tait might be able to help me with that.

MR HANGER: Yes, but it looks like whoever drafted it put it in there for a reason because it's fairly clear that the solicitors were wanting the documents. 40

COMMISSIONER: Yes.

MR HANGER: I would suggest to you just commonsense indicates that the word "formal" is put in there for a particular reason.

COMMISSIONER: Was advised.

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MR HANGER: Used advisedly.

COMMISSIONER: Thanks, Mr Hanger.

MR HARRIS: I have no questions, commissioner.

COMMISSIONER: Yes, Mr Lindeberg?

MR LINDEBERG: Thank you.

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Mr Tait, I want to get something clear. I think I understood from your evidence yesterday that the Heiner documents in the box turned up in your office without any forenotice. Is that correct?---They were brought up by Family Services. I think Trevor Walsh might have been the person who brought them up.

He suddenly arrived on your doorstep, "Here, here's a box of documents I want you to look after"?---Look, I can't recall the exact circumstances in which the documents arrived in the cabinet secretariat. In fact I have no memory of actually seeing the box. Ken Littleboy says it was in office but I can't ever remember seeing the box.

20

But, to your knowledge, they turned up before any cabinet submission arrived?---Yes.

It didn't strike you as unusual for that to occur?---I'm just trying to remember now but - - -

COMMISSIONER: Excuse me, I'm going to make a ruling. Why is that relevant? I didn't let Mr Hanger ask a similar question.

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MR LINDEBERG: I'm going to develop it on the next question, commissioner.

COMMISSIONER: You better ask the next question first.

MR LINDEBERG: I wanted to ask you: do you have any idea of a legal term called "warehousing of evidence"?---No.

Can I suggest to you that this is it, and I'm sure it will be corrected by the learned gentlemen: that it's an improper practice of deliberately transferring required documents to another place to avoid or obstruct access which might normally occur in a discovery or disclosure process in a judicial proceeding.

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MR HANGER: Well, I can't correct or not.

COMMISSIONER: I think it's a phenomenon that grew up in the tobacco cases.

MR LINDEBERG: Yes.

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COMMISSIONER: I think it's a recognised phenomenon now.

MR COPLEY: It may be an American expression.

COMMISSIONER: Yes, but the practice is, I think, international.

MR LINDEBERG: Well, I want to put this to you, Mr Tait, and you can disagree or agree: that the documents were suddenly put into your possession on or about February 9 from the Department of Family Services hoping to gain cabinet confidentiality over them but to also allow the department to be able to tell Coyne and Dutney's lawyers who were seeking access to them that the department no longer had them in order to defeat the legal scope of public service regulation 65 which the lawyers were wanting to exercise on behalf of their clients but which could only apply if the Heiner documents were in the possession of the department at the time.

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COMMISSIONER: Have you got that?---Can I break that into two answers? Yes, I do accept that the department might well have sent the documents to the cabinet secretariat to try and gain cabinet confidentiality over the documents. That might well have been their motivating factor but I have no knowledge of the second part of - I have no knowledge of the Family Services Department's relations with any of the staff within in.

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MR LINDEBERG: No, well, there is evidence which shows that the lawyers on 8 February put a claim on the documents under - - -

MR COPLEY: Well, he doesn't know that.

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MR LINDEBERG: No.

MR COPLEY: He just doesn't know that so there's no point - - -

MR LINDEBERG: All right.

COMMISSIONER: I think that is a submission, Mr Lindeberg.

MR LINDEBERG: Okay.

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Now, can I take you to the crown solicitor's advice of the 16th, the one that you received from Mr O'Shea? I think it's 164?---Did you say "164"?

Yes, 164?---Yes, I have it in front of me.

Now, do you notice it talks about in regard to the documents being discovered? At page 2, down the bottom

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paragraph it talks about, "There must, however, be a pending action, commission of inquiry or other civil or criminal proceeding pending before anyone can seek production of the documents"?---Yes. 1

"If then, for example, anyone who suspects he or she was defamed in of the material produced by Mr Heiner were to commence an action against him in respect thereof, the plaintiff would no doubt at a fairly early stage in the action seek an order for third-party discovery of the material pursuant to order 35 rule 38 of the Rules of the Supreme Court." Do you agree with that?---Sorry, it's advice of the Crown Law. Was it for me to agree with it? I accept that's his advice. 10

And you were aware of that?---Yes.

Can I put it to you that all the time when the parties were handling these documents - well, when you were handling the documents, anybody who had possession of the Crown Law advice would realise that once pending proceedings commenced - in other words, once a writ was served - there was a prospect that these documents would be available under discovery. Do you agree with that? 20

MR COPLEY: The crown solicitor is using the expressing "pending" not in a sense that Mr Lindeberg understands.

COMMISSIONER: Yes, I think you are getting a bit technical, Mr Lindeberg. What Mr Tait has already said is that everybody knew that a lawyer was chasing these documents when the issue was before cabinet. Why do you need more than that for your proposition?

MR LINDEBERG: Insofar as you're happy that that encompasses the prospect of future judicial proceedings. 30

COMMISSIONER: No, all I can go on is what Mr Tait says about what he thinks - and being cabinet secretary and giving that due weight, what he thinks was common knowledge within cabinet and the top levels of government and presumably, I think, including the archivist - if she didn't know, she could easily find out - and Mr O'Shea. As to whether or not - whether Mr Tait knew, believed or not that the pendingness of the litigation was relevant somehow, I don't see that helps you.

MR LINDEBERG: All right. 40

COMMISSIONER: It certainly doesn't help me whether Mr Tait thought there was some significance in the pendency. 1

MR LINDEBERG: I'll move on, commissioner.

COMMISSIONER: It's a legal question, really.

MR LINDEBERG: Mr Tait, did the thought ever strike you that - or did you ever consider the custodianship of these documents, as to who may have the custodianship of them? ---You mean in a legal sense? 10

By law?---No, not really, I don't think. At the time I was just trying to work out what was the proper course of action.

COMMISSIONER: The cabinet office was the custodian at some point, in the sense of had possession and control over them?---Yes. There was a box of documents, yes, or whatever they were.

MR LINDEBERG: But in these documents arriving to your office they suddenly arrived and by their arrival you took that to mean that they were in your possession and control?---I suppose in a physical sense I was. I was unclear about whether they formed part - when they first arrived I was unclear whether they formed part of the public record or not. That's why we sought advice. Then afterwards, once we received final advice from Crown Law that they did not form part of the public record, we then had to seek the advice of the crown archivist in respect of whether they should be retained or not, but certainly we had physical control over them for a period of time, yes. 20

But there is a - see, there is a change of these documents. At one moment they are believed, at a particular point in time, that they are Mr Heiner's records. Do you agree with that?---I don't know. I never opened the box. I presume they were. 30

The advice that you received on the 16th talked about that the crown solicitor had reached the better view that they were now public records?---Yes.

Did you ever consider what the less better advice was? ---No.

These documents came out of the Department of Family Services?---Yes. 40

I put it to you that there is a law, section 12(3)(r), under the Public Service Management and Employment Act which indicates that the ownership of these documents rested with the department and therefore in this - you

never had any letter relinquishing that custodianship from the department to yours. It was just the physical arrival of them?---Yes, that's my recollection.

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So on that basis cabinet and you took it upon yourself to take these documents to the state archivist to have them appraised for destruction?---I'm sorry, only after the state archivist ruled that they were no longer required for - they were no longer required as public documents.

No, let me be clear what I'm saying, is that it was cabinet - cabinet took the decision and then you carried it out, but it was cabinet that took this decision to have these documents appraised for destruction when they had arrived into your department from the Department of Family Services. There was no consultation with the Department of Family Services, as far as you know?---Well, remember, family services prepared for their minister all the cabinet documents, so there was no - I'm not quite sure what you're getting at here.

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I'll make the point that to your knowledge the Department of Family Services never relinquished its custodianship of these documents pursuant to the law which placed them into their custodianship.

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MR COPLEY: The witness shouldn't be required to answer that, because the question all proceeds on the basis that section 12(3)(r) says ownership rests with the chief executive of family services. What section 12(3)(r) says, that without limiting her responsibilities under subsection (1) the responsibility includes responsibility for paragraph (r), maintenance of proper records. That's all it says.

COMMISSIONER: Yes. No, I was notionally excising the legal aspects of the question, but can I ask you - - -

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MR LINDEBERG: Well, I wanted to finish this line.

COMMISSIONER: Okay.

MR LINDEBERG: I was just wondering whether or not - - -

COMMISSIONER: But you can't ask him what the law is and whether it complied with the law. You can ask him if he got anything formally from the department relinquishing custodianship to the cabinet office. As to whether or not that would have been effective or necessary, that's something else.

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MR LINDEBERG: Did you get any such letter, Mr Tait, that you can recall?---I can't recall, no.

The fact that the documents came from family services, is that the reason you took them back there to have them shredded?---I didn't take them back, Ken Littleboy did. 1

I understand that. I mean - - -?---No, I don't think that had anything to do with it. They just - they had to be delivered back to the archivist. I suspect - I don't know, but I'm trying to recall Ken Littleboy's testimony, but my understanding is they went back to family services to be given to Trevor Walsh, who was the cabinet legislation and liaison officer, and then on to state archives. I might be wrong about the course of events but I don't think there was any other purpose or anything like that. They had to be delivered back to the state archivist and that was the purpose of returning them. 10

Can you look at exhibit 173, please?---Yes.

I put it to you that you didn't just send that letter out to the state archivist, did you? According to the notation down the bottom you also sent her a copy of the crown solicitor's advice, albeit that Mr Ken Littleboy signed it, as I understand it?---Just one second, could you? So, "Material and copy of crown" - can we just read that? I just want to make sure I've got that little annotation there of Ken's right. Can you read it to me? "Material and copy of crown solicitor's letter." 20

"Solicitor's letter"?---"Of 16/2/90."

"Hand delivered"?---"Hand delivered".

"To state archivist today"?---"SA. Ken." That could well be the case.

Was that normal practice, to take crown solicitor's advice to the cabinet, to send it to another department? ---Absolutely. 30

Do you think that - did you have any view at all that the - I'll approach it in a different way?---Sorry, I thought the crown solicitor's advice was to me.

To you?---Did you say it was the crown solicitor's advice to cabinet?

COMMISSIONER: No, it was - I think the question was was it normal practice for crown solicitor's advice, whether it was to you or not, to cabinet and then pass it on through cabinet, via cabinet, to the department?---Yes. 40

MR LINDEBERG: Would you agree that the archivist is required to carry out her functions in an impartial manner in terms of making an appraisal for them - when she appraises them?---Yes.

I put it to you that by sending that advice out to the
archivist, what you were doing was you were putting one
view of the records to her. Didn't you see that as putting
pressure on her?---No. 1

Would it be your position that she could have then got a
different view to counterbalance that view?---Absolutely.

COMMISSIONER: Sorry, Mr Lindeberg. Did anyone put it to
the archivist that she felt pressured by the letter?

MR LINDEBERG: If you're asking me, not that I can recall, 10
commissioner.

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COMMISSIONER: Yes. So I'm just wondering what - Mr Tait has already said he didn't want to give that impression and that's why he ran it past the crown solicitor to get his view on whether the text would have had the unintended effect of putting pressure on.

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MR LINDEBERG: But there's one further step. Mr Tait has said that the state archivist could have got her own advice.

COMMISSIONER: Yes.

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MR LINDEBERG: Do you mean by that, Mr Tait, that she could have got advice from the crown solicitor?---She could've chosen advice from a variety of different angles. I mean, I would have thought the most likely place to go and get advice would have been the crown solicitor, yes.

But he has already advising cabinet on the same thing? ---In regards to how then he responds to that, he could have established Chinese walls inside his own office or he could have farmed it out to another legal person. I'm not sure how the advice to her - was sought by her and what advice was received by her.

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Can I take you to exhibit 293, please? Do you have it? ---Not yet.

Sorry?---Yes, I have it.

I think in your evidence yesterday you said it was quite acceptable for - I'm not sure what level, but would you say public servants to access previous cabinet submissions providing that they didn't show them to members of the current government? Is that a proper representation? ---Yes.

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So does that mean that a public servant can turn up unannounced and say, "I want to see a particular cabinet submission," or do you have a process whereby you ask them to put it in writing or do you have a register or something like that?---Yes, you can't just seek the documents of the previous government. There has to be a reason for it. It has to be in writing and it's considered by the cabinet secretary who makes a determination one way or another.

Now, it's been adduced in evidence that Ms Matchett turned up at your office and sought to access certain documents. Do you recall that?---No, I do not.

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But if she did turn up, you would have asked her why? ---Yes.

Sorry, did you say it needed to be put in writing?---Yes.

And registered?---I don't recall whether it was registered but, yes, we would want something in writing. 1

But without that you wouldn't allow access?---Yes, you can't just rock and roll up and want to get access to a previous government's records. There's a process that one goes through and it needs to be in writing.

I understand; and as part of that process, is there some then following obligation upon that bureaucrat to, for want of a better word, swear that they will not show that to a member of the new government?---This is all included in the cabinet handbook which binds - which is adopted by various incoming governments of different political persuasions and it's no longer a contentious issue. This is just the way the public service should properly behave. 10

No, I'm not suggesting it's contentious. I just wanted to make sure that there was some record of people turning up to do things; that they just couldn't, you know, walk in and say, "Show me," et cetera?---Yes.

It was very formalised. Finally, I wanted just to ask the question - if I'm getting right, you talked about yesterday - is it Belle du Jour - - - 20

MR COPLEY: No, that's the racehorse.

MR LINDEBERG: Sorry, you talked about - - -?
---Billet-doux, yes.

Billet-doux.

COMMISSIONER: You better explain that for the record.

MR LINDEBERG: Yes, could you?---Well, it's a treasury terms. It's French for love letters but it's a little tiny note that's put on every cabinet submission to guide the premier and the senior officers in their very quick run-through of the cabinet bag prior to a cabinet meeting. It happens about 8.30 every Monday morning. It's very easy to draft something that's five or six pages but it's pretty hard to draft it into one or two paragraphs. 30

COMMISSIONER: That is where that saying comes from, "I sat down to write you a short note but I didn't have time so I wrote you a long one instead"?---Yes. 40

MR LINDEBERG: But I just wanted to be clear from that that this is the process before you actually go into the cabinet meeting. Is that right?---Correct.

But that doesn't mean to say that there isn't a process earlier on between the premier and his advisers in relation to the Premier's Department, how they might want to handle a particular - - -

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COMMISSIONER: No, you're right, but that is speculative. 1
You don't need Mr Tait to endorse or refute that
suggestion, Mr Lindeberg.

MR LINDEBERG: All right.

COMMISSIONER: That is something you can make on your own.

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

COMMISSIONER: Yes, Mr McGaw? 10

MR MCGAW: No further questions for me. I think it's been
covered, thank you.

COMMISSIONER: Thank you. Mr Copley?

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

COMMISSIONER: Yes.

Mr Tait, thank you very much for the evidence that you have 20
given and the time you have taken to do it. You are
formally excused from the obligations of your summons.

WITNESS WITHDREW

MR COPLEY: I call Norma Alice Jones.

COMMISSIONER: Does anybody else need to be here for
Ms Jones? Does anyone have an interest in Ms Jones's
evidence other than those of us who are in the room?

MR COPLEY: I don't think Mr McGaw has any interest. 30

COMMISSIONER: No, Mr McGaw doesn't. Mr Lindeberg put
something to Ms Warner.

MR COPLEY: He did.

MR LINDEBERG: Sorry, I was assuming that I do have an
interest.

COMMISSIONER: Yes.

MR COPLEY: Yes, we are assuming you do too. 40

COMMISSIONER: I'm just wondering whether Ms Warner does,
that's all.

MR COPLEY: Ms Warner was present with her lawyers when -
Ms Warner's lawyers were present when Ms Warner was
questioned and I did inform Mr Byrne that the commission
would be anxious to obtain a statement from Ms Jones or at

least call her as a witness and we would need to know her whereabouts and Mr Byrne said, "She's in the public gallery." 1

COMMISSIONER: That was handy.

MR COPLEY: So it was more than unusually easy for the police to obtain a statement from her.

COMMISSIONER: Okay.

MR COPLEY: So Ms Warner's lawyers were aware that we were intending to hear from her. 10

COMMISSIONER: Fair enough, thank you.

JONES, NORMA ALICE affirmed:

ASSOCIATE: For recording purposes, would you please state your full name and your occupation?---Norma Alice Jones, retired.

MR COPLEY: Could Ms Jones be shown her statement, please? 20

COMMISSIONER: Good morning, Ms Jones; welcome?
---Thank you.

I bet you didn't think when you turned up yesterday in the back of the court you would be in the front today?---No, I did not.

MR COPLEY: Ms Jones, is that the statement that you provided to the police yesterday, 18 February 2013?---Yes.

I tender that document. 30

COMMISSIONER: That will be exhibit 331.

ADMITTED AND MARKED: "EXHIBIT 331"

COMMISSIONER: May it be published, Mr Copley?

MR COPLEY: It may be, yes.

COMMISSIONER: I direct that it be published.

MR COPLEY: I think in the circumstances, having regard to the content of the statement, I will leave it for Mr Lindeberg or any other party to ask whatever questions they want now. 40

COMMISSIONER: I might have Mr Lindeberg go first, if that is all right with you, Mr Hanger.

MR HANGER: I have no questions.

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MR HARRIS: I have no questions. 1

COMMISSIONER: Mr Lindeberg?

MR LINDEBERG: Thank you, Mr Commissioner.

Good morning, Ms Jones. Ms Jones, looking at your point 4, you say, "Early in my appointment, I believe in January, Kevin came to the minister's office in person and demanded to speak to the premier"?--Mm'hm.

MR COPLEY: "To the minister." 10

MR LINDEBERG: Sorry, "to the minister." I put it to you that your chronology is not correct?---Mm'hm.

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When you say "I believe in January", you only believe it. 1
You're not certain?---No; no, not certain of the time;
could've been early February. I can recall that - I recall
because we were in the process of having a look for some
more space on the floor in terms of office space for us and
we were - myself and a couple of the other staff were
standing not far from the outside office where people ring
the bell to go into the minister's office or to the DG's
office. We were all on the same floor in the old building
of the Family Services building. I recall we were talking
about space or, you know, where we were going to be, and I 10
have a view - I can't recall whether this is true, but Mr
Lindeberg had either been to a meeting on the floor or had
been in the precinct somewhere and came over and was -
realised obviously that there was ministerial staff, asked
for - to see the minister and - not to me at that time, to
one of the other people. I heard the discussion because I
was standing around, and I went and basically had a
conversation with him, and I said to Mr Lindeberg the quote
that he used yesterday, which was that if he really wanted
to see the minister - make an appointment, then he should
ask the union to formally request an appointment, which was
the practice that we were setting up for people to have 20
delegations, so that the union would ring or write, say
who was coming to the meeting, what the issues were for
the meeting, send any relevant documentation. That was a
process which we were doing for - I think you have to
imagine that we'd just changed the government. It was a
very large portfolio. There was Family Services,
Aboriginal Affairs, there was Ethnic Affairs, there were
huge numbers of requests for appointments, there was huge
number of requests for delegations, and we were trying to
process everything in a meaningful way so that we could
actually do it with some order, and obviously in that way.
Now, I was aware that there were some issues that - as 30
Kevin was the POA officer I was aware that there were some
issues; not over the issue, I was aware there were some
issues. And I thought it was appropriate that if the union
wished to talk to the minister then the union would make
the appointment and they would bring Kevin along if that
was the case and they would bring all their relevant
information.

COMMISSIONER: You saw Mr Lindeberg as a representative of
the union and the formal process for access to the minister
as a representative was for your head body to make a formal
request in writing or oral?---Absolutely. I would have 40
thought that most organisations, including the unions,
would not have felt happy about any of their staff rocking
up to the minister and having a ministerial appointment at
this stage over any particular industrial issue that might
have been in the making or on - - -

You didn't do walk-ins?---No.

Okay.

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MR LINDEBERG: Ms Jones, I put it to you that that's a complete misrepresentation of the interchange that occurred between you and I?---Well, that's your view and I - - -

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Let me put - no, look - - - ?--- - - - this is my recollection.

Let me put this to you: that the sequence of events is that I was instructed by my - - -

COMMISSIONER: No, she doesn't know what you were instructed, Mr Lindeberg?---No.

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MR LINDEBERG: Well, the reason I - - -

COMMISSIONER: Don't tell her what your reasons were.

MR LINDEBERG: Okay. I put it to you that the first contact I ever had with you was on a phone call on or about 8 March.

COMMISSIONER: So therefore not in January or February.

MR LINDEBERG: Not in January at all?---Well, I can recall quite clearly this issue. I can't be sure of an exact date. I can recall then knowing that you - from the staff in the office - that you may have phoned a couple of times, but on no occasion do I think that you were put through to me. I fact, I don't think you even asked to speak to me.

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COMMISSIONER: But he's saying that he spoke to you for the first time after the event you've referred to?---No, it was earlier than that.

MR LINDEBERG: No, I'm not - - - ?---I mean, I can't be sure exactly the date, but you were in the office precinct when I spoke to you. I don't even think I spoke to you on the phone at all. I can't recall - - -

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COMMISSIONER: Whether in March or any other time?---I can't recall it at all.

MR LINDEBERG: Can I put it to you the reason I must have got through to you was because you were the minister's principal private secretary, weren't you?---Yes.

And therefore it would have been appropriate for me to talk to you if I was trying to seek a meeting with the minister?---Not necessarily. The appointment secretary would have given you the information that basically that I had said. I mean, she would have said, "Look, who do you represent? Where do you come from? What are the issues? Send us the brief. Send us who's going to attend the meeting." She would have dealt with that. Now, if you'd

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asked to speak to me she may have said - you know, I may have been there or I may have been in a meeting, I don't know, but I can't recall having had phone conversations with you at all.

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Well, I put it to you that I did?---Mm.

And my conversation was about a meeting requested with the minister on behalf of my members. And in the course of that conversation - it related to the Heiner inquiry - and in the course of that the conversation, however it happened, got around to the Heiner inquiry documents and I put it to you that you said to me, "Oh, they've been shredded"?---I have no recollection. I could not imagine that I would have said that to you. In fact, I would have said very little to you more than giving you any information at all.

10

Well, can I put - - - ?---But I probably didn't even - I probably wasn't even aware until - I think you've got to understand my level of knowledge in relation to this matter was not a lot. I came on staff in January. Basically my role was to - we had no staff so it was putting staff on, it was finding the proper premises, it was rooms, it was to get ready for the parliamentary sitting, it was to ensure that all the procedures were in place. At that time the minister and the acting director general were involved in a number of issues; one of those was this issue. I was peripheral to any information because I got on with the task at hand. That was the first six weeks.

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COMMISSIONER: Can I just - - -?---Yes.

- - - broker this a little? Did you know of such a thing as the Heiner documents?---Yes.

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Did you know at any point in time that they had been shredded?---Probably not until after the event.

Right. When do you think you first became aware of that? ---That they were actually shredded?

Yes?---Well, I mean, I don't know. It may have been after the cabinet decision - the final cabinet decision - I can't recall at all. I mean, I - - -

Did you ever have a conversation with Mr Lindeberg in which either of you raised the issue of the Heiner documents or their destruction?---I have no recollection of that meeting. As I said, the only meeting I can recall was the one in which we did have the discussion about how we got to have a meeting.

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And that's referred to in your statement?---That's referred. Now, the date may be wrong, time lapses. But I can't recall having any other conversation with him.

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And your position is that you didn't discuss the Heiner documents or their destruction with Mr Lindeberg at any time and you certainly didn't tell him that they had been destroyed?---No.

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And you didn't tell him that they'd been destroyed before you knew that they had in fact been destroyed?---No.

Is that right?---That's right. And in no way - and I refer to the other point that you made yesterday - that somehow the minister and I had a conversation and I was supposedly to give you that information to somehow throw you off the track.

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MR LINDEBERG: With respect, Ms Jones, I didn't put that to you. I didn't say - - - ?---That was - - -

That was suggested by counsel assisting?---Yes, I was sitting in the gallery.

I didn't do it.

COMMISSIONER: Okay.

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MR LINDEBERG: Let me put this to you?---Mm.

Let me put this to you, that you may have said it to me inadvertently?---Always a possibility but I doubt it very much.

I put it to you that that is what I am saying occurred?---Well, I'm saying it didn't, so - - -

And I'm saying to you upon that comment - it surprised me and I said, "We want those documents." And the phone call finished. I put that to you?---Well, that's - that's your recollection. My recollection is not that at all.

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I put it to you the only reason that I came to see you - - -

COMMISSIONER: Mr Lindeberg, you can't argue your point.

MR LINDEBERG: Sorry.

COMMISSIONER: You've got to put your proposition.

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MR LINDEBERG: The proposition I put to you is that when I came to see you it was to seek a further meeting - well, to try to follow up on the phone call to have this meeting with - my union members with your minister.

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COMMISSIONER: No, again, you can't put why you did something unless you told Ms Jones that's why you were doing it. Did you tell her why - - -

MR LINDEBERG: Well, I say to you that is why I was talking to you.

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COMMISSIONER: No, did you tell her that that was why you - - -

MR LINDEBERG: Yes, I did. I'm saying to you that is why I spoke to you?---What, at the meeting, when we met?

On the phone call, first of all?---I can't recall the phone call. I can recall the - a meeting in the foyer.

I put it to you that the only other time I've spoken to you was when I met you and I put that proposition to you that I wanted to - my members wanted to meet the minister?---And I can - - -

20

That was the only reason?---And I can recall at the meeting in the foyer, which was fairly public, because there were other staff members still standing there, that it would certainly not have been proper for me to engage you in anything that had happened that I did know of, if I did know, and other people were standing there. I just wouldn't do that.

COMMISSIONER: In any event, you say you had a phone call discussion about the Heiner documents with Ms Jones. She says no, she didn't.

30

MR LINDEBERG: Basically that's it, commissioner.

COMMISSIONER: Yes.

MR LINDEBERG: No, look, I have no further questions of Ms Jones. Thank you very much.

COMMISSIONER: Thank you. Mr Copley?

MR COPLEY: When did you first become aware of a man called Kevin Lindeberg? Do you remember which year of your life - or which year, do you recall?---I probably knew he was an organiser for the POA.

40

That doesn't answer my question, though. When?---I don't know. 89, 88. I wouldn't know.

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JONES, N.A. XXN
JONES, N.A. REXN

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So does that mean that before you became a senior policy adviser you knew of the name Kevin Lindeberg and what he did?---Vaguely. 1

Right?---I didn't know him - I'd probably said hello to him. He might have been at something I was at or whatever, but I vaguely knew who he was, yes.

Okay. I'm just asking you because in paragraph 3 you said, "In 1990 I knew Kevin Lindeberg"?---Yes, well - - -

Then it said, "I probably had met him"?---Previously. 10

"And I knew him to be an organiser." It just doesn't tell us when?---No. You know, 89 I probably came across him somewhere. I knew who he was.

Was he, to your knowledge, in the Australian Labor Party, or a member of it?---I don't think so, actually. I'm not sure. I haven't come across him in that way, I don't think.

Were you in that party?---Yes

20

That party obviously had something to do with the Professional Officers Association from time to time, even when in opposition. Is that the case?---I would imagine they would be at different fundraisers or events, yes.

Right, okay. So whenever he first spoke to you in 1990 about whatever it was, he wasn't just like an ordinary person in the street you'd never met before, he was a person whose existence and name and occupation you had some familiarity with?---Yes. He was basically not an acquaintance of mine but he did indicate that he was an acquaintance of the minister and therefore, you know, he needed to have preferential access because he had been - you know, he'd known the minister.

30

Was he a man prior to that comment from him that you'd ever heard the minister speak of and say, "Yes, Kevin is a bloke I know," or, "He's a friend of mine, or an acquaintance"? Had the minister ever discussed him with you?---I don't think so. There were lots of people in unions and organisations that we probably - or the minister had probably come across, as well as me.

Right?---But, you know, we weren't coffee partners or anything, that's for sure.

40

After the ALP government got elected in December 1989 did you perceive in your role as senior policy adviser or as a member of the Labor Party that there were people about that had - people connected with unions that had perhaps, to use an old expression, great expectations of what access they

might have to members of the government, members of the ministry?---Well, I think that's always the case. It doesn't only apply to the Labor Party or - - - 1

Yes, well, I'm not asking in the abstract, I'm just asking you about that particular time in history?---I imagine there were people, yes, who thought they had access, and it was part of my role to put in place a process that was fairly transparent and ethical and that's what I intended to do.

Was it your perception that Mr Lindeberg might have been a person who thought that he could have access?---I guess I thought that he probably thought that. 10

No further questions.

COMMISSIONER: Thank you. Mr Harris, do you have any - - -

MR HARRIS: Nothing arising, thank you.

COMMISSIONER: No, and you didn't have anything, Mr Hanger, did you? 20

MR HANGER: No.

COMMISSIONER: No, okay.

MR COPLEY: May the witness be excused?

COMMISSIONER: Ms Jones, thanks very much for coming. You're formally excused from your summons?---Thank you.

WITNESS WITHDREW

MR COPLEY: I call Darryn Raymond Collins. 30

COLLINS, DARRYN RAYMOND sworn:

ASSOCIATE: Thank you. For recording purposes, can you please state your full name and occupation?---Darryn Raymond Collins, senior forensic nurse at the Park Centre for Mental Health.

COMMISSIONER: Thank you, Mr Collins. Take a seat. Welcome. Yes, Mr Copley? 40

MR COPLEY: Could Mr Collins be shown the statement, please? I just want you to look at this document, Mr Collins, to see if it's the statement that you provided on 12 February 2013?---Yes, that's correct.

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JONES, N.A. REXN
COLLINS, D.R. XN

I tender the statement and publication of it will be a matter we'll have to attend to at the end of his evidence.

1

COMMISSIONER: Yes, certainly. Does he need it back?

MR COPLEY: He will. He probably will. What number is that one?

COMMISSIONER: Sorry, did I not give it a number? Sorry, that will be exhibit 332.

ADMITTED AND MARKED: "EXHIBIT 332"

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MR COPLEY: Thank you. Mr Collins, you worked at the John Oxley Youth Centre during the period of time that there was an investigation conducted by Mr Heiner, didn't you?---I commenced employment around 1989. I don't recollect an inquiry at that period of my employment.

I see. So you had no awareness at the time you worked at the centre that there was an investigation going on by a Mr Noel Heiner?---Yes, that's correct. To my knowledge, yes.

20

You had no awareness of it?---No.

Right, so you did not appear before Mr Heiner?---No.

Speak with him?---No.

Or any assistants of his, any ladies such as Barbara - - -

COMMISSIONER: Flynn.

MR COPLEY: Flynn, or Jan Cosgrove?---Not to my knowledge, no.

30

You didn't provide any written information to anybody on the basis it would be given to an investigator?---No.

After about 18 months you transferred away to the Wolston Park Hospital?---Yes, that's correct.

How long did you work at Wolston Park for?---I'm still there.

You're still there. Okay, sorry. In your statement you speak about an occasion when a man whose name you mention at paragraph 10 arrived at your house one day without an invitation and he had a conversation with you later in the evening. That's the case, isn't it?---That's correct.

40

The position is, as you state it to be at paragraph 13, that notwithstanding what he told you, you didn't make a

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report of that to any person in authority, that is to say, anyone holding public office or any police officer or regulatory body?---That's correct. 1

Okay, thank you. No further question.

COMMISSIONER: Any questions arising, anyone?

MR HARRIS: I have no questions, commissioner.

COMMISSIONER: Thanks. 10

Mr Collins, thank you very much for coming. You are formally excused from the obligations of your summons? ---Thank you.

MR COPLEY: We will just have that document back, thank you.

WITNESS WITHDREW

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COLLINS, D.R. XN

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COMMISSIONER: Now, publication, Mr Copley? 1

MR COPLEY: Yes, there will need to be some obliteration from this document commencing in paragraph 4, second line, last word on the second line and the next two words on the third line of paragraph 4.

COMMISSIONER: I will delete those words from paragraph 4 before publication.

MR COPLEY: Then in paragraph 10, second line surname and Christian name. 10

COMMISSIONER: I will delete the surname and Christian name in line 2 of paragraph 10.

MR COPLEY: And then the Christian name will need to be deleted on line 5 of paragraph 10.

COMMISSIONER: I will delete the Christian name on line 5 of paragraph 10.

MR COPLEY: The Christian name and nickname on the second-last line in paragraph 10. 20

COMMISSIONER: I will delete the same name with the accompanying nickname on line 10 of paragraph 10.

MR COPLEY: And then all of the last line of paragraph 10.

COMMISSIONER: And all of the last line of paragraph 10.

MR COPLEY: And then the Christian name appearing on the first and third lines of paragraph 11 and the Christian name appearing on the sixth and seventh lines of paragraph 11. In fact the faster way to say it is all Christian names in paragraph 11 except that of Ian McIntyre. 30

COMMISSIONER: I will make those directions before publication.

MR COPLEY: And all Christian names in paragraphs 12 and 13.

COMMISSIONER: I will direct that all Christian names in paragraphs 12 and 13 be deleted before publication. 40

MR COPLEY: Thank you. I call Heather Ruth den Houting.

DEN HOUTING, HEATHER RUTH sworn:

ASSOCIATE: For recording purposes, would you please state your full name and occupation?--My full name is Heather Ruth den Houting. My occupation is minister of religion.

COMMISSIONER: Good morning, Ms den Houting; welcome? 1
---Good morning.

Yes, Mr Copley?

MR COPLEY: Ms den Houting, you're currently a minister in
the Uniting Church. Is that the case?---Correct.

But many years ago you were a solicitor?---I was.

And you worked in 1991 for an organisation called the
Community of Inala Legal Aid Service?---Community of Inala
Legal Services, yes. 10

Okay. I'm just reading from the third paragraph where the
word "Aid" appears between "Legal" and "Service"?---Sorry,
yes.

So it's the Community of Inala Legal Service?---Correct.

Right, which went under the acronym of COILS?---Correct.

Did that have anything to do with what might have then been
called the Public Defenders Office or Legal Aid Queensland
or the Public Trustee Office?---No. 20

So you tell me what it was then?---It's an independent
legal service. So in Queensland there's an organisation
called QAILS which oversees all the independent legal
services so like the Caxton Legal service or Women's Legal
Service.

All right. Now, you have a recollection, you state in
paragraph 9 of your statement, of some involvement with a
female detainee at the John Oxley Youth Centre in 1991?
---Correct. 30

Leaving aside what you might have been told by the police
in preparation of this statement, do you remember now or
did you remember when you were asked to provide the
statement the name of the girl?---No.

All right. Do you recall why it was that you were asked to
go to the John Oxley Youth Centre?---No.

But do you have a recollection of going there?---I do, yes.

And a recollection of speaking with a young female
detainee?---Yes. 40

Do you remember what the two of you spoke about?---No, I'm
afraid I don't.

Do you remember who asked you to go there?---I'm so sorry,
I don't recall how I managed to get there, but I do
remember going.

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DEN HOUTING, H.R. XN

So you definitely went in 1991?---Yes.

1

Was there only one visit by you to John Oxley Youth Centre in that year?---In that year it was - I can't recall whether I went back there in that year, but it was very unusual for me to go there.

Do you have any recollection at any other time of going there to speak to a young female detainee?---No.

Okay. When you spoke with that young person, do you remember whether you spoke with her on your own or was there another person present?---I cannot recall the details of it.

10

Do you recall having to provide a report to anyone at the centre or the police or anyone after going to the centre? ---No, not a formal report.

And you state that you have no recollection of the conversation with the child now?---Not an independent recollection, no.

If the child had told you that the child had been raped or forced to have sex or forced to do something by a youth worker, is that something that you would have remembered?-- -I suspect that I would have, yes.

20

Why do you suspect that you would remember something like that?---Well, working as a lawyer in Inala a few things stick out in your memory and they usually are the worst types of abuses or the worst types of cases and so there are several cases that do stick in my memory that were of that nature, but this one doesn't.

COMMISSIONER: Would you have a normal practice of making a written record of complaints of that nature? ---Absolutely.

30

Do you have such a record about this one?---No.

MR COPLEY: Would you have made a written record of the visit to the centre no matter what the child had said? ---Yes, I believe that I would have.

Okay, but you have not been shown such records?---No.

And you haven't obviously of your own volition now gone off searching for them?---No, I would not have kept - I did not have any client records or anything. When I left the left the legal service, I didn't take any client records with me.

40

Just as a matter of interest, does that legal service still exist now?---Yes, it goes under another name. I think it's called the Western Suburbs Legal Service or something of that sort.

1

All right. On 12 February or shortly thereafter, did you make contact with Mr Gordon Harris?---Yes.

And he told you that, as far as he was concerned, his client Shelly Neil or Shelly Farquhar was waiving any privilege that might otherwise attach to any communication she had had with you?---Yes, he did.

10

When he mentioned that name to you, did that ring any bells?---No.

I'm not suggesting anything improper about this. Did Mr Harris enlighten you as to what it was that his client was supposed to have discussed with you?---No, I had no conversation with Mr Harris apart from the issue about relinquishing privilege.

All right. I'm not in a position to put anything to you as to what might have been discussed because neither you can remember it and we haven't heard evidence from the young woman concerned so I will now leave you with Mr Harris? ---Thank you.

20

COMMISSIONER: Yes, Mr Harris?

MR HARRIS: Thank you, commissioner.

Ms den Houting, could I ask you to look at exhibit 315? Could I just ask you to read the contents of that exhibit, please?---Read the whole exhibit?

30

Yes, thanks?---So this is the subject or from - - -

MR COPLEY: I think she thinks you want her to read it out aloud.

MR HARRIS: No, just read it to yourself?---No, you want me to just read it, sorry.

Just read it to yourself?---Yes.

40

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Now, I know you've said in your affidavit that you have no personal knowledge of this, but when you read that document it would outline that an incident happened at a dam involved - and I think it's Mr Muelennberg tells Mr McIntyre a sexual assault had happened. Now, this young lass was in a prison, she would have outlined or told you something like that. You would have thought that would have been the events of that. Can you recall her demeanour or anything like that, or is it too far back?

1

MR COPLEY: Well, there's two propositions in there, isn't there?

10

MR HARRIS: Yes.

MR COPLEY: You've said that she would have outlined - the young woman would have outlined what's in this memo and then you've asked the witness what was her demeanour like.

MR HARRIS: Yes, all right.

Can you recall if what was in that memo was ever raised with you by young Shelly?---I cannot recall the exact - I cannot recall the details of the conversation. What I can do is say that when I read this I clicked - something clicked and went, "Ah, that was why I went to John Oxley Youth Detention Centre."

20

Okay. That's something that clicked, can you tell the court what you thought about that, what thought about reading that there. What memories did that bring back for you?---The memories really were about my anxiety about going to the John Oxley Detention Centre. I'd only been in Brisbane for a short period and so it was my first visit there and so there was some anxiety about: do I know where I'm going; what does it look like; where do I park; how to get into the building? So that's what I remember independently. So I actually remember entering John Oxley, but once I was in there independently I cannot recall much more.

30

See, the report goes on to say that you attended and you visited the centre to explain to Shelly the legal implications and to represent her interests during a police investigation. Now, one would have thought that the police would have also turned up on that day. Do you recall that incident?---I do not recall that.

40

All right. In this instance Shelly would not have required a solicitor to represent her, would she?---No, I agree.

It would have been far better for, say, someone in the social work field or someone, that they're to attend and assist her, or someone from a rape crisis centre. Do you

agree there?---Well, in my experience at Inala at that time you got whoever - you know, the resources were pretty thin on the ground. 1

All right. No further questions, Commissioner.

COMMISSIONER: Thank you.

MR COPLEY: No further questions. May Ms den Houting be excused?

COMMISSIONER: Ms den Houting, thank you very much for coming. Much appreciated. You're formally excused from your summons. 10

WITNESS WITHDREW

MR COPLEY: I can't recall if I asked you to make her statement an exhibit. I don't think I did, so I tender it.

COMMISSIONER: No, but I'll mark it exhibit 333.

ADMITTED AND MARKED: "EXHIBIT 333" 20

MR COPLEY: Yes, thank you, and there's no reason why it cannot be - - -

COMMISSIONER: I'll direct the publication of the statement, exhibit 333.

MR COPLEY: Thank you. I call Malcolm Thomas Elliot.

ELLIOT, MALCOLM THOMAS sworn:

ASSOCIATE: For recording purposes would you please state your full name and occupation?---Malcolm Thomas Elliott. I'm a retired police officer. 30

COMMISSIONER: Good afternoon, Mr Elliot. Welcome. Yes, Mr Copley?

MR COPLEY: Thank you.

Mr Elliot, could you look at this document that's about to be shown to you, please, to see whether or not it's a statement that you provided to the police on 15 January 2013?---Yes. 40

Okay, thank you. I tender that statement.

COMMISSIONER: Mr Elliot's statement will be exhibit 334.

ADMITTED AND MARKED: "EXHIBIT 334"

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DEN HOUTING, H.R. XXN
ELLIOT, M.T. XN

COMMISSIONER: May it be published?

1

MR COPLEY: Yes.

MR COPLEY: I direct its publication.

MR COPLEY: Mr Elliot, on 15 February 2013 Detective John Mizon interviewed you, didn't he?---He spoke to me, yes.

He spoke to you. Face to face?---Yes.

All right. And he showed you a document, didn't he?---Yes.

10

Okay. I'll get you to have a look at exhibit 315. The document that I'm about to show you is a document written by Ian McIntyre. It's a two-page document dated 14 May 1991. Is that the document Detective Mizon showed you? ---Yes.

Or a copy of it?---Yes.

Okay. Now, I understand that when you saw that document it revived some memories?---It did.

20

It did, right. Because you were the police officer who was tasked with going to the John Oxley Youth Centre to speak with Shelly Neil, weren't you?---I believe so, yes.

All right. When you say you believe so, do you not now recall this matter?---Only from information that I've been supplied with today.

Now, I'm not meaning to be rude by this or trying to insult you or anything, but you're retired now?---Correct.

Do you have any problems with your memory at all that you're aware of?---No.

30

No. Okay. I'm just checking, that's all, because it could be that you can't remember because it's so many years ago; it could be that you can't remember because you've got difficulty with memory, you see. So would you say that any inability to remember is simply due to the fact whatever occurred had so many years ago?---Yes.

Okay, thank you. Now, your memory is that when you went to the centre the child had already been replaced?---Yes.

40

Okay. And so you couldn't talk to her when she was in the centre and subsequent inquiries never lead you to actually speak with the child at all. Is that the case?---Correct.

Okay. But this statement that you gave to that police attached to the commission of inquiry was not the first statement that you have provided about this matter with

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ELLIOT, M.T. XN

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Shelly Neil, is it?---I believe that I provided the statement some time ago that I'd forgotten about.

1

Yes?---I was shown that statement and I think it was provided for the CJC.

I'll get you to have a look at this document, please. Is that the statement that you provided at the request of the CJC?---Yes.

All right. I tender that document.

10

COMMISSIONER: Mr Elliot's statement to the CJC will be exhibit 335.

ADMITTED AND MARKED: "EXHIBIT 335"

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ELLIOT, M.T. XN

50

MR COPLEY: Mr Elliot, in that statement you, can I suggest, speculated or wondered about the delay that had occurred between when you understood the incident had occurred and when you were tasked to go to the centre, would you agree?---Yes.

1

Why did you speculate about that in the statement to the Crime and Misconduct Commission or the Criminal Justice Commission, however it was styled in those days?---I couldn't understand why there was a delay in notifying the police regarding the alleged incident.

10

According to the report of Mr McIntyre which was written in May of 1991, although a youth worker knew of the incident, apparently, on the afternoon of the day on which it occurred, that youth worker didn't bring it to the attention of Mr McIntyre until 16 April 1991 and according to Mr McIntyre's report, the Juvenile Aid Bureau at Inala were advised on 18 April 1991. So the failure of the youth worker to tell the manager about the incident could account for the delay between when the incident occurred and when you got there, couldn't it?---Yes.

You don't have in mind any other explanation for the delay, do you?---No.

20

The document speaks for itself and obviously the police weren't told on 16 or 17 April, but if any delay occurred on the part of the manager it was of the order of 48 hours only, wasn't it, according to his report?---48 hours from when the information came to him?

Yes?---I wouldn't know.

Well, if the manager gets told something on the 16th of the month and reports it to the police, or has it reported to the police, on the 18th of the month, the delay is in the order of two days, isn't it, on the part of the manager? ---I'd say so, yes.

30

Because he can't report things he apparently doesn't otherwise know, can he?---I don't know.

Well, that stands to reason, doesn't it?---I assume so, yes.

Yes. Well, I mean, if you have got any other theory or any other suspicions about why there was such a substantial delay in this matter getting to the attention of the Juvenile Aid Bureau at Inala now is your opportunity to put them forward or tell me what they are?---I've got no idea.

40

Okay, but if Mr McIntyre's report is correct, that he was only told 10 days after 6 April, if he was told - sorry, if he only became aware on 16 April of an incident that

apparently occurred on 4 April, that would go a long way towards offering a reasonable explanation for the delay, wouldn't it?---I would assume so. 1

Well, you'd have to concede that, wouldn't you?---I would have to assume so, yes.

Why do you balk at saying "conceding"?---Because I have no idea. I've got no knowledge. I wasn't at the centre.

You don't have any reason to think that Mr McIntyre was telling lies in his report, do you?---He had no need to. He was just providing information to the police on information that he had been given. 10

COMMISSIONER: So in the absence of an explanation the delay was curious. Is that your position? Your position is in the absence of any explanation for the delay the delay was curious to you?---It just prevented me from speaking to the young girl.

Yes, but you speculated in your CJC statement about the length of delay, and why you did that was because the delay wasn't explained?---To me. 20

Yes?---It wasn't, no.

No, so without an explanation you saw some potential - something odd about the delay?---I suppose so, yes.

Yes, but in the face of an explanation that explained the delay your concerns would be allayed?---Yes.

MR COPLEY: I have no further questions.

COMMISSIONER: Thank you. 30

MR HANGER: May I just see 335? I think he's - - -

COMMISSIONER: Yes, certainly. Mr Harris?

MR HARRIS: I have some questions, commissioner, but I was wondering if I could see the exhibit, the CJC, also, 335.

COMMISSIONER: Certainly. Mr Hanger will pass it to you when he's finished.

MR HANGER: I'll give it to him - I'll give it to you first. 40

MR HARRIS: Mr Elliot, my name is Gordon Harris. I'm representing Shelly Neil in this inquiry. You were a police officer from 1979 through to 2006?---Correct.

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ELLIOT, M.T. XN
ELLIOT, M.T. XXN

As a police officer did you spend all that time in the Juvenile Aid Bureau?---No. I commenced at the Juvenile Aid Bureau I think 92 - no, 82. 1

So you had a lot of experience as a Juvenile Aid police officer?---Yes.

Can I have the witness have a look at these documents, please? They're all loose-leaved and I've just got the tops tagged, the different sections. Now, do you recall that document, or recall - - -?---I can never forget it. 10

The policemen's manual?---Correct.

The policemen's manual highlighted the role a police officer really had to do in investigations, didn't it?---It did, yes. It was the policemen's manual.

Yes, and as you go through the policemen's manual could I just ask you to have a look at it? I just want to make sure I've got the right sections in there. On the cover of that there's "Policemen's Manual", then if you go into the first tag or the second tag there's these GIs, or general instructions, 41 through to 422A. They explain the responsibilities of police generally, okay?---Right. 20

Then from there we've got police questioning persons with disabilities and the judge's rule, which are all part of what a policeman does and it goes into quite a lot of detail, the manual. Then we've got GIs 4108 to 4108B which talks about the sexual offenders squad, in that light there, then GIs 4364 to 4369 talk about Juvenile Aid Bureau operations. Then we have section 41 which describes how to investigate a complaint of carnal knowledge. Then we have GI 41 which describes - sorry, GI 4344 which describes rape and then GIs 9151 through to GIs 9108B which outlines the Children's Services Act. So that's all encompassed in these two big volumes. Would you agree with that?---Yes. 30

So that's all encompassed in these two big volumes. Would you agree with that?---Yes.

40

Now, if a complaint had been made to you, an official complaint, you would have investigated that complaint in accordance with the general instructions?---I would've done, yes. 1

Now, with respect to the general instructions, were there penalties attached to it for disobeying general instructions?---It was a guideline on how police could investigate a particular offence.

And that was the commissioner's guideline?---I believe so, yes. 10

And then under the - I don't know if I have got the correct act here. Under the Police Service Act you could be disciplined for disobeying those instructions.

COMMISSIONER: It would have been the Police Act then, wouldn't it?

MR HARRIS: Police Act, sorry, yes.

The Police Act?---If it was in there, I never read it. 20

Sorry?---I said if it was in there, I don't recall reading it.

No, I just wanted to see your knowledge. Could I tender the Policemen's Manual as an exhibit, commissioner?

COMMISSIONER: What in relation to the manual do you want me to bear in mind, please, Mr Harris?

MR HARRIS: It shows the role of what a police officer does when a complaint is made to the police officer with respect to an official complaint that has been made. 30

COMMISSIONER: Yes. Mr Copley?

MR COPLEY: I was just going to raise for your consideration that I have no objection to Mr Harris tendering the Policemen's Manual, as it was called, but I'm not sure whether he regards it as relevant to this matter or whether he regards it as relevant to the Harding incident. Whether he regards it as relevant to either one or both, a difficulty that occurs to me which hasn't been clarified with the witness yet or clarified in any submission from Mr Harris is whether these extracts from various parts of the manual were extracted and current - - - 40

COMMISSIONER: At the time.

MR COPLEY: - - - as at when because the first document which is the cover sheet reproduces the manual as at 1975 and we can see from that that there were amendments made to

the manual from time to time, but there is just no way at the moment of knowing whether these other extracts that Mr Harris has had the witness identify, but which the witness didn't actually pick up the document and look at, were - when they were in existence and so if it's to be of any real assistance to you, Mr Commissioner, it may be that Mr Harris is going to have to clarify all of that.

1

COMMISSIONER: Yes. Mr Harris, maybe we can do it this way: we don't need to do it with the witness, but you can provide some evidence about the currency of the sections that you want me to take account of. For example, they do say when the amendments were to the GI's, the general instructions, and when they were revised at the bottom of the page, but they don't tell you - that is only the last provision.

10

MR HARRIS: Can I say that the - and I don't like to give evidence from the bar table, but the manuals were current up until 1991. Now, I can produce to the commission the document signed showing the currency.

COMMISSIONER: Yes.

20

MR HARRIS: I can get that to the commission by email.

COMMISSIONER: Yes, because it's not just when the manual was in vogue. It is when each section and each instruction is current.

MR HARRIS: Yes, I can undertake to get Mr Copley a copy of that.

COMMISSIONER: Yes, that's all you need to do.

MR HARRIS: Yes.

30

COMMISSIONER: I will give you this back. When you have got that, add it to this and I will accept the tender.

MR HARRIS: Thank you.

COMMISSIONER: But we don't have to delay Mr Elliot for that process.

MR HARRIS: Yes.

Mr Elliot, can I just take you to exhibit 315? Now, have you ever seen that exhibit before these proceedings?---This one here?

40

Yes?---I saw this one on Friday.

On Friday?---And I don't recall ever seeing it before.

Now, when you saw that exhibit, it says here - in that exhibit it says that on 18 April - and this is in the last paragraph - that arrangements were to be made to the police to interview Shelly Neil at the John Oxley Centre. Right? ---To speak to her?

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Sorry?---To speak to her?

It says "interview" her there?---No, speak to her.

Speak to her?---Yes. I wasn't going to speak to someone who was a suspect. I was going to talk to a complainant. That was just going to be a conversation.

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So it was going to be a complaint - you were going to take a complaint of her on that afternoon?---Well, I needed to have a talk to her to find out what had happened.

Okay. Do you have any recollection about talking to her on that day?---No - sorry, correction, I never spoke to her.

You have never spoken to her?---Ever.

All right. Did you attend to the Pine Rivers area and talk with her?---I can recall attending to the Department of Family Services' office at Caboolture and I assumed that that would have been it and I believe that I would've made arrangements to go and speak to the girl there. When I got there, I was told by a youth worker that she hadn't fronted up and that she didn't want to speak to police.

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So you never actually spoke to her personally?---Never saw her.

Thank you. I have no further questions, commissioner.

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COMMISSIONER: Thank you. Mr Hanger?

MR HANGER: Therefore a complaint was never made?---It was never made.

Thank you.

COMMISSIONER: Thank you. Yes, Mr Copley?

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

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COMMISSIONER: Yes.

Mr Elliot, thanks very much for coming. We appreciated it. Sorry to interrupt your day. You are formally excused from your obligations of your summons with thanks?---Thank you, your Honour.

WITNESS WITHDREW

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ELLIOT, M.T. XXN

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MR COPLEY: There's no reason why exhibit 334 can't be published. 1

COMMISSIONER: I will direct the publication of exhibit 334.

MR COPLEY: So it appears as though the last exhibit I tendered which was the statement the officer gave to the CJC is back in the custody of your assistant. May I just see it to see whether there is any reason why it can't be published? There is some material in exhibit 335 that should not be published and I will just read it into the record and ask you to make an order. 10

COMMISSIONER: In those terms.

MR COPLEY: In the terms as follows: exhibit 335 be published after the Christian and surname in the second-last paragraph, second line and in the second-last paragraph, third line is obliterated and that it be published after the Christian name and surname is obliterated from the second-last paragraph on page 2 in the fourth line down and that the Christian name and surname be obliterated in the last line on the first paragraph on page 3 and also in the first line of the last paragraph on page 3 of the statement. That's all. 20

COMMISSIONER: I will make an order that those deletions be made before publication.

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MR COPLEY: Mr Commissioner, we've now reached the point at which we do not have any further witnesses to call today and unless there is the possibility of a statement still outstanding from a youth worker that I'm not aware of who might have been employed at John Oxley in the period 89 to 90 - and I don't think there is - the position has now been reached where all of the witnesses who I consider need to be called in connection with paragraph 3E of the order in council have been called.

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However, you'll recall that a couple of weeks ago you invited those with authority to appear to let the commission know if they considered any other witnesses needed to be called. Mr Harris did do that but only in connection with the Farquhar matter, and I think we've called the people he wanted called.

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COMMISSIONER: Is that right, Mr Harris?

MR HARRIS: That's right.

COMMISSIONER: You don't want anyone called who hasn't been already called?

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MR HARRIS: Yes.

COMMISSIONER: Do you want any other evidence other than the general instructions in the police manual to be admitted on your focus of concern in the term of reference? No. Okay, so once that's tendered you're content that all the evidence that's available has been presented to me for my consideration in respect of Ms Neil and Ms Farquhar?

MR HARRIS: Yes, that's correct.

COMMISSIONER: Thank you.

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MR COPLEY: Mr Hanger, counsel for the state, brought to our attention some documents that he considered might be relevant.

COMMISSIONER: Yes.

MR COPLEY: I think they've all been tendered. He didn't indicate to me any other witnesses that he thought should be called. Of course, you'll give him the opportunity to make a further submission about that should he wish to in a minute. Mr Bosscher from Bosscher Lawyers wrote a letter to me on 6 February 2013 setting out the names of people that he considered needed to be called.

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COMMISSIONER: Yes.

MR COPLEY: And I replied to him on 7 February indicating that at that time I did not consider that any of the people who he wanted called needed to be called, but that I'd keep

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COPLEY, MR

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an open mind. One of the names on his list was Norma Jones and so as things fell out the commission did indeed call Norma Jones, as you know, today. I'll hand up the letter that Mr Bosscher sent on 6 February 2013. 1

COMMISSIONER: You're handing it up as a - are you tendering it?

MR COPLEY: I will tender it, yes, because that represents the list of people that Mr Bosscher considered needed to be called. 10

COMMISSIONER: Okay. The letter from Bosscher Lawyers dated 6 February 2013 to senior counsel assisting will be exhibit 336.

ADMITTED AND MARKED: "EXHIBIT 336"

MR COPLEY: Now, my view is that apart from Ms Jones, who has already been taken care of, my view remains that there is no need for the commission of inquiry to hear from any of the other people on the list. And so I raise that now because that is a matter that others - I don't mean Mr Harris, but Mr Lindeberg and/or Mr Hanger - may have a different view about. I've provided a copy of that exhibit to Mr Hanger just a minute ago. 20

COMMISSIONER: I'll certainly deal with the names in the Bosscher letter. What about Mr Lindeberg's position in respect of Ms Jones? He's put to her a proposition that she denied. Do I need evidence from him to weigh in the balance on any relevant matter? Do I need to consider the evidence? At the moment there is evidence that Ms Jones did not tell Mr Lindeberg that the Heiner documents had been destroyed before they had in fact been destroyed. 30

MR COPLEY: That's right.

COMMISSIONER: So Mr Lindeberg's position is that he was told that by Ms Jones and deliberately misled - - -

MR COPLEY: Yes.

COMMISSIONER: - - - as a result. He'd have to adduce evidence to that effect if he wanted me to take it into account, wouldn't he?

MR COPLEY: Well, yes, because at the moment the only evidence is that the conversation never happened. 40

COMMISSIONER: Exactly. That's right.

MR COPLEY: In those terms.

COMMISSIONER: So there's no evidence of it.

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COPLEY, MR

MR COPLEY: Yes.

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COMMISSIONER: Or there's evidence that it possibly didn't happen. What do you say about the relevance of the conversation that Mr Lindeberg asserts he had with Ms Jones?

MR COPLEY: Well, its only relevance is that it is capable of casting some light on the attitude of the executive government to the request for access to the documents.

COMMISSIONER: Yes, and - - -

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MR COPLEY: We know the documents were ultimately destroyed.

COMMISSIONER: We do, but the question is how relevant is the cabinet's position in relation to the documents, having regard to what they knew? And whether steps were taken to destroy them for an ulterior motive, if you like; and part of that included misleading people who were interested in preserving the documents.

MR COPLEY: Well, the difficulty with that is that Mr Lindeberg is not in a position - so far as can be ascertained from what he's put to Ms Jones - to be able to know the source or to suggest the source of Ms Jones's alleged comment.

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COMMISSIONER: Yes.

MR COPLEY: So the possibility is - taken at its highest, let us assume Ms Jones said that - the possibility is she said it off her own bat or that she said it pursuant to some pre-arranged plan - - -

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COMMISSIONER: With Ms Warner, her minister, or someone else.

MR COPLEY: - - - or with God knows who. We don't know.

COMMISSIONER: Yes.

MR COPLEY: But Mr Lindeberg is not in a position, as I understand from what he's put to Ms Jones, to be able to advance a scenario or give evidence about why she said it.

COMMISSIONER: You say that there's an indispensable missing link.

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MR COPLEY: Yes. He can only assert that she said it if he gives evidence.

COMMISSIONER: And that doesn't get him home because the fact that she said it doesn't link the statement or the intent behind it to anybody in cabinet, which is really what's relevant. 1

MR COPLEY: That's so. I mean, if it is accepted that she said it the possibility is that she for some reason just decided to fob him off, either because she had a reason to do so or no reason at all.

COMMISSIONER: And him giving evidence about the conversation having occurred doesn't go to that. 10

MR COPLEY: No, it just goes to the fact that it was said and when it was said.

COMMISSIONER: All right. I just wanted Mr Lindeberg to hear that debate.

MR COPLEY: Okay.

COMMISSIONER: So that he can address it in his submission. Mr Lindeberg, can I call on you now? 20

MR LINDEBERG: You want me to - - -

COMMISSIONER: What do you say about that?

MR LINDEBERG: Commissioner, I have always attempted to be honest in things and I have never put that particular comment above an inadvertent comment that was said by Ms Jones.

COMMISSIONER: So you don't see anything sinister in it?

MR LINDEBERG: From where I stood at the time, I didn't. 30

COMMISSIONER: Right.

MR LINDEBERG: And I thought that she made a mistake and the conversation finished there and then when I challenged - - -

COMMISSIONER: She said it didn't happen, so do you want to prove that it did happen by giving evidence yourself and being cross-examined, or are you happy to leave it lie there on the basis that Mr Copley suggests, that even if I was to hear from you and prefer your evidence over hers, it wouldn't really advance your case. 40

MR LINDEBERG: Except may I say that it is - this is my view - it is from that incident that occurred certain other incidents occurred which caused me to be taken off the case, and subsequent events occurred which this particular commission of inquiry is not looking at.

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COMMISSIONER: Yes.

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MR LINDEBERG: And to the extent that I leave it for - which might cause it not to be deemed to be relevant possibly at a later stage may disadvantage me, but I am saying - and I've always said - that I personally, as I perceived it at the time - did not see a sinister matter in it other than that she inadvertently told me something which I suspect she should never have said. I mean, that then perhaps leads on to what you're talking about, but I'm saying to you to be consistent I have put that down to advertence - inadvertence, I should say.

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COMMISSIONER: All right. Well, I take it from that you don't want to contradict her on oath because it doesn't really advance you anywhere. 1

MR LINDEBERG: No.

COMMISSIONER: Even if I believed you over her.

MR LINDEBERG: No, well - - -

COMMISSIONER: All right. Well, let's get to the nub of the matter. Do you still propose - or do you still argue that the members of Mr Goss's cabinet should be called? 10

MR LINDEBERG: To the extent that you yourself made the comment that it appears unclear as to - I think I'm quoting you correctly - how Mr Tait reached his view and arguably, given your task, which appears to be looking at the potential illegality of the shredding, I think it does - I think we still hold to that view that those people should be called.

COMMISSIONER: Well, let's just have a look at the term of reference just to put our conversation in context. What I have to do under term 3E is review - and I'm paraphrasing here, parsing even. Review the adequacy and appropriateness of any response of government, including any allegations of criminal conduct associated with one, into historic child sex abuse in a youth detention centre. So there's an allegation of criminal conduct associated with a government response to something. The question is whether it's a government response to historic child sex abuse in a youth detention centre. 20

So that's the key phrase, isn't it, that what I'm required to review, and only this, is the adequacy and appropriateness of any response of government into historic child sex abuse at a youth detention centre, including an allegation of criminal conduct associated with it? You would say there was criminal conduct associated with the cabinet decision to destroy the Heiner documents because at the very least it was, if not calculated, had the practical effect of putting out of reach documents that would have been relevant for the purpose of Mr Coyne and arguably others to use for litigation purposes to protect a relevant interest, a legitimate interest they had. Would that be what you'd say? 30

MR LINDEBERG: Yes, I would say that. I do say that. 40

COMMISSIONER: Accepting that to be true for the moment, that there was an unresolved question as to whether or not the conduct of cabinet amounted to a criminal offence in that context, how do you connect that conduct with historic child sexual abuse at a youth detention centre?

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LINDEBERG, MR

MR LINDEBERG: I thought the task in terms of - which this commission set itself from the beginning was to assure itself that within those documents there was evidence put before Mr Heiner of historic child sexual abuse. 1

COMMISSIONER: Do you say there is evidence that there was?

MR LINDEBERG: We do say that.

COMMISSIONER: On the basis of what? 10

MR LINDEBERG: On the basis of the evidence of at least two if not - certainly two witnesses.

COMMISSIONER: Well, I'll tell you what, I think what we need to do - what do you - can I just interrupt our conversation for the moment, Mr Lindeberg, and go to Mr Hanger? What's your position in respect of the request to call the cabinet ministers of 1990?

MR HANGER: Well, first of all, I'm sure that I won't have instructions to act for them. I'm not now acting for them, but it won't take matters any further, in my submission. I think we know all the facts now. There's a few things that you have to determine in terms of what was just said, was there historic sexual abuse, and I foreshadowed before Christmas a submission on that, which was obviously premature and I accept that, that is to say, that 3E doesn't - if there's not historic child sexual abuse then really you don't have to go any further. 20

COMMISSIONER: You say there's no evidence of any.

MR HANGER: I think there is no acceptable evidence of any. My recollection is that that airline pilot Roch said he talked to Mr Heiner about sexual abuse and I would be submitting that the evidence wasn't reliable, and I think - it might have been Feige might have said something like that, but, I mean, there's, you know - - - 30

COMMISSIONER: But is it - all right, let's just - - -

MR HANGER: Put that aside.

COMMISSIONER: - - - put that to one side for the moment and say there was - the investigation of cabinet's conduct was within the term of reference. Just let's assume that. 40

MR HANGER: Yes, the shredding is in the terms of reference.

COMMISSIONER: My concern at the moment is, and I think it's probably been betrayed by some of the questions I've asked, is was it proper - well, let's just use a neutral term for the moment. Was it appropriate for cabinet to

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have the documents destroyed in circumstances where they knew that while there might not have been any formal legal action pending, that a solicitor was seeking to preserve the documents to preserve the rights of his client in respect of the potentiality of defamation proceedings, because we have to see that as they saw it, and while it might have actually been quite a lot broader, it had been distilled to the point by the time it got to cabinet that people were concerned about defamation action, so let's restrict it to that. It may not strictly be true.

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MR HANGER: Yes.

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COMMISSIONER: So in the light of that, that there was a potential at least for these documents being used by a person with a valid interest in litigation proceedings, destroying them against that setting, was that appropriate or even arguably criminal?

MR HANGER: I accept that you've put the question to me that you've got to answer and that I've got to make submissions on and I don't want to go into detail on it now, but it is clear that cabinet wanted these documents destroyed. I think that much is clear. The reasons - defamation keeps appearing in the material, although I don't think - and I may be wrong. I don't think the word "defamation" was used by the solicitors at all. I think - - -

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COMMISSIONER: No.

MR HANGER: No. I think they were talking about writs of prohibition.

COMMISSIONER: Well, they were talking about a couple of things, I think, but I think defamation was the assumed threat.

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MR HANGER: Cabinet certainly - or people advising certainly assumed that.

COMMISSIONER: Yes.

MR HANGER: But in fact Mr Coyne himself gave evidence, I think, that he had no intention of starting defamation proceedings.

COMMISSIONER: I'm sure Mr Heiner assumed it.

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MR HANGER: Yes, but, I mean, look, that's getting into detail. The question then is what would be added by calling all of these former cabinet ministers when you have the secretary of cabinet saying, "We worked by consensus." So each one of them - and you've heard from, what, two cabinet ministers already. Are any more of them

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HANGER, MR

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going to add to the picture? My suggestion to you is no. They will doubtless say they believed they were acting with absolute integrity and they looked at this matter very carefully. My friend will make submissions about Mr Tait's evidence, but doubtless cabinet will say, "Well, we wanted to make sure that they weren't protected by the Archives Act."

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HANGER, MR

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COMMISSIONER: Yes, but isn't Mr Lindeberg entitled to test them on that? My preference is not to call any more witnesses on the point, which is why I was a bit short with Mr Tait because I thought he might have been able to provide the evidence to fill the gap, but he didn't seem to me to do that. Initially I didn't think that this would be necessary but, as things have panned out, I'm concerned that while the last thing I really want to do is to have the former ministers called and interrogated about what happened in cabinet, if I don't do that we will never know why as a group they agreed unanimously to destroy documents when they knew that a solicitor was after their preservation. Why would you do that?

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MR HANGER: Well, I mean, I will speculate - - -

COMMISSIONER: There might be answers, but don't I need to hear from the people who made the decision what the answer is?

MR HANGER: What will they say to you?

COMMISSIONER: I don't know.

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MR HANGER: I mean, I see your problem, but I'll suggest to you the answer they will give is, "We had advice that we could destroy them. There was potential of industrial unrest," which is in that last cabinet submission, "There was potential of defamation actions and we thought we could lawfully do it so long as we satisfied the Libraries and Archives Act."

COMMISSIONER: Then let's just have a look at - and it's not only Mr Coyne and let's look at it through the defamation language. If one of their reasons was to prevent Mr Coyne from getting his hands on these documents and using them in litigation or for some other purpose but if Mr Coyne had a legitimate interest in the preservation of those documents, regardless of what the cabinet thought was good for him or good for anyone else or good for the social order, wasn't he entitled to expect then, as they led on one view of the evidence his solicitor to believe or at least to - they gave him no reason to believe that they would destroy them until it was sorted out with him. Isn't that arguably at least wrong. Whether it is a criminal offence or not we have to have a look. What's the potential criminal offence here?

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MR COPLEY: Well, nothing has actually been put, of course, to any witness.

COMMISSIONER: No.

MR COPLEY: Over the decades there has been an assertion that there was an alleged breach of section 129 of the Criminal Code, as it then was.

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HANGER, MR

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COMMISSIONER: Which was what? 1

MR COPLEY: Paraphrasing it, any person who, knowing that any book, document or other thing is or may be required in a judicial proceeding, destroys that book, document or other thing with intent to prevent its use in that proceeding commits an offence; maximum penalty two or three years.

COMMISSIONER: All right. So that would be the criminality if you could prove the elements to the standard required. 10

MR COPLEY: Yes.

COMMISSIONER: Much would depend on the meaning of the words "may be required" and no doubt mental elements.

MR COPLEY: There is the mental element of knowledge; the mental element of the intention.

COMMISSIONER: No reasonable excuse, is there?

MR COPLEY: I don't think that phrase appears in section 129. 20

COMMISSIONER: So it is intent.

MR COPLEY: You have mixed that up with 119B, I think, which came years later. So it's the intention coupled with the knowledge and presumably the objective fact of whether there was then a judicial proceeding. I can't remember the exact phrase for that.

COMMISSIONER: Whether there was one pending. 30

MR COPLEY: Whether a judicial proceeding is to be interpreted as one actually on foot instituted - - -

COMMISSIONER: A formal one.

MR COPLEY: Just one that has been commenced.

COMMISSIONER: Or threatened.

MR COPLEY: Or one that has just been threatened.

COMMISSIONER: Or potential. 40

MR COPLEY: Yes.

COMMISSIONER: All right.

MR COPLEY: So they are probably the issues that are thrown up by looking at the - - -

19/2/13 COPLEY, MR

COMMISSIONER: I must say I'm in a state of uncertainty about it. I don't want to have any unnecessary witness in the witness box answering questions about things that happened a long time ago. On the other hand, I don't want to leave the state of the evidence incomplete having come this far and I certainly don't want to give anybody any grounds for grievance or for believing that we left a stone unturned.

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MR COPLEY: So far in this inquiry any person who has authored a document of any importance or was suspected of having done so has been called as a witness.

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COMMISSIONER: Yes, anybody walking past the building, Mr Copley.

MR COPLEY: Well, anybody who had anything to do with the John Oxley Centre has been called out of an abundance of caution so that this business about sexual abuse can be thoroughly looked into once and for all, which business was never invented until, Mr Coyne asserts, 1990.

COMMISSIONER: But only two of them were members of the body that I have interpreted as government within the terms of reference.

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MR COPLEY: One of those two was called because she was the person who signed two of the three cabinet submissions and she was the person whose department brought it to the cabinet in the first place so it was appropriate and proper that Ms Warner be called.

COMMISSIONER: Yes.

MR COPLEY: The reason for calling the second minister was because it's been widely known that he said years later, "We all knew this was about child abuse," which, of course, is then relied upon by some to say, "Aha, they knew it was about child sexual abuse."

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COMMISSIONER: Yes.

MR COPLEY: So he's called to explain what he was talking about and you have heard his explanation, for what it is worth.

COMMISSIONER: Yes, he had to explain what he meant by something he said.

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MR COPLEY: Yes, but beyond that - - -

COMMISSIONER: Then there is Mr Tait. The combination of those two - - -

MR COPLEY: No, Tait was an important witness - - -

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COMMISSIONER: Yes.

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MR COPLEY: - - - because he engineered - and I use that term deliberately and I put that to him so I can now say that. He engineered the consent from the archivist. He played an integral role in obtaining that and then presenting it - - -

COMMISSIONER: Yes.

MR COPLEY: Getting Family Services to then present to the cabinet a submission saying, "Oh, look, the archivist consented."

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COMMISSIONER: Sure, but what they also did apart their chief purpose, it seems to me, is leave hanging like the sword of Damocles a suggestion that cabinet did something that may or may not have been ethical, may even have been criminal on one view of the section in the Criminal Code, and nobody is here to gainsay it and Mr Lindeberg hasn't had the opportunity to put it and they haven't had the opportunity to deny it, but the question I'm grappling with is: is there enough created now for it to become a matter of public disquiet or controversy that I need to deal with now rather than run an inquiry over a nine-month period that produces the counterproductive result that created more doubt than it clarified?

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MR COPLEY: My submission to you is that recourse to the last cabinet submission and document 181 reveals why cabinet did it and it reveals the state of knowledge cabinet had and cabinet chose for better or worse to destroy those documents notwithstanding that cabinet knew a solicitor wanted them to investigate the potential of legal action.

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COMMISSIONER: Let's just say then that that is the way evidence stands.

MR COPLEY: That is the way the evidence is.

COMMISSIONER: The question is: if I was to draw an adverse inference from that based on that evidence, aren't those cabinet ministers entitled - I'm not saying I would, but the fact that it is open to me to do that - doesn't that give them a legitimate interest in being heard?

MR COPLEY: Perhaps what you have in mind here is that the evidence of Tait, Warner and Comben is that that was the discerned consensus of the cabinet.

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COMMISSIONER: Yes, and is that right? What do they know?

MR COPLEY: They were all quick to deny that there was a vote.

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COPLEY, MR

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COMMISSIONER: Yes, obviously.

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MR COPLEY: So what you're positing is that - are you positing perhaps that there is a duty of fairness to these surviving members of the cabinet to call them to find out whether or not that is their recollection of the matter of whether some one or more might say, "Well, no, I, for example, was most unhappy and I didn't agree with it and asked them to note that I disagreed with it. So it was not my decision," for example; "It was the decision of the other 16 or 17" because are you positing that in the absence of such evidence - - -

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COMMISSIONER: I'm concerned about the state of the evidence, not only as to whether it is a full and careful inquiry into the term of reference, but also whether or not it is now in such a state that it really needs to be clarified from the horse's mouth what cabinet decided in order to assess whether what it decided and the consequence of it - mainly the destruction - amounts to an allegation of criminal action which I have to review the adequacy and appropriateness of that response.

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See, having a look at the term of reference, let's say Mr Lindeberg the contradictor, he's making an allegation of criminal conduct associated with a response into historic child sexual abuse by the government in the form of a cabinet by inappropriately destroying the documents. That's in effect what he's saying, isn't it?

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MR COPLEY: Yes.

COMMISSIONER: And that's something I have to review the adequacy and appropriateness of.

MR COPLEY: Right.

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COMMISSIONER: I see a real problem in linking the adequacy or appropriateness or otherwise of the response to historic child sexual abuse in a youth detention centre.

MR COPLEY: That's an evidential problem.

COMMISSIONER: But that is an evidentiary problem.

MR COPLEY: Yes.

COMMISSIONER: And I see the question as to whether or not - well, I'll start that again. I also see in reviewing the adequacy and appropriateness of cabinet's response as to whether or not that was criminal conduct may require the members of cabinet be asked or answer that allegation personally.

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MR COPLEY: Well, my submission to you is that to know what cabinet decided and why cabinet decided it - - -

COMMISSIONER: I must ask cabinet mustn't I?

MR COPLEY: Well no, my submission is you know that from exhibit 181. But if you're contemplating draw an inference adverse to the members of the cabinet, then that raises another issue about whether witnesses need to be called to have that put to them for them to comment - - -

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COMMISSIONER: - - - procedural fairness question.

MR COPLEY: Yes.

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COPLEY, MR

COMMISSIONER: I'm not that far advanced yet. Where I'm at is: have a fully and carefully inquired into Mr Lindeberg's allegation of criminal conduct if I pull up stumps without having heard from cabinet? 1

MR COPLEY: Well, I submit that you have because you have the reason cabinet did it; you have the knowledge cabinet had when did it; and you know that cabinet did that despite knowing what you.

COMMISSIONER: Well, let's assume that to be so for the moment. Are you in a position to tell me now - and you don't have do, I'm not putting to you on the spot, you may not be this far advanced yourself - whether or not it's open, either to you or Mr Lindeberg or someone else, to content that there is an adverse inference open on the evidence as you would have left? 10

MR COPLEY: Well, you don't know in fact what each member of the cabinet knew and if you equate belief with knowledge - - -

COMMISSIONER: Can I?

MR COPLEY: There's authority, sir. There is an authority to suggest that that might be an acceptable way of understanding the term "knowledge" in section 129. 20

COMMISSIONER: Ensbey.

MR COPLEY: Ensbey.

COMMISSIONER: Ensbey.

MR COPLEY: If you equate belief with knowledge you don't at the moment know whether individual cabinet members - what they actually knew or believed at the time they authorised destruction. 30

COMMISSIONER: Do I need to know that to discharge my remit the order in council to make full and careful inquiry in an open and independent manner? I tell you what, I'm not going to conclude it, I'm going to get everyone to make some written submissions to me on it. I want to think about it and I don't want to act in haste and I don't want to make a ruling now it isn't fully considered and I do want to hear some carefully presented arguments on it. 40

I'll tell you what I would like addressed: that is what people contend term of reference 3E means or should be interpreted to mean; whether there's sufficient evidence of historic child sexual abuse in youth detention centres within the meaning of 3E that makes reviewing the adequacy and appropriateness of the cabinet decision to destroy the documents reviewable under the term of

reference; and whether in reviewing the adequacy and appropriateness of cabinet's response - that is, the decision to destroy the documents - can be done fully and carefully within the requirements of an order in council without hearing from members of cabinet who made that decision directly. Yes, Mr Hanger.

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MR HANGER: Would you consider another option which I had in mind at the end of last year, and that is to make a finding, even if it takes a week, on whether or not - on that second point, is the evidence of historic sexual abuse in detention centres.

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COMMISSIONER: That is an option and if you want to submit that that's the course I should take, would you do that?

MR HANGER: Yes.

COMMISSIONER: And I'll make a ruling.

MR HANGER: I would certainly be submitting - - -

COMMISSIONER: You foreshadowed that you're going to do that?

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MR HANGER: Yes. That is to say - - -

COMMISSIONER: But I want to see your arguments in writing.

MR HANGER: For sure.

COMMISSIONER: And I want to think about it and - - -

MR LINDEBERG: Commissioner, am I clear, you have before us these three options: Mr Hanger, that didn't trump ours, what you said.

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COMMISSIONER: No, no. What Mr Hanger is saying is once I get the submissions on those three points I should then think about as the next step, even if there's prima facie evidence or some evidence that that would bring the situation within term 3E as historic child sex abuse, actually decide it as a fact before proceeding further into reviewing. That is, if it's a precondition, if it's an indispensable condition to a review, should I take that step of review in light of the evidence about the link between the response and historic child sex abuse?

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He'll argue no doubt that the link is too weak to justify a review of the government's response because they were not responding to historic child sex abuse on the evidence.

MR LINDEBERG: Of course, I may argue that - - -

COMMISSIONER: You will argue the opposite.

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HANGER, MR

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MR LINDEBERG: But is it open - notwithstanding I suspect it's not because of the - you have to, arguably, stick within your term of reference. 1

COMMISSIONER: I have to undoubtedly stick to the term of reference.

MR LINDEBERG: I appreciate that. But commissions of inquiry go into things and they find things which they never thought they'd find, et cetera.

COMMISSIONER: Yes, but they don't stray outside the boundaries of the term of reference. They do interpret their term of reference rather liberally sometimes. 10

MR LINDEBERG: I appreciate that.

COMMISSIONER: Or narrowly.

MR LINDEBERG: I appreciate that. Yes, I know, but the point, I suppose - - -

COMMISSIONER: Don't bother yourself now if - - - 20

MR LINDEBERG: - - - I'll listen.

COMMISSIONER: No need to fret just yet. I think what we need to do is I want to hear back from everybody and you might want to prevail upon Mr Bosscher to help you with this one because it's critically important.

MR LINDEBERG: I will.

COMMISSIONER: I want to hear back on those three points and then I will not do anything without hearing again from anybody else if I'm going to think it's - if there's a risk that I'll make a decision about something really important like what term 3E means and whether the evidence is sufficient to justify me reviewing it. I'm not going to do that without hearing from you again. 30

MR LINDEBERG: I thank you. I totally understand the need for caution because the potential is quite serious on a range of people, so you must make sure you get it right. Do you have a time frame for that, Commissioner?

COMMISSIONER: Yes, I do. 40

MR LINDEBERG: Not tomorrow.

COMMISSIONER: Next Friday - close of business next Friday.

MR LINDEBERG: Not this coming Friday, the following.

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LINDEBERG, MR

COMMISSIONER: No. That will be the Friday the 27th, would it be, just off the top of my head? Put it this way, close of business on the Friday closest to 27 February. Is that 1 March? Really? Next Friday? Okay, 1 March, close of business Friday, 1 March. So that no doubt concludes our business on 3E for the moment and I'll adjourn further hearing of it to a date to be advised and you can expect that I'll reconvene sometime in the first week of March.

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And I'll give you an opportunity to talk to your written submissions before I do anything, but really my purpose is I want everyone to focus on not only what's required of me but what the state of the evidence is, what that means in the context of what 3E means and what the next step should properly be in order for me to discharge the responsibilities of the order in council.

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MR LINDBERG: Is this somewhat of an interim final submission-type matter?

COMMISSIONER: Well, we're pretty close. I suppose it is a bit. It's aimed at deciding whether or not the evidence should be closed or whether there are some outstanding witnesses without whose evidence I can't properly conclude the - I can't do my job without them. That's the critical question: can I do the job that's been given to me by the order in council without hearing from those cabinet ministers or not? That's really what it boils down to. If I can on the state of the evidence at the moment we'll leave it where it is; if I can't we'll do what we need to do.

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MR HANGER: Just before you adjourn, I promised you a document from the crown solicitor saying that in effect all inquiries have been made.

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COMMISSIONER: Yes.

MR HANGER: Well, that document is coming. It's required some technical computer research but anyway, it will be coming and my instructions are that is the case.

COMMISSIONER: All right, thanks. We've got a week now anyway, Mr Hanger. All right, we'll adjourn to a date to be fixed. Now, am I reconvening the other non-3E matters next week? I think I am. I don't need to; it has already been adjourned. I think for your sake, Mr Hanger - I think Ms Allison is being called Monday or Tuesday?

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MR HANGER: Yes.

COMMISSIONER: See you then, and otherwise I'll see you gentlemen later. Thank you for your help.

THE COMMISSION ADJOURNED AT 1.32 PM UNTIL
MONDAY, 25 FEBRUARY, 2013

19/2/13

COPLEY, MR

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