



SPARK AND CANNON

TRANSCRIPT OF PROCEEDINGS

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THE HONOURABLE TIMOTHY FRANCIS CARMODY SC, Commissioner

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IN THE MATTER OF THE COMMISSIONS INQUIRY ACT 1950

COMMISSIONS OF INQUIRY ORDER (No. 1) 2012

QUEENSLAND CHILD PROTECTION COMMISSION OF INQUIRY

BRISBANE

..DATE 03/12/2012

Continued from 26/11/2012

..DAY 3

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

COMMISSIONER: Good morning, everybody. Mr Copley. 1

MR COPLEY: Good morning, Mr Commissioner. For the purposes of hearings connected with paragraph 3(e) of the order in council I appear, along with my learned friend Mr Woodford, initials M.J. as counsel.

COMMISSIONER: Thank you.

MR COPLEY: I simply announce that because Mr Woodforde hasn't hitherto been retained by the commission. 10

COMMISSIONER: No. Thanks, Mr Copley. I'll take other appearances as well on this term of reference. Mr Hanger.

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

COMMISSIONER: Thank you. Mr Bosscher.

MR BOSSCHER: Commissioner, good morning. I appear on behalf of Mr Lindeberg pursuant to the order that you made giving me such authority on 12 October 2012. 20

COMMISSIONER: Thanks, Mr Bosscher. Good morning. Mr Harris.

MR HARRIS: Good morning, Commissioner. I appear on behalf of Ms Annette Macintosh and Ms Shelly Farquhar.

COMMISSIONER: Thanks very much, Mr Harris. Welcome. Mr Copley. Mr Bosscher.

MR BOSSCHER: Commissioner, there are some housekeeping matters that I would like to raise if this is a convenient time. Thank you. Firstly, Commissioner, the authority to appear that you granted in relation to Mr Lindeberg has been granted to me specifically as an individual. Commissioner, at the present time there's a committal proceeding taking place downstairs involving an accused person charged with murder and I am the lead advocate in relation to that particular matter. From time to time that's going to involve me not being able to be personally present before you this week. 30

When that were to occur I'd be asking you, Commissioner, to extend that leave to various agents to appear on my behalf. I can specifically name as to who that will be; one will be Ms Alison Campbell, who is actually the principal of Bosscher Lawyer, and the other will be - or may be - Mr Alexander Jones, who is a senior solicitor and an employee of Bosscher Lawyers. 40

COMMISSIONER: Look, I don't see any problem, Mr Bosscher, but as and when that occurs, if each of them asks to be substituted as your agent for a specific period of time, I

03/12/12

don't see that it wouldn't be granted.

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MR BOSSCHER: Thank you.

COMMISSIONER: But I don't want to give it in advance.

MR BOSSCHER: Thank you, Commissioner. I can indicate that we've managed to arrange things in the other matter that I will be able to be present for the great majority of the time. Secondly, Commissioner, I put this on the record: in relation to Mr Lindeberg, he's not in a position to fund my appearance before you, Commissioner, and Legal Aid Queensland is not, pursuant to their act, in a position to make a grant of assistance to him for the purpose of this inquiry. Over a month ago I wrote to the attorney general requesting that he look at the possibility of funding my firm or me particularly in relation to this particular matter and I've not had a response.

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I've written to him again today asking him to respond to that correspondence. If that matter is not resolved in the very near future then it may be the case firstly that I'll be seeking your permission to withdraw if indeed I need that permission; and secondly that I'll be making - as friend of the commission as opposed to friend of the court - an application that Mr Lindeberg be given leave personally to appear in relation to this matter. I simply raise that for you at this point in time.

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The last matter, if I may, is that it would assist me if Mr Lindeberg were able to be at the bar table during the course of the proceeding when I'm appearing. I appreciate that's not customary, but as you can see, I'm not instructed, and it would be of some assistance, but that's entirely a matter at your discretion, of course.

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COMMISSIONER: I'll hear Mr Copley on the last request, Mr Bosscher.

MR BOSSCHER: Thank you, Mr Commissioner.

COMMISSIONER: Mr Copley, do you have any view?

MR COPLEY: In my submission, the last request should be denied because as things move on in this matter there may be other counsel who are seeking authority to appear. There will need to be room at the bar table.

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COMMISSIONER: What I'm - - -

MR COPLEY: Secondly, this is a matter where all of the statements have so far been provided well in advance to all counsel. A list of witnesses was provided to all counsel and solicitors by no later than noon on Friday. A series of documents are going to be tendered this morning. I have provided a copy of every single document I propose to

03/12/12

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tender to counsel and solicitor for them to have a copy of
as we go through and tender them. 1

So in the circumstances in my submission Mr Bosscher and his client will not be disadvantaged by the ordinary rule continuing to apply, that being that the bar table is reserved for counsel and instructing solicitor or instructing clerk.

COMMISSIONER: I think that's what I will do at this point in time, Mr Bosscher, but I'll keep it under review. If you tell me that you're having difficulty or there's some particular reason, you can certainly renew your application, but for the moment I'll leave things as they are. 10

MR BOSSCHER: Thank you, Mr Commissioner.

COMMISSIONER: Yes, Mr Harris.

MR HARRIS: Your Honour, I have two questions also (indistinct) the first one with respect to my appearance at this commission of inquiry, I will on occasion be absent and I'd seek the same privilege you gave Mr Bosscher, with respect to that. Legal practitioners will be taking my place here at the bar table and they will ask then. The second matter I just raise to be put on the record is funding. 20

We wrote to the attorney general on 8 November seeking funding for this matter. We still haven't received a reply from the attorney general with respect to that there. I will be representing both Ms Macintosh and Ms Farquhar throughout this inquiry.

COMMISSIONER: All right, thanks. Mr Hanger, do you want to say anything about any of those things, or just let things - - - 30

MR HANGER: No, your Honour.

COMMISSIONER: All right. Okay, Mr Copley.

MR COPLEY: Thank you, Mr Commissioner. As I said a moment ago, photocopies of all of the exhibits that I propose to tender today have been provided to those with authority to appear. I cannot guarantee that that courtesy was able to be extended in all circumstances on all days during the period of these hearings, but whensoever it can be extended, it will be. But from time to time it may be documents will simply be tendered and copies will be made available after the lunch adjournment or in the evening or the next morning. 40

Pursuant to section 17 of the Commissions of Inquiry Act of 1950:

03/12/12

A commission, in the exercise of any of its functions or powers, shall not be bound by the rules or practice of any court or tribunal as to procedure or evidence, but may conduct its proceedings and inform itself on any matter in such manner as it thinks proper.

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And with that provision in mind I propose now to ask you to admit into evidence a large quantity of documentary material. Now, the original of these documents often doesn't exist. Sometimes it has been able to be recovered and it's in those folders that your assistant has just handed to you. But I'd ask you to mark as the exhibit in every case the copy of the document or the original which is in those folders, a photocopy of which is in our possession and in the possession of all those with authority to appear.

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COMMISSIONER: So I take it that if it's in the exhibit - the folder - it's the best evidence available.

MR COPLEY: That is correct, as far as the commission has been able to discover through the issue of summonses and other documents.

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COMMISSIONER: Okay.

MR COPLEY: And for example, in some circumstances there would be obvious no original available. For example, the first document that I propose to tender is an extract from the Government Gazette.

COMMISSIONER: Yes.

MR COPLEY: So perhaps if you, Commissioner, go to the folder marked Exhibit 57-100 1989.

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COMMISSIONER: Yes.

MR COPLEY: And the first document that I tender is an extract from the government gazette. On page 2 you will see that it concerns an act of the governor in council on 18 December 1986. You will see there that the governor in council established an institution at Wacol to be known as the John Oxley Youth Centre.

COMMISSIONER: That will be exhibit 57, Mr Copley.

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ADMITTED AND MARKED: "EXHIBIT 57"

The next document I wish to tender is a photocopy of a letter from Mr Alan Pettigrew who was the director-general of the Department of Families addressed to Mr P.W. Coyne, bachelor of social work, supervisor, Department of Family Services Inala, dated 24 March 1988 and that document is the instrument of appointment of Mr Coyne as the manager of Oxley Centre at WACOL.

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COMMISSIONER: Exhibit 58.

ADMITTED AND MARKED: "EXHIBIT 58"

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MR COPLEY: Thank you. Now, the next document I wish to tender bears on the face of it the date of 8 June 1989 at the top left-hand corner and it's signed by a Mr G.E. Nix. As I understand it, that is Mr George Nix, who was the deputy director-general. It was a memo summarising his views about how the attached report should be handled by the government. The attached report is headed Report on the Effectiveness and Efficiency of Youth Detention Centres and - as it's called at the top - and there are three centres mentioned, John Oxley being the relevant one for these purposes and the report - perhaps after you make it an exhibit, I'll say more about it.

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COMMISSIONER: All right. Why don't we do that? I'll make it exhibit 59.

ADMITTED AND MARKED: EXHIBIT 59

MR COPLEY: Thank you. Now, you'll see in the memo on the front page in the third paragraph that Mr Nix suggested that a body called SEMT which must be an acronym for some internal departmental working committee, "Should establish a working party to consist of certain persons and the purpose of the working party was, as is set out in the last paragraph, to examine the ways and means of implementing the report." That's not of any great significance to you, but if you look at the report and go to, for example, the page that is numbered 10 in typing - it's also numbered 47 with a circle on it, but page 10.

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COMMISSIONER: Yes.

MR COPLEY: You'll see there in the second-last paragraph it provides a description of the John Oxley Youth Centre as at that time; that it had a small population of both boys and girls and the program there was, "Attempted intervention comprehensively with each youth to overcome delinquent behaviour at an early stage," because I'd submit to you that it might be important for the commission to understand something of the nature of this John Oxley Youth Centre, given that the events that we're primarily concerned with occurred so long ago. You'll see on the next page, paragraph 11 - - -

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COMMISSIONER: Sorry. Just before you go to that, it says, "Normalisation was the goal." 1

MR COPLEY: Yes.

COMMISSIONER: Okay.

MR COPLEY: As I understand that, that means that the goal was to have the children live and move and operate in an environment that was as close as possible to what they would experience if they lived not in a prison or a detention centre, but in the community. 10

COMMISSIONER: Okay. So were they segregated?

MR COPLEY: My recollection is from the material I've read that they weren't necessarily segregated.

COMMISSIONER: Okay.

MR COPLEY: Certainly not during the daytime. If you go to the next page, page 11, you'll see in the second paragraph where the report writer writes that, "John Oxley must be the most expensive centre because it attempts to do more with each youth." You will recall from the Government Gazette notice that I tendered that it was a very new youth centre compared to, for example, Westbrook which had been around by that time for many, many years. 20

COMMISSIONER: Did John Oxley take over from the Sir Leslie Wilson Centre, did it?

MR COPLEY: It didn't actually take over. Sir Leslie Wilson continued to operate.

COMMISSIONER: All right. 30

MR COPLEY: So it was operating concurrently with the Sir Leslie Wilson Youth Centre for some period of time.

COMMISSIONER: But performing different functions?

MR COPLEY: Yes, yes.

COMMISSIONER: Right.

MR COPLEY: They were the only two - no. 40

COMMISSIONER: Page 18 - - -

MR COPLEY: Yes, page 18 would be one that you might wish to note under paragraph 5.2.3, "The level of tension amongst youth and staff at John Oxley has been high, that the behaviour in the wings" - Mr Commissioner, there are three wings at this centre called, Blaxland, Lawson and Wentworth. That's what that's a reference to, "The

03/12/12

COPLEY SC, MR

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residents of the wings had frequently been testing the limitations which allowed little energy for productive interaction between youth and staff. The staff have been confused about the limits and standards and that there has been inconsistent application of these between youth workers and senior youth workers."

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COMMISSIONER: As we go along, it will become clear what the physical structure of the place was and how it was staffed, by how many and with what qualifications and experience.

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MR COPLEY: Yes; and there will be some further reference in the material to some of these problems. In the next paragraph you'll see that staff commented that the level of damage within the centre had been very high and that each of the three wings operated independently, setting its own internal rules and expectations which, although a valid exercise in normalisation, made it more difficult to monitor and enforce behavioural standards because the youth considered there to be an inconsistency or inconsistencies as they moved through the centre in terms of what was acceptable and what was unacceptable behaviour.

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At page 19, the second paragraph, "Youth at John Oxley appear to do fewer chores than at other centres," and the third - - -

COMMISSIONER: It just shows you how things change. I see that cigarette smoking was given as a reward for acceptable behaviour.

MR COPLEY: Yes, yes. In the third last paragraph on page 19 it says, "In this respect, a behaviour management system is harder to maintain at John Oxley." So it appears that there were some challenges facing the people who managed the John Oxley Youth Centre from fairly soon after its inception.

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COMMISSIONER: That document, exhibit 59, is dated 8 June 1989.

MR COPLEY: That's right. But the report that we've just been looking at is one dated April 1989. This was, of course, an issue that, no doubt, the Department of Families had to deal with, amongst other things. The next document that I wish to tender is a letter from Mr Alan Pettigrew, director-general of the Department of Family Services to Mr Ken O'Shea, the acting solicitor-general, dated 20 June 1989.

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COMMISSIONER: Mr Copley, I'll make that exhibit 60.

ADMITTED AND MARKED: "EXHIBIT 60"

MR COPLEY: Thank you.

03/12/12

COPLEY SC, MR

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03122012 02/JJT(BRIS) (Carmody CMR)

COMMISSIONER: But while I think of it, the term of reference relates to government response. My recollection is during this period government changed. 1

MR COPLEY: Yes.

COMMISSIONER: Will we have evidence about when it changed?

MR COPLEY: I don't know that you will - it's probably a matter you would be able to take notice of. 10

COMMISSIONER: No.

MR COPLEY: But it is referred to in material.

COMMISSIONER: Okay.

MR COPLEY: It may be that the election occurred on or about December 2, 1989, and then the National Party government was voted out of office and an ALP government was voted in.

COMMISSIONER: So from 1990 it was during the period of the Labor Party government headed by Mr Goss, was it? 20

MR COPLEY: Yes. Correct.

COMMISSIONER: Before that date, it was a National Party government.

MR COPLEY: Yes.

COMMISSIONER: Okay.

MR COPLEY: This letter from Mr Pettigrew dated 20 June 1989 is directed to Mr O'Shea and it seeks advice about whether certain reports prepared under regulation 63 of the Public Service Management and Employment Regulations of 1988 needed to be placed on an officer's file. A review of legislation would demonstrate that the public service operated on or under the Public Service Act of 1922, as amended from time to time; from 1922 until 1988. Then in 1988 this legislation, the Public Service Management and Employment Act of 1988 was passed and so, of course, one doesn't like to speculate, but it may be that the advent of a new legislative regime for governing the public service and the uncertainties that caused was one of the matters that caused Mr Pettigrew to write this letter to Mr O'Shea. 30 40

COMMISSIONER: And Mr O'Shea was the acting solicitor-general there.

MR COPLEY: And the permanently appointed crown solicitor.

COMMISSIONER: Right.

03/12/12

COPLEY SC, MR

MR COPLEY: Yes.

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COMMISSIONER: But that's a relevant contextual fact that there was a new piece of legislation established in 1989.

MR COPLEY: Yes.

COMMISSIONER: Okay.

MR COPLEY: He says after the passage that I've just read out that the concern is that if this occurs, that is, "If reports prepared under regulation 63 are placed on an officer's file, the officer could lodge a further grievance in respect of the investigation," and so on, "as each grievance is investigated. Mr Pettigrew then said, "One option was to keep a record of material gathered in the grievance process on a single confidential policy file rather than to place the material on someone's personnel file."

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COMMISSIONER: So to separate them out?

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MR COPLEY: Yes, and he says after the passage that I've just read out that the concern is that if this occurs, that is, if reports prepared under regulation 63 are placed on an officer's file, the officer could lodge a further grievance in respect of the investigation and so on as each grievance is investigated. Mr Pettigrew then said one option was to keep a record of material gathered in the grievance process on a single confidential policy file rather than to place the material on someone's personnel file.

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COMMISSIONER: So separate them out.

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MR COPLEY: Yes, and his advice - Mr O'Shea's advice was sought as to what extent regulation 46 would apply in this situation, in particular as to whether such a policy file, that is, a separate confidential policy file, would represent a departmental file or record held on an officer and thus be liable to discovery to the officer and whether it would represent an official file or record relating to an officer and if it would be necessary for an officer to be provided with a copy of it.

COMMISSIONER: so as at 20 June 1989 the guidelines for implementing the investigation of grievances under this new regulation were still be finalised.

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MR COPLEY: It would seem so.

COMMISSIONER: Okay.

MR COPLEY: Yes, and it's unclear exactly why he wrote that letter but, nevertheless, it was one that was found on departmental files.

COMMISSIONER: All right.

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MR COPLEY: Mr O'Shea - well, the next exhibit that I tender - - -

COMMISSIONER: Have I given you that exhibit number.

MR COPLEY: You have. 60 you said.

COMMISSIONER: Mr Pettigrew, for the record, was the director-general of the Department of Family Services at that time.

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MR COPLEY: He was, yes, and he was the director-general all the way through until shortly after the government changed in December 1989 and the material would tend to suggest he was transferred to another department to be its director-general and he was replaced by an acting director-general, but we will come to that.

COMMISSIONER: All right.

03/12/12

COPLEY SC, MR

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MR COPLEY: The next letter is an unsigned letter and you will see at the end of it that it bears typing but no signature of K.M. O'Shea, acting solicitor-general and you will see on the front of it that if one telephones or calls, one was to ask for Mr Campbell who was a lawyer employed in the Crown Solicitor's Office. It's dated 30 June 1989 and it's directed to the director-general of Family Services. I would ask that that be made an exhibit.

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COMMISSIONER: That will be exhibit 61.

ADMITTED AND MARKED: "EXHIBIT 61"

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MR COPLEY: This letter was a response to exhibit 60.

COMMISSIONER: Yes.

MR COPLEY: Mr Campbell or Mr O'Shea, whoever authored this letter, stated that regulation 46 of the Public Service Management and Employment Regulations required a report concerning the performance of an officer which could reasonably be considered to be detrimental to his interests not be placed on any official file or record relating to the officer unless the officer was provided with a copy of it and an opportunity to respond first. That was the effect of regulation 46. That was dated - - -

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COMMISSIONER: That was the advice through the department head as at 30 June 1989.

MR COPLEY: Yes. Regulation 63 is set out and that concerns how an officer may submit a grievance to the chief executive. The chief executive was then obliged to ensure that everyone had an opportunity to present all aspects of the grievance and that the grievance would be investigated in a thorough, fair and impartial manner and under regulation 63(3) the chief executive might appoint an officer to investigate the grievance and that officer was obliged to prepare a report. The significance of this will become apparent as the months go by and as we tender more documents. Regulation 65 is there set out on page 2. It states that an officer shall be permitted to peruse any departmental file or record held on the officer.

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COMMISSIONER: Presumably the term "an officer" is defined, is it?

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MR COPLEY: Yes, it was. Now, the advice was in the first big paragraph on page 2 about halfway through the paragraph where the writer, Mr O'Shea or Mr Campbell, said: 1

Commonsense and good administrative practice would seem to indicate that such reports, whether favourable or detrimental, should be placed on official files or records. In the event that such a report is detrimental the requirement of regulation 46 must be complied with.

Namely, the step of showing it to the public service officer and giving him the right to comment on the report. The writer said: 10

The concern about the lodgment of further grievances would not appear to be well based and in any event could be dealt with by the chief executive opining that the grievance was of a frivolous or vexatious nature. If the chief executive opined that a grievance was frivolous or vexatious, he had a discretion not to investigate it.

The writer said that the option to keep a record in a confidential policy file would not seem to be advisable or practicable. The adoption of a system of confidential grievance files running parallel to the system of official files would be an exercise in artificiality and administrative duplication and the opinion of the writer was that a confidential policy file did constitute a departmental file or record held on an officer and so it would be necessary to give that officer a copy of such a confidential policy file and it would be necessary to give that officer the opportunity to respond or comment on anything adverse to the officer's interests in that file. The next exhibit I tender is a letter dated 28 August 1989 and it is written by a Mr D.F. Lannen to the director-general, Mr Pettigrew. 20 30

COMMISSIONER: That will be exhibit 62.

ADMITTED AND MARKED: "EXHIBIT 62"

MR COPLEY: Now, that letter was written by a worker, a youth worker, at the John Oxley Youth Centre and the letter complains about the fact that the writer, Mr Lannen, had had his probationary period extended because you may know or may not know that in the public service, at least in those days, when an officer was appointed, he was placed on what was called probation for a period of time before he could become a permanent public servant with all the rights that inhered to being a permanent public servant and if the person performed satisfactorily on probation, then he was recommended for permanent appointment. If he performed unsatisfactorily, then probation might be continued or his employment might be ended. 40

03/12/12

COPLEY SC, MR

This officer is complaining that his probation was extended when it shouldn't have been and that a salary increment to him had been withheld. He states in the second-last paragraph that he had never been formally advised either orally or in writing why his service had been less than satisfactory and he complains that the manager - complained that the manager at the John Oxley Youth Centre had retained reports about him which the manager had withheld from him. The officer asserted that his service had been more than satisfactory and in the big paragraph on page 2 the officer complained that he was being victimised and that he had been accused of being dishonest and using unnecessary force on inmate children.

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COMMISSIONER: Right.

MR COPLEY: He complained in the next paragraph that the problems that he faced were presently being experienced by several other competent - what he described as competent and caring staff members and in the last paragraph he complained to the director-general that he was going to have to consider pursuing a career elsewhere even though he didn't want to do so.

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COMMISSIONER: The manager referred to in the letter is Mr Coyne who was appointed under exhibit 59.

MR COPLEY: That is correct. Now, the next exhibit I tender has no relationship to exhibit 62 but, rather, relates back to exhibit 61 and exhibit 60. It's a letter to Mr O'Shea in his capacity as acting solicitor-general from Mr Alan Pettigrew, director-general, dated 29 August 1989.

COMMISSIONER: That will be exhibit 63.

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ADMITTED AND MARKED: "EXHIBIT 63"

MR COPLEY: Now, in this letter Mr Pettigrew returned to this subject of regulation 46 of the Public Service Management and Employment Act and he said that the advice he had received on 30 June 1989 raised a further question for him and he pointed out that during the process of selection for vacant public service positions merit statements were produced to support the recommendation that a particular applicant get a particular job.

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Some of the merit statements, he said, might discuss the relative merits of various applicants who might be other public servants and he said it was possible that there might be material that could be considered detrimental to the interests of those public service officers within the merit statements. He said the departmental practice had been to retain such merit statements only for a period of six months, after which time they were destroyed and that they were never attached to a public servant's personnel

03/12/12

COPLEY SC, MR

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file and that they were not made available to unsuccessful candidates. 1

So on the second page of the document he sought the Crown Solicitor's advice as to whether the practice of storing and destroying merit statements might breach regulation 46 of what was then, as I pointed out earlier, a relatively new legislative regime governing the public service. I think you made that an exhibit.

COMMISSIONER: I did, Mr Copley, 63. 10

MR COPLEY: Right, thank you. The next document I wish to tender is a handwritten note which you'll see on page 2 is dated 12/9/89.

COMMISSIONER: Yes, I see it.

MR COPLEY: And on the front page at the top it is described as a memo, J. Walker, QUS, I think it is. I tender that document.

COMMISSIONER: That will be exhibit 64. 20

ADMITTED AND MARKED: "EXHIBIT 64"

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MR COPLEY: You will see on the handwritten note on the first page it says, "Persons who have recently expressed concern at" - and this word is in inverted commas - "'alleged' harassment by P. Coyne, manager of John Oxley YC." And it names the persons as being one Danny Lannen and a description of his role there; secondly David Smith, who was the Queensland State Service Union - that's what QSSU would mean - representative at JOYC; thirdly Maryanna Pearce, a youth worker who was currently on sick leave (stress); fourthly allegedly all youth workers who are employees of the Wilson - are ex-employees, rather - of the Wilson Youth Centre; fifthly an M. Roach (since resigned position) continually harassed by manager, it is asserted.

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Then there's paragraph 6 doesn't name any individual; paragraph 7 names two departmental officers who were allegedly aware of the union's concerns; paragraph 8 asserts that there were no staff problems with the previous manager; paragraph 9 asserts currently a high turnover of staff; paragraph 10 reads, "Allegation that Coyne deliberately sets out to harass individuals whom he doesn't like so that they resign." And then lastly the author puts forward an opinion about Mr Coyne in paragraph 11.

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It's not clear from the signature who the author of that document is, but it seems to have been a union official writing to another union official and the union concerned was the Queensland State Service Union. The next letter I want to tender is a letter dated 12 September 1989, so the same date as that handwritten note, and it's a letter from a J.M. Walker, who was the director of industrial services with the Queensland State Service Union and it was addressed to Mr Alan Pettigrew, director general.

COMMISSIONER: Ms Walker's letter will be exhibit 65.

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ADMITTED AND MARKED: "EXHIBIT 65"

MR COPLEY: Thank you. You will see that that letter is headed, "Re: unsatisfactory probation report, Mr D.F. Lannen." And it asserts that Mr Lannen was appointed and placed on probation on 14 March 1988; then on 29 June 1989 he was appointed a youth worker at John Oxley, that his probation report was not completed until July 1989; that the union asserted that the delay wasn't due to Mr Lannen, the union asserted that there was an apparent personality conflict between Mr Lannen and the manager of JOYC, Mr Peter Coyne. An example is then cited in the last paragraph of the first page of the letter about the conduct or the behaviour between the two.

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Then on the second page of the letter it is asserted by the writer, Mr or Ms Walker, that this is not the first occasion that members of the union at John Oxley have had cause to contact the union in regard to alleged harassment by the manager. It says, "In fact, on 9 November 1988 a

03/12/12

COPLEY SC, MR

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meeting of about 35 employees of JOYC was held with the executive director of youth services, is to Ian Pearce, attending." It goes on to state that, "The union now considers that a meeting you, the director-general, at this point would be appropriate to discuss those concerns as well as those of Mr Lannen." And then it notes that, "Tentative arrangements have been made to meet with you on Thursday, 21 September 1989."

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Now, the reference to a meeting on 9 November 1988 was indeed a meeting that did occur. We have the minutes of that meeting and they'll be tendered later in the day today. The next document wish to tender is handed Attachment 1, Meeting with Queensland State Service Union, it bears the date 14 September 1989 and it notes that those present at the meeting were Mr Pettigrew, who was the director-general; Mr George Nix, whose name you've encountered before, who was a deputy director-general; Mr C. Thatcher, who may have been an assistant director-general; Mr Herbert, I don't know who he was; and Mr Clark, similarly I don't know who he was.

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The identity in terms of the gender of J. Walker has now been answered, a Ms J. Walker.

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COMMISSIONER: It's Janine Walker.

MR COPLEY: It may well be, yes. And this notation, which appears to be a summation of the meeting with the director-general, opens with this, that Ms J. Walker of Queensland State Service Union sought discussions with the director-general to raise specific issues of concern concerning her members at John Oxley. The issues raised by her were as follows, and you'll see that there are seven issues there.

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COMMISSIONER: Yes.

MR COPLEY: The first concern Mr Coyne; the second concerned Mr Coyne; the third concerned Mr Lex Clemments; the fourth concerned Mr Coyne; the fifth concerned Maryanna Pearce; the sixth of concerned five other youth workers; the seventh was an allegation that Mr Coyne had been threatening other youth workers at John Oxley youth centre besides Mr Lannen, that he was prepared to take private defamation action against them; and the eighth allegation or assertion was that the union was seeking to have an inquiry into management/staff relationships at John Oxley youth centre in view of the ongoing problems occurring at the centre.

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It goes on, "The union was prepared to provide specific details of incidents between management and staff to aid the inquiry." This document then asserts in the last paragraph that, "The director-general as a result of those concerns decided that an investigation into the operations

03/12/12

COPLEY SC, MR

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of the John Oxley youth centre would be held."

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COMMISSIONER: I see in that paragraph, the last paragraph on the page, it says that the investigation would take into account, "Issues raised by the union in addition to other matters." Does that ever become clear, what other matters he was referring to?

MR COPLEY: It's not clear, no. But it reads this way, that the investigation would take into account in addition to other matters, the issues raised by the Queensland State Service Union.

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COMMISSIONER: Right, so those - presumably the issues raised there are the 1 to 7.

MR COPLEY: Yes.

COMMISSIONER: And the other matters - - -

MR COPLEY: Probably it can be established by inference at the moment, but it may be that Mr Nix and Mr Pearce might be able to cast light on this in coming months.

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COMMISSIONER: All right, okay.

MR COPLEY: But when you get to the terms of reference for Mr Heiner's investigation, you might be able to discern what some of the other matters were.

COMMISSIONER: All right, okay.

MR COPLEY: Possibly. You will see - - -

COMMISSIONER: You're telling me to hold on, Mr Copley.

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MR COPLEY: Yes. You'll see that there are two handwritten notes on that document, Mr Commissioner. The first one I can't help you with apart from perhaps the word thanks, "Thanks George, please see that the" - something or other, then the next one is addressed to someone called Peter. It says, "Peter, Allen will decide who he wants to conduct the investigation and advise," and it's signed Ian and it's dated 18 September 1989. Whether the Peter is Peter Coyne, whether the Ian is Ian Pearce is a matter we don't know at the moment.

COMMISSIONER: Or whether the Alan is Mr Pettigrew.

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MR COPLEY: True. But there's an eerie familiarity already in these names. The next document I tender is a handwritten memo directed to the acting G-S and - - -

MR HANGER: Was that previous one made an exhibit?

COMMISSIONER: Yes. If it wasn't, it will be Exhibit 66.

03/12/12

COPLEY SC, MR

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03122012 04/ADH (BRIS) (Carmody CMR)

ADMITTED AND MARKED: "EXHIBIT 66"

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MR COPLEY: The next document, the handwritten memo to the acting G-S - that may mean general secretary -is dated 20 September 1989.

COMMISSIONER: That document, Mr Copley, will be exhibit 68.

MR COPLEY: 67, I think.

COMMISSIONER: 67, is it? Yes, it will.

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ADMITTED AND MARKED: "EXHIBIT 67"

MR COPLEY: Thank you. You will see there that in speaking with David Smith (delegate) several names were suggested as persons he would make detailed - make available, rather, signed statements with respect to problems with Mr Coyne, and the names listed were Lex Clemments, Peter McNevin and Maryanna Pearce.

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03/12/12

COPLEY SC, MR

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COMMISSIONER: Yes.

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MR COPLEY: Names of various other officers, the note asserts, are to be withheld at this stage, that Mr Smith will make contact with these anonymous official officers with a view to them forwarding signed statements, and then it provides an opinion about the merit or otherwise of Mr Coyne's appointment which is, with all due respect, neither here nor there to this inquiry.

The next document I tender is a letter, a typewritten letter, written by a lady called Lyn Draper, principal youth worker, John Oxley Youth Centre addressed to Ms Janine Walker, State Services Union dated 22 September 1989.

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COMMISSIONER: The document will be exhibit 68.

ADMITTED AND MARKED: "EXHIBIT 68"

MR COPLEY: In that letter Ms Draper asserts that she was a financial member of the State Service Superannuation Union and that she was concerned about recent issues that had occurred at John Oxley and that they had not been dealt with in a fair manner. She asserted that over a period of time there had been complaints from a minority group of staff about the management of the John Oxley Youth Centre and that this minority group had in the past gone so far as to call a major meeting of staff within the centre to show a vote of no confidence in the manager but that their issues could not be substantiated.

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She then went on to express concern about the way the union was handling matters at John Oxley and she became aware, she said, that a youth worker called David Smith who you may recall is referred to in the previous exhibit as the delegate had nominated himself to act as a union delegate. She did not believe he had the ability to work in the best interests of either the union or its members and she, Ms Draper, had no confidence in his representation of her or the union.

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She complained that the manner of collecting information from staff who felt that they were being victimised by Mr Coyne was improper. She said that some staff had been quite concerned that a very one-sided view - presumably adverse to Mr Coyne - a one-sided view of Mr Coyne was being presented. She said that the State Service Union appears to be prepared to take complaints and present them on behalf of non-union members and as a financial member of the union she found that very unsatisfactory.

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In her last paragraph she said she wished to register her support for the managers of the JOYC, namely, Mr Peter Coyne and Mrs Anne Dutney, and that she was prepared to display this support in person or in writing to any inquiry

03/12/12

COPLEY SC, MR

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instituted by the department. The reference to Mrs Dutney is the first one you will have seen to her name. She was the deputy manager of the John Oxley Youth Centre.

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COMMISSIONER: So the opposing forces are lining up at this point.

MR COPLEY: Yes, or starting to, it seems.

COMMISSIONER: Yes.

MR COPLEY: The next document I tender is a handwritten note to a man called Brian so I would ask you to make that an exhibit.

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COMMISSIONER: Yes, it's undated. That will be exhibit 69.

ADMITTED AND MARKED: "EXHIBIT 69"

MR COPLEY: It's undated but you can get an impression about when it may have been written because it says, "Danny Lannen had contacted me" - whoever the writer is - "to say that Alan Pettigrew will be making a special trip to J. Oxley this Thursday, 27/9, 2.30 to start asking his own questions about Peter Coyne."

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COMMISSIONER: Right.

MR COPLEY: The next letter I tender is a letter signed apparently by Mr K.M. O'Shea, acting solicitor-general to the director-general, again bears Mr Campbell's name in the top left-hand corner and it's dated 27 September 1989.

COMMISSIONER: That letter will be exhibit 70.

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ADMITTED AND MARKED: "EXHIBIT 70"

MR COPLEY: Yes.

COMMISSIONER: Mr Copley, I haven't asked you this in respect of the exhibits to this point, but I take it there's no reason why any of the exhibits that I accept and marked can't be published in full and if that assumption shouldn't apply in respect of any particular exhibit, you will tell me.

MR COPLEY: Well, certainly from my point of view as counsel assisting there are two exhibits that I have in mind at the moment that it might be necessary for the commission to contact a person mentioned in the exhibits to see whether or not they would wish to be heard on the question of publication, but certainly apart from that my position is that all of the exhibits that I'm tendering today should be published.

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COMMISSIONER: All right. If anybody has a contrary position in respect of any particular exhibit, they should let it be known before I accept and mark it because otherwise once that has happened, it will be on the basis that it is to be published in full without amendment unless I have specifically directed otherwise.

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MR COPLEY: This letter of 27 September 1989 is the Crown Solicitor's reply to the letter Mr Pettigrew sent on 29 August 1989 concerning whether or not Mr Pettigrew could destroy merit statements after six months under the new regulation.

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COMMISSIONER: That's merit statements so if you get a job, somebody assesses your level of merit for that job.

MR COPLEY: That's right, or if you apply for a job as a public servant and you miss out on it and an assessment is made about the degree of merit that you demonstrated against a selection criteria, then there may be favourable or unfavourable comments in those merit-assessment reports.

COMMISSIONER: Then after six months those comments are destroyed.

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MR COPLEY: That had been the practice in the Department of Family Services at least and Mr Pettigrew seemed anxious to know whether that practice could continue in the face of the new regulations made pursuant to the new statute.

COMMISSIONER: And in particular regulation 46.

MR COPLEY: That's correct.

COMMISSIONER: Okay.

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MR COPLEY: The answer was in the last big paragraph on the page that in view of what appeared to be a uniform policy to maintain merit statements separately from any official file or record and to destroy the said statements at the expiration of a fixed period the departmental practice would not seem to offend against regulation 46.

COMMISSIONER: So practices didn't need to change. The status quo prevailed.

MR COPLEY: That's correct, subject to the assumption that all merit statements are dealt with and destroyed in that manner and would not in any circumstances become part of the official files or records relating to an officer and, further, the Crown Solicitor wrote that no extracts from or references to the merit statements should be placed in the official files or records of the department.

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COMMISSIONER: So that meant the practical effect was that if somebody wanted to have a look at my file, after six

03/12/12

COPLEY SC, MR

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months they wouldn't - well, they wouldn't see any merit statement. 1

MR COPLEY: Correct.

COMMISSIONER: If they wanted to look at the departmental file about me and my merits, they had six months to do it, otherwise they missed out.

MR COPLEY: That's correct, and you will see there's a handwritten note on the left-hand side by someone, "No change to existing practices required." So that appeared to be where the issue was left. 10

COMMISSIONER: That handwritten notation looks to me to be dated 20 October 1989.

MR COPLEY: Yes, that appears to be right, and the letter is marked as having been received in the department on 18 October 1989. You will see it's an upside-down receipt stamp.

COMMISSIONER: Yes. 20

MR COPLEY: So even though the letter was dated 27 September, the Crown Solicitor's Office may not actually have got around to mailing it until much later than that.

COMMISSIONER: On the 18th it said, "To David for necessary attention".

MR COPLEY: Yes, by "Sue C."; Sue, surname beginning with C. So it may be that the reply was prepared by Mr Campbell on behalf of the Crown Solicitor or acting solicitor-general, Mr O'Shea, and him being a busy person, some weeks might have elapsed before he was able to review the opinion that had been prepared. The next letter that I tender is one directed to Mr Alan Pettigrew, director-general, from a man called Fred Feige, F-e-i-g-e, and it is dated certainly September 1989 and by reference to the body of the letter the date must be 29 September 1989. 30

COMMISSIONER: That will be exhibit 71.

ADMITTED AND MARKED: "EXHIBIT 71"

MR COPLEY: Mr Feige was, he said, a youth worker at the John Oxley Youth Centre and he was writing in response to a meeting that had been held on 28 September at John Oxley Youth Centre. He said that he "understood from yourself" - meaning Mr Pettigrew or Mr Nix - "that there had been allegations made against the management (Mr Coyne)". 40

In the body of the letter the writer opines that Mr Coyne was far too professional to resort to such measures as victimisation and that Mr Coyne, he felt, the author felt,

03/12/12

COPLEY SC, MR

had been the victim of what is called flattery for advancement. In the last paragraph on that page it says, "At the meeting" - presumably the one on 28 September - "I" - Mr Feige - "inquired if other subjects could be included if an inquiry was held. The subjects were the safety of both young people and staff as well as the use of handcuffs."

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He goes on, "In recent weeks we have been forced to use handcuffs to contain the behaviour of a number of young people. I was involved in most of these instances. While I did not like what was done," and he underlines this, "I felt there was no other option. We were forced into this action as the facilities at John Oxley are not designed to control such behaviours from more than one young person. I feel it is time we collectively sought answers to these problems. In discussion with Mr Coyne, a range of options were investigated, however, there seems to be only one option. This would involve capital works."

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He goes on to state, "The safety of both the young people and the staff is of particular concern to me." He complains that the alarm system seems to be experiencing problems and increasing staff levels would ameliorate the concerns that he had. So, in short, it was a letter complaining about quite a few things to the director-general from a worker at John Oxley.

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The next letter I tender is one from Ms Janine Walker, director of industrial services of the Queensland State Service Union, who I might from now on simply call the QWSU. It's directed to Mr Alan Pettigrew, director-general, dated 10 October 1989.

COMMISSIONER: That will be exhibit 72.

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ADMITTED AND MARKED: "EXHIBIT 72"

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MR COPLEY: Thank you. In this letter she refers to the meeting held on Thursday, 21 September 1989 regarding the unsatisfactory probation report for Mr Lannen. She notes, "It was indicated that there are a group of youth workers who had expressed to the union their concern regarding the manager, Mr Coyne," and she goes on to assert, "The union had now received a number of submissions from the youth workers who had lodged complaints about the style of management of Mr Coyne."

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The union wanted to point out as well that they have also received from other youth workers letters supportive of Mr Coyne as the manager. She said, "As requested, the union has obtained statements from youth workers and these statements are now enclosed for your perusal." She says, "Certain of the enclosed statements contained serious allegations. For that reason they are supplied to you personally on the understanding that they will not be circulated widely."

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That is important for you to note that phrase that, "They are supplied to you personally on the understanding that they will not be circulated widely," because that's a concept or an expression or phraseology that is referred to subsequently in documents that I will tender.

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COMMISSIONER: So this is a condition on which the union is providing this information to the department?

MR COPLEY: That's correct. It goes on to say, "They are supplied for the purpose of substantiating our concerns in relation to the management of the centre."

COMMISSIONER: All right. So the union is taking up the cause of the staff.

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MR COPLEY: That might be perhaps an oversimplification - - -

COMMISSIONER: Overstating it.

MR COPLEY: - - - because they assert that they had received letters critical of the manager, but also letters supportive of the manager.

COMMISSIONER: Right. So they were taking up the interests of their members whichever side they were on.

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MR COPLEY: It would appear so and bringing them to the attention of the director-general.

COMMISSIONER: Yes.

MR COPLEY: Now, I think that from memory - that has been made exhibit 72, I think, from memory.

03/12/12

COPLEY SC, MR

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COMMISSIONER: Yes. 1

MR COPLEY: Okay. The next document you will see is a typewritten document and it's got the names of people down the left-hand side. Is that there, Mr Commissioner? If it's not, it doesn't matter because it probably shouldn't be, but if it is there will be no great harm in you seeing it now. I'll just hand it to your assistant so you can see the document I'm referring to.

COMMISSIONER: Yes. 10

MR COPLEY: It should be under the last exhibit you have just - - -

COMMISSIONER: Yes, sorry. I have got that. Yes.

MR COPLEY: Okay.

COMMISSIONER: All right. That's the list of people that has got a date on it.

MR COPLEY: That's right. 20

COMMISSIONER: Yes.

MR COPLEY: That document wasn't created until 29 November 1989.

COMMISSIONER: I see.

MR COPLEY: We will probably be able to work out who created it, but I have left it there because it contains basically an index to the statements which follow.

COMMISSIONER: All right. Okay. 30

MR COPLEY: Maybe you can just make it a part of exhibit 72.

COMMISSIONER: Yes.

MR COPLEY: Because that, effectively, would seem to be an exhaustive list of the letters that were complaining about Mr Coyne.

COMMISSIONER: All right. The schedule that's dated 9 November 1989 will be part of exhibit 72. 40

MR COPLEY: Thank you. Now, I'm not going to go into the detail of these letters at all at this stage because these letters can be shown to witnesses down the track and we'll see if they adopt them, but I would ask you to make these exhibits 72A, 72B, 72C and so on, simply for the purposes of keeping them with the letter that is exhibit 72. May I read them into the record?

03/12/12 COPLEY SC, MR

COMMISSIONER: Yes, certainly. What I'll do, I should perhaps make that schedule 72A rather than part of 72 - - - 1

MR COPLEY: Very well.

COMMISSIONER: - - - because it isn't actually part of the letter, is it?

MR COPLEY: Okay.

ADMITTED AND MARKED: EXHIBIT 72A 10

COMMISSIONER: And then I'll make the others successive after that.

MR COPLEY: All right.

COMMISSIONER: If you read them into the record, I'll give them a number and a letter as you do so.

MR COPLEY: Okay. The first is a typewritten letter from Daniel Lannen dated 3 October 1989 and it's three pages long. 20

COMMISSIONER: That will be exhibit 72B.

ADMITTED AND MARKED: "EXHIBIT 72B"

MR COPLEY: Thank you. The next is a one-page letter from Mr David Smith, typewritten to Mr Pettigrew dated possible 8 October 1989.

COMMISSIONER: Yes, it looks like that. That will be exhibit 72C. 30

ADMITTED AND MARKED: "EXHIBIT 72C"

MR COPLEY: The next is a handwritten statement from Mariana Pearce, four pages long, and it doesn't appear to be addressed to anyone in particular.

COMMISSIONER: That will be exhibit 72D.

ADMITTED AND MARKED: "EXHIBIT 72D"

MR COPLEY: The next is a handwritten statement which is four pages long from L. McGregor, RN, presumably registered nurse, and it's not addressed to anyone in particular. 40

COMMISSIONER: Ms McGregor's letter will be exhibit 72E.

ADMITTED AND MARKED: "EXHIBIT 72E"

MR COPLEY: The next is described as an affidavit signed at Townsville on 2 October 1989 via Brendon Sean Collins.

03/12/12 COPLEY SC, MR

03122012 06/JJT(BRIS) (Carmody CMR)

COMMISSIONER: The affidavit of Mr Collins will be 72F. 1

ADMITTED AND MARKED: "EXHIBIT 72F"

MR COPLEY: The next is a handwritten one-page letter addressed, "Dear sir," from Peter McNevan.

COMMISSIONER: That will be 72G.

ADMITTED AND MARKED: "EXHIBIT 72G"

MR COPLEY: The next is a one-page handwritten letter dated 3 October 1989 signed, "Yours sincerely, very concerned,". 10

COMMISSIONER: The "very concerned" document will be exhibit 72H.

ADMITTED AND MARKED: "EXHIBIT 72H"

MR COPLEY: The next is a handwritten letter that is quite a few pages long addressed, "To whom it may concern," and signed by Lex Clements. 20

COMMISSIONER: Mr Clements' letter will be exhibit 72I.

ADMITTED AND MARKED: "EXHIBIT 72I"

MR COPLEY: The next is a handwritten letter addressed to Mr Pettigrew dated 3 October 1989 and signed Sabina Konicanin.

COMMISSIONER: Ms Konicanin's letter to Mr Pettigrew will be exhibit 72J.

ADMITTED AND MARKED: "EXHIBIT 72J" 30

MR COPLEY: Thank you. The next document that I tender is a memorandum from Mr Pettigrew, director-general, dated 17 October 1989 addressed to, "The Honourable, the minister."

COMMISSIONER: That will be exhibit 73.

ADMITTED AND MARKED: "EXHIBIT 73"

MR COPLEY: The minister concerned there was a Mrs Beryce Nelson. You will see that it recites that on 14 September 1989, Mrs Walker from the QWSU alleged serious problems between the manager of the JOYC, Mr Coyne, and some of his staff; that she had received reports some from her members that Mr Coyne was inconsistent in his handling of staff and was harassing some staff members and making threats against them and others. Mr Pettigrew said he gave a commitment to Mrs Walker that he would investigate any complaints which were put to him in writing which might 40

03/12/12

COPLEY SC, MR

inform the importance of the documents 72B through to I. 1

On 28 September 1989, he said that he visited the centre and spoke with a large proportion of the staff and told them that he conducted to conduct an investigation if the complaints were confirmed in writing. He said, "On Wednesday last, I received a letter from Mrs Walker enclosing nine letters of complaint against Mr Coyne; some signed by the authors and others signed under nom de plumes, such as "very concerned". Mr Pettigrew said to the minister that he was giving the matter a great deal of consideration and had proposed to recommend that Mr Viv Gillingwater, a former magistrate, be appointed to conduct an investigation." 10

Mr Gillingwater had retired the year before and he considered Mr Gillingwater would have been a suitable person for the task in view of his knowledge of the system because he had been a Children's Court magistrate, according to Mr Pettigrew. He said, "The reasons behind the request for the four unions now to meet with you are not known, but it would appear that the State Service Union has sought the support of the others in their representations to the department." So this is the first time we hear of a reference to other unions and the documents subsequently will show that those other unions would appear to have been the Teachers Union and the Professional Officers Association, amongst others. 20

You will see down the bottom that there's a handwritten note that asserts "Minister is very sympathetic". There's a handwritten that refers to "John Oxley (Laurie Gillespie)" who was a senior official in the State Service Union, makes reference to staff ratio and it says "seven or eight months since made the submission", but probably the important note there is the assertion "Minister is very sympathetic". 30

COMMISSIONER: Yes.

MR COPLEY: The next letter I tender is from Mr Gillespie of the State Service Union addressed to the Honourable B.A. Nelson, Minister for Family Services, dated 18 October 1989.

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COMMISSIONER: The letter from Mr Gillespie to the minister will be exhibit 74. 1

ADMITTED AND MARKED: "EXHIBIT 74"

MR COPLEY: Thank you. You will see there that it refers to attachments relative to the shortcomings that have become evident at the John Oxley Centre and that the submission refers to the role of the centre, personal safety of staff, adequacy of staffing, the structure of the centre and its amenities and staff training, and then attached to that is a three-page typewritten document which appears to set out in greater detail those areas of concern that I have just read into the record from the State Service Union. 10

COMMISSIONER: Yes.

MR COPLEY: For example, on page 2, the next page, paragraph 1, the alarm system, particular 2, locks and doors and so it goes on.

COMMISSIONER: Yes.

MR COPLEY: The next letter I tender is a letter addressed to Mr Coyne, the manager of John Oxley Youth Centre, from Mr Pettigrew dated 23 October 1989. 20

COMMISSIONER: That letter will be exhibit 75.

ADMITTED AND MARKED: "EXHIBIT 75"

MR COPLEY: This letter, if nothing else, demonstrates that Mr Coyne was still in charge at that time because the letter is to advise him that the minister had approved an increase in the classification level of the position of manager at John Oxley to the level of the letter I-12. That was a ranking system that existed in the public service in those days where positions were given a ranking which determined how much pay and superannuation they received. 30

COMMISSIONER: Right, and when something is reclassified it spills the position.

MR COPLEY: That's right, and an advertisement, according to this letter, was going to be placed in the Government Gazette shortly so that presumably Mr Coyne, if he wanted to, could apply for the job he was then doing at a lower level but at the higher level of I-12. 40

COMMISSIONER: In the meantime he was to act in that position.

MR COPLEY: That's right, until further advised.

COMMISSIONER: Right. 1

MR COPLEY: That letter was received at the John Oxley Youth Centre, according to the stamp, on 16 November 1989. Have you made that an exhibit?

COMMISSIONER: I have, I think. It will be exhibit 75.

MR COPLEY: Thank you. The next document I tender is headed "Secret Collective Minutes of Proceedings Cabinet Meeting Held at the Cabinet Room Brisbane on 23 October 1989". I tender that. 10

COMMISSIONER: That will be exhibit 76.

ADMITTED AND MARKED: "EXHIBIT 76"

MR COPLEY: There is attached to that document a letter from the acting cabinet secretary in 1999. That's probably just there to demonstrate that whatever privilege that document might otherwise once had had was waived many years ago, but the importance of the minute, Mr Commissioner, is that among the ministers in attendance that day was Mrs Nelson until 10.05 pm. You will see that at the top of the first page. 20

COMMISSIONER: Yes.

MR COPLEY: Then on the second page in the third paragraph down it says, "The Honourable, the Minister for Family Services indicated that an investigation was to be conducted into the operations of the John Oxley Youth Centre."

COMMISSIONER: So that is information to cabinet from the minister about what she had directed to happen. 30

MR COPLEY: That's correct, yes. It does not seem as though she was seeking cabinet approval for it or that cabinet appoint the investigation. She was simply asking them to note that an investigation was going to be conducted.

COMMISSIONER: Yes, she probably didn't need to and the investigation was being conducted under Mr Pettigrew's authority rather than the minister's, wasn't it?

MR COPLEY: That's correct, yes. The next document I tender is a typewritten brief. It's described as "A brief for the Honourable, the Minister Re Visit to John Oxley Youth Centre Thursday, 26 October 1989". Could you make that an exhibit, please? 40

COMMISSIONER: Yes, sure. That will be exhibit 77.

ADMITTED AND MARKED: "EXHIBIT 77"

03/12/12

COPLEY SC, MR

MR COPLEY: Thank you. This document is interesting because it tells you a number of things about the John Oxley Centre. For example, in the second paragraph it tells you that it opened on 17 February 1987 so it had been operating less than three years when all these problems were emerging. It describes the centre's physical attributes there on the first page. It identifies who the manager and deputy manager were, Mr Coyne and Ms Dutney respectively. It sets out that 55 staff were employed at the centre and sets out their various categories and you will see their youth workers, senior youth workers, teachers, psychologists, nurses and various administrative officers.

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Then importantly on page 2 it sets out a description of clients and you will see that generally it housed children committed to the care and control of the director-general for offences by a court and it houses girls on remand. For the record, you will probably, of course, know this. "On remand" means awaiting next appearance in court; guilt still being a matter to be determined. Care and control was an order that courts were allowed to make on a child who was convicted of a criminal offence prior to the advent of the Juvenile Justice Act at the end of 1992. So it was an order permissible under the Children's Services Act of 1965 and what it effectively meant was instead of saying, "You're sentenced to a period of detention," the order was, "You are sentenced to under the care and control of the director-general of the department."

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COMMISSIONER: Who then detained you.

MR COPLEY: Yes, or may even have had a discretion where to detain you, if at all.

COMMISSIONER: Yes.

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MR COPLEY: But I just wanted to get you to note that it occasionally housed girls subject to care and control applications so they were applications made by the director-general to have a child placed under his care and control presumably because the child had been misbehaving or was otherwise uncontrollable. So it seems from this document that the John Oxley Youth Centre was housing inmates who were sentenced offenders, as well as occasionally inmates, in the sense of people living in there, who were simply there because the director-general had obtained an order from a court to place a child under his care and control for their own safety.

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COMMISSIONER: In the case of girls some of them were on remand.

MR COPLEY: Yes, so very much a mixed bag of children, children who were effectively to be regarded as criminals and children who were there for their own protection.

03/12/12

COPLEY SC, MR

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COMMISSIONER: While they were there they were accommodated and educated. 1

MR COPLEY: Yes, that's why there were teachers on the staff.

COMMISSIONER: Then there were youth workers who obviously dealt with them in that capacity as well.

MR COPLEY: Yes, and on page 2 you will see there in the middle of the page "individual education services are available" so it was asserted. Then on page 3 it speaks about current significant issues and that several unions representing staff had raised with the minister issues concerning - and it sets out the issues - personal safety of staff, adequacy of staffing, the physical structure of the centre and the role of the centre and then the last paragraph says, "The director-general is initiating a process for independent investigation of these concerns." 10

COMMISSIONER: And staff training was one of them as well.

MR COPLEY: Yes; yes. 20

COMMISSIONER: Yes.

MR COPLEY: Now, the next document is a memorandum dated 30 October 1989 to the director-general from Mr Ian Peers, executive director.

COMMISSIONER: That document will be exhibit 78.

ADMITTED AND MARKED: "EXHIBIT 78"

MR COPLEY: The memorandum concerns, according to its heading, documents relevant to the work of the magistrate investigating at John Oxley Youth Centre. And what was attached to this exhibit were: a copy of the code of conduct for public servants; a copy of the file containing all memoranda issued to staff at the John Oxley youth centre; draft position descriptions, which are documents which describe what each particular category of public servant is meant to do in his job; and a print-out of subject titles for administrative memoranda and procedural memoranda which might be relevant; and then there's a handwritten note, "Info passed on to Mr Noel Heiner on 31/10/1989." 30

COMMISSIONER: Sorry, when did Mr Heiner come into the picture over Mr Gillingwater? 40

MR COPLEY: It's not clear at all.

COMMISSIONER: No. 1

MR COPLEY: It's not clear, but the idea of obtaining Mr Gillingwater to do this investigation didn't appear to go anywhere.

COMMISSIONER: Right. And as at 30 October 1989 there was an unnamed magistrate - - -

MR COPLEY: That's right.

COMMISSIONER: - - - investigating magistrate to be given these documents. 10

MR COPLEY: And his identity became apparent on 31 October 1989 according to the handwritten notes, and it was Mr Heiner.

COMMISSIONER: Okay.

MR COPLEY: A former magistrate.

COMMISSIONER: Yes, righto. 20

MR COPLEY: So I tender that document. The next document is a letter to Mr Gillespie, the general secretary of the State Service Union, and it is from Mrs Beryce Nelson, the Minister for Family Services, and it's dated 30 October 1989.

COMMISSIONER: That will be exhibit 79.

ADMITTED AND MARKED: "EXHIBIT 79"

MR COPLEY: Mrs Nelson, the Minister, refers to Mr Gillespie's letter of 18 October 1989 in which he set out various concerns with the John Oxley youth centre and she then purported to address each of his concerns. You will see that the concerns concerned in paragraph 1, the alarm system; in paragraph 2, door locks; paragraph 3, capital works; paragraph 5, lighting; paragraph 6 - - - 30

COMMISSIONER: Mobile phone.

MR COPLEY: Mobile phones; paragraph 7, plumbing; paragraph 8, gates; paragraph 9, a reference to a firm of consultants to examine the efficiency and effectiveness of youth detention centres, which did not recommend an increase in staff levels at John Oxley. 40

COMMISSIONER: Was that the one that was tendered?

MR COPLEY: It would seem as though that would have been the one that was dated April 1989, it was the second exhibit tended.

COMMISSIONER: Exhibit 58.

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MR COPLEY: Then lastly it talks about staff training and impediments to staff training.

COMMISSIONER: Right.

MR COPLEY: And then attached to that letter is a response to the issues raised by the State Service Union. It would appear to have been an internal departmental document which was drafted so that the minister could draft the letter that you've just made the exhibit, and that's why it's attached to the exhibit.

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COMMISSIONER: Yes.

MR COPLEY: And you'll see there's a handwritten note at the bottom of the response, "As discussed, could you please prepare the following: (1) terms of reference for a proposed investigation at John Oxley youth centre; letter from minister to Gillespie based on the information in this report and confirming the intention to have an investigation."

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COMMISSIONER: Yes.

MR COPLEY: And then on the next page there's a handwritten note from a man called Alan to the Honourable the Minister talking about training program. The next document is a memo to the Honourable the Minister from Mr Pettigrew dated 1 November 1989. I tender that.

COMMISSIONER: That will be exhibit 80.

ADMITTED AND MARKED: "EXHIBIT 80"

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MR COPLEY: This is an important document, as indeed they all are, but this one is a little more than ordinarily important because this is the memorandum to the Minister recommending the appointment of Mr Noel Heiner, a former stipendiary magistrate, to conduct the inquiry into the complaints and union representations, it is said, in respect of the centre. Attached to the memorandum would be terms of reference submitted for the minister's approval and it refers to the necessity to provide Mr Heiner with various secretarial and other support.

You will see that it talks about how much Mr Heiner will be paid; that it was anticipated that the inquiry would only take about six weeks; that the total cost wasn't expected to exceed \$5000; and it talks about union representations regarding some issues at Westbrook, the youth detention centre on the Darling Downs, but that for various reasons Westbrook shouldn't be included in this inquiry. The minister has written - well, someone that looks like the minister's signature has written, "Approved by Minister,"

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03/12/12

COPLEY SC, MR

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dated 2/11/1989 in handwriting on the top front of document. 1

And then attached to the document, Mr Commissioner, are what is described as the draft terms of reference for the investigation of complaints by certain members of staff at John Oxley youth centre. The report was to investigate and report to the Honourable the Minister and director-general on the following, there are eight matters listed: the first is the validity of the complaints received in writing from present or former staff members and whether there is any basis in fact for those claims; the second, compliance or otherwise with established government policy, departmental policy and departmental procedures on the part of management and/or staff; thirdly whether there is a need for additional guidelines or procedures or clarification of roles and duties; fourthly the adequacy of and implementation of staff disciplinary processes; fifthly compliance or otherwise with the code of conduct for officers of the Queensland public service; sixthly whether the behaviour of management and/or staff has been fair and reasonable; seventhly the adequacy of induction and basic training of staff, particularly in relation to the personal safety of staff and children; and eighthly the need for additional measures to be undertaken to provide adequate protection for staff and children and to secure the building. 10 20

COMMISSIONER: That's as at the 1 November 1989.

MR COPLEY: Yes. The next document is a letter to the honourable Beryce Nelson, the Minister, from Don Martindale, who was the general secretary of the Professional Officers Association of Queensland dated 6 November 1989. I tender that. 30

COMMISSIONER: It will be exhibit 81.

ADMITTED AND MARKED: "EXHIBIT 81"

MR COPLEY: Mr Martindale advised the minister that he had received a letter that had been sent to the State Service Union addressing concerns that had been put to the minister on 18 October 1989. The letter goes on to say that their concern - that is the Professional Officers Association - concern was, "For the safety of our members, and it remained" - it is said - "within the capacity of the minister to assist in that regard." The letter then wanted to discuss further the minister's response to answer number 9 about staff limits - limits on the number of inmates at the centre. 40

COMMISSIONER: So the Queensland Professional Officers Association received a letter or somehow got a letter that the minister wrote to the Queensland State Service Union.

03/12/12

COPLEY SC, MR

MR COPLEY: Yes. And then their issue at that time was simply with the number of inmates at the centre. 1

COMMISSIONER: Yes.

MR COPLEY: The next document I tender is a memorandum to Mr Ian Pearce, executive director, from Mr Peter Coyne, the manager at John Oxley, but it is signed, "A. Jutney for Peter Coyne," and it is dated 8 November 1989.

COMMISSIONER: That document will be exhibit 82. 10

ADMITTED AND MARKED: "EXHIBIT 82"

MR COPLEY: Thank you. This memorandum concerns Mrs Mariana Pearce who wrote a letter that you made Exhibit 72 with an initial after it. It asserts that on 6 November 1989 Mrs Pearce had made an allegation that Mr Coyne had wandered around her unit with Mr T. Cox, a senior youth worker from John Oxley. A meeting was arranged as a result of the allegation being made. Mr Coyne asserted the allegations - restated that Mrs Pearce alleged that he and Mr Cox had entered her unit at Indooroopilly late last year without her permission and that they were alleged to have wandered around looking for something. 20

Mr Coyne asserts that Mrs Pearce explained that she hadn't contacted the police or anyone in authority about the matter; that she had a witness who could identify both Coyne and Cox; and that she also had a signed statement from someone regarding this alleged entry of her unit. She said, according to Mr Coyne, that she had told other officers of the public service who worked at John Oxley about her belief about this incident.

Mr Coyne then wrote that he had told Mrs Pearce that he had not been in her unit and that her allegations about him were - and I quote - "absolute rot"; that he challenged her to immediately contact a more senior officer and make the allegation so the matter could be investigated; that Mrs Pearce refused, saying she wasn't addictive person. Mr Coyne said that he believed Mrs Pearce's allegations were serious and should be investigated. He said if Mrs Pearce's allegations proved to be unfounded then Mrs Pearce should be held accountable; that he was very concerned about Mrs Pearce's conduct in that she had made serious allegations, told other officers of the department about them, and she believed them to be true. 40

He said that, "Given these allegations are about myself, I feel that this matter needs to be addressed by someone outside the centre." Of course, the obvious person that might have come to mind for the government, perhaps, was Mr Heiner.

The next document I tender is a letter from Mr Pettigrew addressed to Mr Heiner dated 13 November 1989. 1

COMMISSIONER: That will be exhibit 83.

ADMITTED AND MARKED: "EXHIBIT 83"

MR COPLEY: This is the letter which appointed Mr Heiner to conduct the inquiry into the investigation of staff complaints at the John Oxley Youth Centre. Attached to the letter were the terms of reference which appear to be in the same terms as they were that we read out a few minutes ago. There's a handwritten note on it from Alan Pettigrew stating, "Mr Nix, I made a few changes to your draft, as you will see." So that was, effectively, the instrument of appointment of Mr Heiner. 10

COMMISSIONER: Following discussions concerning the investigation of what are described as staff complaints at the centre?

MR COPLEY: That's right. It notes that Mr Heiner will be given some changes at the Magistrate's Court or at the Children's Court and that there would be secretarial assistance as well as the assistance of a senior officer of the department to assist him. 20

COMMISSIONER: That letter attaches the terms of reference?

MR COPLEY: It does.

COMMISSIONER: Do they slightly differ from the draft terms of reference you exhibited before?

MR COPLEY: I haven't examined them in that degree of detail. 30

COMMISSIONER: I just thought that maybe that was what Mr Pettigrew's handwritten note was a reference to; that Mr Nix had drafted them and that he had slightly changed them, but that doesn't matter. We can ascertain that as we go along.

MR COPLEY: That task can be undertaken by me and my junior and all those at the bar table in the coming weeks.

COMMISSIONER: Yes. 40

MR COPLEY: But it could also be a reference that he had changed his draft letter to Mr Heiner rather than the terms of reference.

COMMISSIONER: Yes. It looks like you're right, I'm wrong.

03/12/12

COPLEY SC, MR

MR COPLEY: Sorry?

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COMMISSIONER: It looks like you're right about that. The draft terms seem to accord with the actual terms of reference apart from the deletion of the word draft.

MR COPLEY: Yes.

COMMISSIONER: Okay.

MR COPLEY: The next document I tender is a document which is a typewritten document headed Meeting Between the Department of Family Services, Professional Officers' Association, State Service Union and Australian Workers' Union dated 17 November 1989.

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COMMISSIONER: The minutes of the meeting will be exhibit 84.

ADMITTED AND MARKED: "EXHIBIT 84"

MR COPLEY: Mr Woodford tells me the two documents, the draft terms of reference and the one sent to Mr Heiner are in fact the same.

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COMMISSIONER: Except for the word draft?

MR COPLEY: Yes. If anyone disagrees with that, we'll no doubt hear about it. Present at this meeting, which you've made exhibit 84, was S. Cook, E. Clark, D. Herbert, who would all appear to have been departmental employees from former documents, a D. Kirk, W. Mills, F. Feige, that name will be familiar to you, a K. Lindeberg, an S. Kirk and a B. Mann - the word Mann, he's associated with the State Service Union. These seem to be minutes because it refers to the last meeting and item (vii) is, "John Oxley Youth Centre investigation has commenced."

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Then the State Service Union items included, first, "Terms of reference for the John Oxley Youth Centre investigation were requested. The State Service Union has so far received nothing in writing about the investigation," and so a complaint that the union hadn't been told what was going on. It talks about awards. The Australian Workers' Union raised an issue about reduction in staff in inmate numbers and staff numbers and the Professional Officers' Association representative raised an issue regarding resident numbers at JOYC and the fact that a security working party will soon be circulating draft guidelines to committee members seeking documents or seeking comments. Then the next meeting was to occur at the Family Services building on 15 September 1989.

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Copies of these minutes were sent to various government officials. So whether this document is a government document or a union document is perhaps unclear at this

03/12/12

COPLEY SC, MR

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stage. The next document I tender is dated 21 November 1989 and it is a memorandum from Ashton, the acting general secretary of the State Service Union to obviously people who worked at John Oxley because it's - I tender that.

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COMMISSIONER: Exhibit 85.

ADMITTED AND MARKED: "EXHIBIT 85"

MR COPLEY: It records that, "An inquiry is to be conducted into security matters surrounding the John Oxley Centre; that Mr Heiner had been appointed from the ranks of the retired magistracy and was to commence duty on Wednesday, 22 November; that Mr Heiner had been given a six-week deadline in which to complete his investigation and that Mr Pettigrew had advised that he had spoken to employees at the centre at the change of shifts on Monday, 20 November, and had informed them of the development."

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The next letter is one dated 23 November 1989 from Mr Alan Pettigrew, director-general, to Mr Gillespie, general secretary of the Queensland State Service Union.

COMMISSIONER: That letter will be exhibit 86.

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ADMITTED AND MARKED: EXHIBIT 86

MR COPLEY: It refers to previous discussions concerning staff complaints at the John Oxley Youth Centre and it advises, "Mr Noel Heiner has accepted the responsibility to investigate the complaints. He commenced duty on Wednesday, 22 November, and would be conducting his inquiries two days per week, Wednesdays and Thursdays, and arrangements had been made for members of staff at John Oxley to be interviewed." Mr Pettigrew attached to the union's notice a copy of the terms of reference under which Mr Heiner would operate and they're attached to this letter.

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The next document I tender is also dated 23 November 1989, signed by Mr Pettigrew, and it doesn't have who the recipient is on the face of the letter, but attached to it are the names Mr Gillespie of the State Service Union, Mr Lindeberg, who's described as an organiser of the Professional Officers' Association of Queensland, whose name you would have first encountered a couple of exhibits ago, Mr Rose, regional organiser, Queensland Teachers' Union and Mr Mills, organiser, Australian Workers' Union.

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If you look at the body of that letter, it's the same as the exhibit you made exhibit 85. So it would appear that a letter in the same terms as exhibit 85 went to not just Mr Gillespie, but to Mr Lindeberg, Mr Mills and Mr Rose from those unions. I tender that.

COMMISSIONER: That will be exhibit 80 - - -

03/12/12

COPLEY SC, MR

03122012 09/JJT(BRIS) (Carmody CMR)

MR COPLEY: Six, I think.

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COMMISSIONER: 87.

ADMITTED AND MARKED: "EXHIBIT 87"

MR COPLEY: No, I think maybe you have already made that an exhibit.

COMMISSIONER: Yes.

MR COPLEY: Actually, I tell you what, rather than give it a different number, would you just make it a part of exhibit 86, which was the letter to Mr Gillespie because - - -

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COMMISSIONER: All right. Yes, I see.

MR COPLEY: It's all the same. It's the same letter. It just went to four different gentlemen.

COMMISSIONER: Okay. I'll make it exhibit - - -

MR COPLEY: Or 86A, if you like.

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COMMISSIONER: - - - 86A.

ADMITTED AND MARKED: "EXHIBIT 86A"

MR COPLEY: Okay. The next document I tender - and this is out of order, but you'll recall I referred to it quite a while ago, it's the memo of a meeting held at John Oxley Youth Centre on Wednesday, 9 November 1988, and it's dated 28 November 1988.

COMMISSIONER: That will be exhibit 87, but can we go back to 86A.

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MR COPLEY: Yes.

COMMISSIONER: That annexes draft terms of reference as well.

MR COPLEY: Yes, it does use that expression draft.

COMMISSIONER: Yes. There's only six terms of reference on that document.

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MR COPLEY: Yes.

COMMISSIONER: There were eight on the ones that we discussed a minute ago that had the same except the word draft had been deleted. It looks like there were two drafts; maybe one done by Mr Nix which Mr Pettigrew then altered.

03/12/12

COPLEY SC, MR

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03122012 09/JJT(BRIS) (Carmody CMR)

MR COPLEY: Yes. Maybe you are right about that. 1

COMMISSIONER: Yes.

MR COPLEY: Yes. But, yes, the State Service Union seems to have got the one with the eight grounds and - - -

COMMISSIONER: Yes.

MR COPLEY: - - - what's attached to the unsent pro forma is one that's got only six grounds. 10

COMMISSIONER: Yes.

MR COPLEY: Yes.

COMMISSIONER: The difference in terms of reference 1 and terms of reference 3 in the eight ground document seemed to be the additions to those other six.

MR COPLEY: Yes, yes. So I would ask you to admit the record of the meeting of 28 November 1988 as exhibit 87.

COMMISSIONER: Yes. I'll mark that exhibit 87. 20

ADMITTED AND MARKED: "EXHIBIT 87"

MR COPLEY: I don't want to say anything more about that document at the moment. The next document which I ask you to admit as an exhibit, and I put it in as correct chronological date of construction, is the document that has - it's got 29 November 1989 on the bottom of it and it sets out on the left-hand side the list of names, Lannen, Smith, Pearce, McGregor, Collins, McNevean, unsigned, Clements and Konicanin. 30

COMMISSIONER: Yes.

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03/12/12

COPLEY SC, MR

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MR COPLEY: You've already got a copy of that earlier, but if you would just make this a separate exhibit now. 1

COMMISSIONER: I will make that exhibit 88.

ADMITTED AND MARKED: "EXHIBIT 88"

MR COPLEY: Thank you. The next exhibit I tender is a letter from Mrs Beryce Nelson, the Minister for Family Services, addressed to Mr Martindale, the general secretary of the Queensland Professional Officers Association dated 30 November 1989. 10

COMMISSIONER: That will be exhibit 89.

ADMITTED AND MARKED: "EXHIBIT 89"

MR COPLEY: It refers to the Queensland Professional Officers Association's request of 6 November 1989, which document you have already made an exhibit, requesting an immediate limit of 24 in terms of the number of inmates in the centre. The minister goes on to say that she had recently appointed Mr Heiner to inquire into a wide range of issues at the centre. His investigation had commenced and she didn't propose to make any changes such as that sought in his letter, that is, Mr Gillespie's letter, until Mr Heiner had completed his inquiry and she had received Mr Heiner's report. 20

COMMISSIONER: It may not be relevant, but it seems she is not right about that. She didn't appoint Mr Heiner. In fact Mr Pettigrew did.

MR COPLEY: That seems to be what the instrument of appointment says. 30

COMMISSIONER: She may have approved it - - -

MR COPLEY: Yes.

COMMISSIONER: - - - which is a notation by Mr Pettigrew, but she certainly adopted the appointment here as her own.

MR COPLEY: Yes. The next document is a handwritten note addressed to Mr Heiner dated 30/11/1989 signed Fred Feige, youth worker.

COMMISSIONER: That will be exhibit 90. 40

ADMITTED AND MARKED: "EXHIBIT 90"

MR COPLEY: No more need be said about that at the moment, but attached to it is a lengthy typewritten submission headed "Submission to Mr Heiner - Inquiry John Oxley Youth Centre 1989 Compiled by F.J. Feige, Youth Worker, John Oxley Youth Centre".

03/12/12 COPLEY SC, MR

COMMISSIONER: Do you see the last document? 1

MR COPLEY: Yes.

COMMISSIONER: Is that to be ignored?

MR COPLEY: That's to be ignored. That's why there's a line been drawn through it. It's the way the documents were copied on the government file that that page was copied to the back of the end of Mr Feige's typewritten submission. So the page headed "Criminal Justice Commission" which is a letter to Mr Feige is to be completely ignored. 10

COMMISSIONER: That's dated 3 November 1997. It doesn't form part of the exhibit.

MR COPLEY: No, it doesn't and it's outside our understanding of the term of reference.

COMMISSIONER: All right.

MR COPLEY: So we won't go into that document now. The next document I tender is a memo to the deputy director-general from Mr Pettigrew dated 5 December 1989. 20

COMMISSIONER: That will be exhibit 91.

ADMITTED AND MARKED: "EXHIBIT 91"

MR COPLEY: Mr Pettigrew says that "Earlier today" - meaning earlier on 5 December 1989 he had raised with Mr Heiner the question about whether or not Mr Heiner was prepared to make the letters of complaint written by some staff members at John Oxley available to the manager, Mr Coyne. Mr Heiner said, according to Mr Pettigrew, that he was not prepared to make these letters available. 30

Some of them, Mr Pettigrew wrote, were written on a confidential basis and he was not disposed towards breaking that confidentiality. He, meaning, Mr Heiner, gave an assurance that all staff members about whom any complaint had been made would have ample opportunity to answer the allegations. So that exhibit explains perhaps why I asked you to particularly note the basis upon which the State Service Union had purported to hand the letters over to Mr Pettigrew on 10 October 1989. 40

COMMISSIONER: Yes.

MR COPLEY: The next document I tender is a letter dated 5 December 1989. It's unsigned but the signature block is Ian Peers, an officer of the department, addressed to Mrs Mariana Pearce.

COMMISSIONER: That will be exhibit 92.

03/12/12

COPLEY SC, MR

ADMITTED AND MARKED: "EXHIBIT 92"

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MR COPLEY: This letter informs Mrs Pearce that Mr Peers had received a memorandum from Mr Coyne regarding her allegation that Mr Coyne and Mr Cox had entered her house and wandered about in it. The letter goes on to say on page 2 that there were two possibilities. The first was that her allegations were true, in which case they should be properly investigated. The second possibility was that her allegations were untrue and Mr Peers said, "in which the repetition of the allegations to other people would be grossly unfair to Mr Coyne and Mr Cox and possibly injurious to their reputations", and Mr Peers raised that he "anticipated that Mr Tony Brown would arrange on your behalf a further interview in which these matters can be discussed with me".

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COMMISSIONER: That's a letter about exhibit 82.

MR COPLEY: Yes, and it appears that it's Mr Peers' effort to investigate Mrs Mariana Pearce's allegations.

COMMISSIONER: Yes.

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MR COPLEY: The next document I tender is dated 15/12/1989 at the foot of it and it concerns discussions with principal youth workers and senior youth workers at John Oxley Youth Centre on Friday, 8 December 1989. I tender that.

COMMISSIONER: That record of discussions will be exhibit 93.

ADMITTED AND MARKED: "EXHIBIT 93"

MR COPLEY: Mr Hanger just pointed out helpfully to me that this typewritten document occurs about a week after the election.

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COMMISSIONER: Thank you.

MR COPLEY: This document is an interesting document because in the first paragraph it says - I don't know who the author is at the bottom. It could be Mr Nix but we'll have to find out as the weeks unfold. It says:

Raise concerns with me concerning inappropriate questions being directed to participants. The questions by the magistrate are in accordance with the terms of reference but are slanted towards whether or not individuals have complaints about the manager Peter Coyne. It was stated by more than one person that Barbara Flynn was asking leading questions which were considered to be inappropriate.

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A couple of staff were also advised that when Barbara Flynn asked questions, they were instructed by Jan Cosgrove to, "Please look at Mr Heiner when you are

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answering the questions." I was also advised that the magistrate also asked Jan if she had any questions to ask. A number of staff also advised me that Barbara Flynn was a close friend of Janice Doyle. This was not known by myself or Alan -

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that's why one might infer it was George Nix that wrote this -

and I considered this to be inappropriate as the staff members who are making the complaints are former Wilsons staff. In my view the situation is polarising the staff at John Oxley and it would appear to me that there will be no winners at the end of the day.

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So by December 8 there appear to be misgivings about this inquiry. "The following is brought to your attention," the writer says:

You should be aware that a number of managerial staff at John Oxley are ready to throw it in if Peter Coyne goes. You should be aware that the POA -

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which must be the Professional Officers Association -

are very much involved with senior staff. Basically they are keeping their powder dry at this point in time but they are not happy. Do you know if Kevin Lindeberg has briefed the Honourable, the Minister. He advised staff that he would be doing so. It is my opinion that the magistrate should give you a briefing of where he is at with the inquiry. Some solutions for consideration: time limit the inquiry; call for a report; state what the outcome of the inquiry will be.

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That latter might be considered to be rather ambitious, and then the author says:

Depending on the flavour on the report, one outcome could be that the complaints will be dealt with by way of a grievance procedure on an individual basis.

COMMISSIONER: The author of this document you thing is Mr Nix.

MR COPLEY: The signature could possibly be Mr Nix's signature.

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COMMISSIONER: Right. We will have to confirm that.

MR COPLEY: That's right. So we wouldn't call it Mr Nix's document at the moment.

COMMISSIONER: No, we won't, but this is a week after the

03/12/12

COPLEY SC, MR

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change of government.

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MR COPLEY: Yes.

COMMISSIONER: Cracks are starting to appear at this point.

MR COPLEY: Sorry, the meeting where these concerns were expressed were a week after the change of government.

COMMISSIONER: And this was a week after that.

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MR COPLEY: That's right. The memo is dated 15 December.

COMMISSIONER: Okay.

MR COPLEY: The next document that I tender is a letter from Karen Mersiadés, M-e-r-s-i-a-d-e-s, addressed to Mr Pettigrew dated 8 December 1989.

COMMISSIONER: That will be exhibit 94.

ADMITTED AND MARKED: "EXHIBIT 94"

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MR COPLEY: In this letter in the second paragraph Ms Mersiadés says:

I am writing because all of the professional staff I have spoken to who have contributed to the inquiry are unhappy with the process as witnessed by them during their interview. You visited this centre on Monday, 20 November 1989 to explain to us the role of the inquiry and the roles of the magistrate, the Family Services representative and the secretary.

At that meeting you may remember I asked you to clarify the role of Barbara Flynn, the Family Services representative. You assured the meeting that Barbara Flynn did not share dual role with the magistrate but that Barbara was with the magistrate to clarify with him any departmental procedures or structures with which he was unfamiliar.

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Ms Mersiadés alleges:

Barbara has stepped well outside the role described the role by you. She has assumed a dual role. One of the teachers claims Barbara asked many leading questions with the presumption from her being that the management -

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that is from Barbara Flynn allegedly -

had harassed and undermined youth workers in their work.

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That teacher also felt that the magistrate asked leading questions justifying the behaviour of the youth workers. She asserts that Mr Farnworth was asked many times why he had asked to be a party of the inquiry as he had no specific complaints or information on the complaints. When he asked about the complaints, the magistrate refused to provide information. The magistrate said a number of times that the inquiry is not about the management but about the centre and yet he seemed unwilling to listen to the positive comments Mr Farnworth wished to make." Ms Mersiades said, "I was asked several times if I had problems with the management here and on one occasion was asked to give an opinion of Peter Coyne's attitude and behaviour towards his staff. Never once was I asked about work performance or attitudes of the staff members making complaints, whoever they may be.

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She goes on to say that:

Many are distressed that we are now witnessing an inquiry which accepts the complaints of a minority but which does not accept direct knowledge the dedicated and sincere work effort of the management of this centre." So you can see there, Mr Commissioner, that there were misgivings about this inquiry being expressed to Mr Pettigrew, the man who had constituted it the month before.

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The next letter I tender or document I tender is a memorandum dated December 12, 1989, addressed to Mr C. Thatcher, who is a deputy director-general not an assistant director-general, from Peter Coyne, manager, John Oxley Youth Centre. Mr Coyne asserts in this memorandum that Mr Heiner was currently investigating complaints by members of staff. He asserts, "One matter he is to report on is the adequacy of and the implementation of staff's disciplinary processes." Of course, that's consistent with the terms of reference, "For me to assist Mr Heiner," says Mr Coyne, "I request a copy of approved staff disciplinary processes used by the department from November 1987 to the current date."

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COMMISSIONER: That will be exhibit 95.

ADMITTED AND MARKED: "EXHIBIT 95"

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MR COPLEY: The next document I tender - - -

COMMISSIONER: 96, is it?

MR COPLEY: 95. Yes, 95, according to us.

COMMISSIONER: All right.

03/12/12

COPLEY SC, MR

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MR COPLEY: The next document I tender is a memorandum from Mr Coyne dated 14 December 1989 and on this occasion he has written to the director-general, who's not named. I tender that.

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COMMISSIONER: It will be exhibit 96.

ADMITTED AND MARKED: "EXHIBIT 96"

MR COPLEY: In this document, the subject is The Investigation of Complaints Made by Certain Members of Staff at JOYC. Mr Coyne says, "I request a copy of the allegations made against me. I further request a copy of the transcripts of evidence taken during the investigation to date." The next document is a memorandum dated 15 December 1989, written by Mr Coyne to a person called R. Matchett, M-a-t-c-h-e-t-t, who he describes as the A/director-general, so acting director-general of the department.

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COMMISSIONER: Which you would expect two weeks after a change of government, I suppose.

MR COPLEY: Yes.

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COMMISSIONER: So Mr Pettigrew has gone by now, has he?

MR COPLEY: Mr Pettigrew has gone and it would appear Ms or Mrs Matchett is the acting director-general.

MR HANGER: If it assists, I have a note that she was appointed on 11 December.

COMMISSIONER: That will be exhibit 97.

ADMITTED AND MARKED: "EXHIBIT 97"

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MR COPLEY: In this letter to Ms Matchett, Mr Coyne said that in September and October of 1989 a number of staff members wrote positive letters to senior managers relating to his style of management and his performance as manager at JOYC. Mr Coyne said that he spoke with Barbara Flynn on 15 December, which was the date he wrote this memo; that Ms Flynn indicated to him that these supportive letters hadn't been tabled, as he put it, at the inquiry and that there was no intention to call any senior members of staff who had received these letters. Mr Coyne said that he requested that consideration be given to tabling these supportive letters at the earliest possible time.

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The next document I tender is a memorandum dated 18 December 1989 which is four pages long and contains three attachments numbered attachment 1, attachment 2 and attachment 3 and it's from Mr Peter Coyne to R. Matchett, acting director-general.

03/12/12

COPLEY SC, MR

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COMMISSIONER: They're tendered as a bundle? 1

MR COPLEY: The whole thing is one exhibit please.

COMMISSIONER: That will be exhibit 98.

ADMITTED AND MARKED: "EXHIBIT 98"

MR COPLEY: Thank you. Now, the attachments you will have seen before. The first one was the summation of the meeting with the State Service Union on 14 September 1989, which was an exhibit. The second one, attachment 2, is terms of reference for the investigation and there are eight paragraphs there. The third one is the typewritten document of 29 November 1989 setting out the names of the nine signatories, it seems, to the letter that was sent on October 10, 1989 or the letters that were forwarded on October, 10, 1989 to the director-general. 10

Now, in this memorandum, Mr Coyne asserts that he is aware from these attached documents that he is the subject of the complaints and that he had been previously denied information necessary to enable him to a fair and reasonable opportunity to ensure that his reputation was adequately defended against imputations by persons known and anonymous. 20

COMMISSIONER: Do we know who we received these attachments from? The letter doesn't say, but do we know - - -

MR COPLEY: I have it in my mind that he may have received attachment 3 from Mrs Cosgrove, who was the secretary to the Heiner investigation or from Ms Flynn, who was the departmental assistant to the Heiner investigation. 30

COMMISSIONER: All right.

MR COPLEY: Does it say that, does it? I see. There's no flies on me because earlier in the document you'll see it says "attachment number 3" underlined.

COMMISSIONER: Yes.

MR COPLEY: "A document provided to me in person by Jan Cosgrove on Wednesday, 29 November 1989.

COMMISSIONER: Was there some reference to attachments 1 and 2 being provided to Mr Coyne by the department or someone else before? 40

MR COPLEY: Well, he clearly had them.

COMMISSIONER: Yes, I was - - -

MR COPLEY: He clearly had them because - - -

03/12/12

COPLEY SC, MR

COMMISSIONER: I was just wondering where he got them from, that's all. 1

MR COPLEY: Well, we know where he got the third one from, at least.

COMMISSIONER: All right.

MR COPLEY: He then said he needed to seek precise and detailed clarification of the means developed by the chief executive, that means director-general, "To ensure I am treated justly and fairly in regards to this investigation." He then posited to the director-general 21 questions that he wanted her to answer. At the end of the letter, after setting out his 21 questions, "I repeat my request for a copy of the complaints made against me and a copy of the transcripts of evidence given at the investigation to date." 10

COMMISSIONER: Yes. That's point 19, that one.

MR COPLEY: Point 19, "Will the transcripts of evidence be kept and filed? I would strongly request that the transcripts not be destroyed." 20

COMMISSIONER: Then that's repeated in the notation on page 4 in handwriting.

MR COPLEY: Yes, in handwriting, but I don't know who wrote that but certainly there was a request from him that whatever transcripts of evidence had been gathered not be destroyed.

COMMISSIONER: As early as 18 December 1989.

MR COPLEY: Yes. 30

COMMISSIONER: Which was about halfway through. It was three weeks into the inquiry.

MR COPLEY: That's correct. The next document I tender is one to the acting director-general from Mr George Nix, the deputy director-general, concerning lists of matters outstanding in the youth support and community support programs. It deals generally with issues relating to youth detention centres.

COMMISSIONER: That will be exhibit 99. 40

ADMITTED AND MARKED: "EXHIBIT 99"

MR COPLEY: No more need be said about it.

COMMISSIONER: Mr Copley, before we go on to the next folder, we might have a - - -

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MR COPLEY: Can we just finish this folder first? 1

COMMISSIONER: Haven't we finished it?

MR COPLEY: There's one more document. Sorry.

COMMISSIONER: We will certainly finish the file then.

MR COPLEY: Thank you. Otherwise I'll forget it. The last document I tender is a letter from a psychiatrist Dr Nigel Collings, C-o-l-l-i-n-g-s, directed to Ms R. Matchett, acting director-general, dated 19 December 1989. 10

COMMISSIONER: Sorry. That will be exhibit 100.

ADMITTED AND MARKED: "EXHIBIT 100"

MR COPLEY: Thank you. That letter concerns the use of medication at John Oxley Youth Centre and the psychiatrist's opinion that to his knowledge there had been no inappropriate use of medication at John Oxley as far as he was aware. 20

COMMISSIONER: All right, thank you. We will resume at midday.

THE COMMISSION ADJOURNED AT 11.55 AM UNTIL 12.00 PM

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03/12/12

COPLEY SC, MR

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THE COMMISSION RESUMED AT 12.05 PM

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COMMISSIONER: Yes, Mr Copley.

MR COPLEY: Mr Commissioner, I tender a memorandum dated 2 January 1990 from Ian Pearce to the acting director-general of the Department of Family Services.

COMMISSIONER: That will be exhibit 101.

ADMITTED AND MARKED: "EXHIBIT 101"

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MR COPLEY: You will see that that letter contains quite a few attachments; one is the summary of the meeting with the State Service Union on 14 September 1989; it then attaches letters supportive of Mr Coyne, the manager, and those letters came from a Mr Gerke, a handwritten letter from that gentleman, Mr M. Mills, and from a Mrs Anne Jutney, and a handwritten letter from Lorraine Draper, all are supportive of Mr Coyne's position. It contains a copy of the letter of appointment of Mr Heiner and his terms of reference; and it also has annexed to it the memorandum Mr Coyne wrote on 18 December 1989 where he posited the 21 questions that he expected the director-general to answer.

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COMMISSIONER: Okay.

MR COPLEY: Mr Nix sets out on the first page of the letter under the sentence numbered 5 his understanding of the sequence of events which he nominates as starting on 14 September 1989 when Ms Janine Walker of the State Service Union sought a meeting; that Mr Pettigrew said he would have an investigation if complaints were put into writing; and that officers of various unions including the POA, QTU, the Nurses' Union, then met with the minister and raised a number of concerns about the John Oxley Centre but these matters did not relate to the behaviour of the manager, but rather to the number of residents and problems with the building and staff security; and that these complaints were also included in Mr Heiner's brief.

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Mr Nix said since the inquiry had begun Mr Coyne and a number of other senior staff had expressed to Mr Nix on a number of publications that they were unhappy with the process, and that that expression of unhappiness by Mr Coyne and others had also been made to their union, the Professional Officers Association, but that the Professional Officers Association had reportedly advised its members to cooperate with the inquiry at this stage.

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COMMISSIONER: So presumably Mr Coyne is a member of the union, or was a member of that union.

MR COPLEY: Yes, he was in it.

03/12/12

COPLEY SC, MR

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COMMISSIONER: And do we know anyone else who was in it? 1

MR COPLEY: He and Ms Jutney would have been in it - were both in it, actually.

COMMISSIONER: Okay.

MR COPLEY: Yes. Beyond that, I don't know. The letter from Mr Peers to the acting director-general on 2 January also asserts that Mr Coyne had been given an interview time for 12 January with Mr Heiner. 10

COMMISSIONER: Right, okay.

MR COPLEY: Then there's a handwritten note, the significance of which is not obviously apparent under that, it just seems to be where the document might have been stored at one point. The next document I tender is a memorandum dated 4 January 1990 from Lynn Draper, principal youth worker, to Ms Matchett.

COMMISSIONER: So not much break at Christmas or New Year in January 1990. 20

MR COPLEY: No.

COMMISSIONER: All right. That will be exhibit 102.

ADMITTED AND MARKED: "EXHIBIT 102"

MR COPLEY: In this memorandum Ms Draper records the fact that on 10 January she was due to appear before Mr Heiner. She said she wanted to cancel the appointment as she didn't believe that the information she wanted to give him would be accepted in the light that it was intended to be given. She said that on speaking with a number of staff who had been before Mr Heiner she had been led to believe that there was no interest being shown in hearing information about the complainants, which is relevant to any complaints of harassment or victimisation, and that any history of Sir Leslie Wilson youth centre or John Oxley youth centre which staff from the redeployment issues do not appear to be considered necessary. 30

When you hear evidence in this proceeding you're going to perhaps you something about tension between staff who had come over from Sir Leslie Wilson youth centre to work at John Oxley and tension between them and staff who have never before worked in youth detention but had come fresh to the field when they joined John Oxley. 40

COMMISSIONER: And the philosophy of normalisation that was practised at John Oxley was different to that practised at Sir Leslie Wilson. Is that right?

MR COPLEY: Apparently, yes.

03/12/12

COPLEY SC, MR

COMMISSIONER: Is this normal practice, for the director-general to be receiving memos directly from, say, a principal youth worker? Is that how it works?

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MR COPLEY: I can't - of course I can't give evidence from the bar table or offer my own opinion.

COMMISSIONER: Right. But you could ask someone when you get the chance.

MR COPLEY: Yes.

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COMMISSIONER: Okay.

MR COPLEY: That would probably carry more weight.

COMMISSIONER: All right.

MR COPLEY: The next letter I tender - or memo I tender is one which is dated 8 January 1990, directed to Mr P. Coyne - in bold at the top - from Mr Clark.

COMMISSIONER: That will be exhibit 103.

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ADMITTED AND MARKED: "EXHIBIT 103"

MR COPLEY: And it just relates back to Mr Coyne's memo of 12 December 1989 in which he had requested details of staff disciplinary processes employed by the department, and the letter addressed that by providing some information in an attachment, a copy of which I don't have. The next document I tender is a memorandum dated 10 January 1992 Mr Coyne from Mr Ian Pearce.

COMMISSIONER: Exhibit 104.

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ADMITTED AND MARKED: "EXHIBIT 104"

MR COPLEY: And the subject is Ms Mariana Pearce.

COMMISSIONER: Yes.

MR COPLEY: The memo records that Mr Peers interviewed Ms Pearce on Friday, 5 January 1990. Mrs Pearce, according to Mr Peers, said at that interview that she now no longer believed that Mr Coyne and Mr Cox had entered her premises as originally alleged. However, she didn't consider that she should apologise to Mr Coyne as she felt there were many other grievances that she had with Mr Coyne's behaviour towards her.

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Mr Peers said, "As Mrs Pearce had made her original allegations about you and Mr Cox to the magistrates inquiry, I suggested she might seek to advise him" - it is the magistrate - "of her change of mind by way of a letter."

03/12/12

COPLEY SC, MR

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COMMISSIONER: Right. So at least Mr Coyne is being told that Ms Pearce's allegation against him and Mr Cox has been withdrawn at least.

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MR COPLEY: That's right.

COMMISSIONER: But not formally at that point through Mr Heiner.

MR COPLEY: No. The next document I tender is a statement, as it is headed, "A statement to Mr N. Heiner SM," signed by Daniel Lannen, and it's dated 11 January 1990.

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COMMISSIONER: Yes. That will be exhibit 105.

ADMITTED AND MARKED: "EXHIBIT 105"

MR COPLEY: And this was a statement, the contents of which contained a complaint or complaints about the way Mr Coyne had treated Mr Lannen on Wednesday, 10 January 1990, in connection with Mr Lannen complaints to Magistrate Heiner. Among other things Mr Lannen told Mr Heiner that, "As I was writing a report Mr Coyne had requested, Mr Coyne said, 'I have to go to the inquiry today to answer allegations based on lies that you have told about me'." Lannen replied, "I have not told any lies about you. We should not be discussing this here." Mr Coyne said, "You wrote to the director-general and said I was victimising you, didn't you?" Et cetera. The next document I tender is a memorandum dated 11 January 1990, apparently made at 9.10 am from Wendy to Ruth.

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COMMISSIONER: That will be exhibit 106.

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ADMITTED AND MARKED: "EXHIBIT 106"

MR COPLEY: It may be that the Ruth referred to is Ruth Matchett, the acting director-general, and it concerns a telephone message that Mr Coyne had left complaining that his correspondence that he had sent hadn't been replied to and that he was required "to go before the inquiry at John Oxley today".

COMMISSIONER: That's the correspondence that was seeking answers to the 21 questions.

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MR COPLEY: And possibly other memos that he had sent which I have already made exhibits.

COMMISSIONER: Right.

MR COPLEY: The next document I tender is a memorandum dated 15 January 1990 from Mr Coyne to the director-general. The expression is not longer "acting director-general" but "director-general". Whether that's because she had in fact by then been appointed permanently or not is not clear at the moment. I tender that.

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COMMISSIONER: That will be exhibit 107.

ADMITTED AND MARKED: "EXHIBIT 107"

MR COPLEY: Mr Coyne refers the director-general to a conversation he had with Mr Heiner on January 11 in which Mr Heiner had told Mr Coyne that he was investigating grievances in accordance with regulation 63 of the Public Service Management and Employment Regulations.

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COMMISSIONER: We know from previously that that was the grievance-handling procedures.

MR COPLEY: That had been made the subject of legal advice from Crown Law to Mr Pettigrew.

COMMISSIONER: Okay.

MR COPLEY: Of course he was in fact investigating a lot more than that, but Mr Coyne went on to say that he wanted advice from the director-general on the legislative base "of the abovementioned inquiry" and he appreciated the advice within 48 hours as he believed the inquiry was due to close.

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COMMISSIONER: Yes.

MR COPLEY: Then on the same day I tender the next memo dated 15 January 1990 from Mr Coyne to Mr Gary Clarke, the director of organisational services.

03/12/12

COPLEY SC, MR

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COMMISSIONER: I have got another document. How many documents were there for 107, one or two? 1

MR COPLEY: Exhibit 107 there was one. It could be that these are just in the wrong order now.

COMMISSIONER: I see, yes. They are dated the same date.

MR COPLEY: So the one I want you to look at now is one to Mr Gary Clarke.

COMMISSIONER: Yes. 10

MR COPLEY: It has got one paragraph in it.

COMMISSIONER: Yes, that will be exhibit 108.

ADMITTED AND MARKED: "EXHIBIT 108"

MR COPLEY: Thank you. Mr Coyne said to Mr Clarke that he, Mr Coyne, was concerned about Mr Heiner's behaviour towards him, Mr Coyne, on 11 January and he said that he knew that Mr Heiner would need to be an officer of the public service for Mr Coyne to be able to lodge a grievance successfully and so he sought clarification as to whether or not Mr Heiner was an officer of the public service or not. 20

COMMISSIONER: Which was relevant for two reasons: (1) it was relevant to Mr Coyne to know whether he could lodge a grievance against Mr Heiner and (2) whether Mr Heiner was an officer for the purposes of conducting his inquiry under regulation 63.

MR COPLEY: Yes, and so this perhaps throws up the scenario that Mr Pettigrew had conjured up some months before about grievances being investigated and then someone lodging a grievance about a grievance. 30

COMMISSIONER: Yes; yes.

MR COPLEY: It contains a handwritten note below the signature of Mr Coyne that says, "Advised verbally that Mr Heiner is not an officer."

COMMISSIONER: So therefore from Mr Coyne's point of view couldn't be made the subject of a complaint by Coyne under the regulations - - - 40

MR COPLEY: That's right.

COMMISSIONER: - - - but it might have had another significance as well which at this point is not pertinent to Mr Coyne.

MR COPLEY: The next document I tender is also dated

03/12/12 COPLEY SC, MR

15 January 1990 and it also comes from Mr Coyne and is directed to the director-general. 1

COMMISSIONER: Yes.

MR COPLEY: Three paragraphs long.

COMMISSIONER: Yes, so that one will be exhibit 109.

ADMITTED AND MARKED: "EXHIBIT 109"

MR COPLEY: Thank you. Mr Coyne told the director-general that he was subject to complaints by known and unknown persons, that the department had received written complaints and copies of these complaints had been given to Mr Heiner, that he had previously requested copies of these complaints on December 14 and 18, 1989 but hadn't been given copies and so in according with regulation 65 of the Public Service Management and Employment Regulations he requested a copy of the records held on himself relating to the investigation and he wanted advice within 48 hours about this matter because the investigation was to end, he asserted, on Wednesday, 17 January 1990. 10

COMMISSIONER: Right. 20

MR COPLEY: So that would be 109.

COMMISSIONER: Yes, that's 109.

MR COPLEY: Then the next exhibit perhaps could be numbered 109A. This is a memo dated 16 January 1990 from Ms Anne Dutney to the director-general, three paragraphs long.

COMMISSIONER: Yes, that will be exhibit 109A. 30

ADMITTED AND MARKED: "EXHIBIT 109A"

MR COPLEY: It is in substantially the same terms as the one which was exhibit 109 calling upon the director-general to give her copies of any complaints about herself pursuant to regulation 65.

COMMISSIONER: Right. The only difference is the date, but they were both received on the same date at the department. 40

MR COPLEY: Yes, both received on the same date but dated different days and with different signatures. The next document that I tender is a one-page document that has been photocopied a number of times, I think, from memory, because it is difficult to settle upon which is the clearest photocopy of the document, but it is headed "16/1/1990".

03/12/12

COPLEY SC, MR

COMMISSIONER: Yes, I have got that. That will be exhibit 110. 1

ADMITTED AND MARKED: "EXHIBIT 110"

MR COPLEY: Thank you. As I say, there are two other copies of that document and there are also some other little notations that seemed to be attached to various of the copies, but the document says:

I rang Ruth Matchett back in November 1989, inquiry John Oxley Youth Centre - 10

something complaints -

QSSU complaints, Noel Heiner retired SM, 13/11/89, broad terms of reference, appointed by DG of the time by letter; question put to him whether he was having -

something or other -

with a member of the staff. 20

We don't know what that's about:

POA up in arms. I advised him to write to Mr Heiner saying not clear on what basis he was appointed. Would he please advise?

Now, this document may in fact be a notation made by the Crown Solicitor, Mr O'Shea, rather than one made by someone from Family Services because - - -

COMMISSIONER: This is on the 13th - sorry. 30

MR COPLEY: 16th.

COMMISSIONER: 16th.

MR COPLEY: 16 January 1990. I say that because it came from Crown Law documents.

COMMISSIONER: All right. It looks like Mr O'Shea's initial.

MR COPLEY: Yes, but because that's very uncertain at the moment who wrote that and what the provenance of the information contained in it is, even although I tender it and ask you to make it an exhibit, I would suggest to you that it should not be published at the moment. Exhibit 110 should not be published until such time as it can be ascertained who actually wrote it. 40

COMMISSIONER: Yes, all right. I will mark it 110 but order it not be published until further order pending

03/12/12

COPLEY SC, MR

evidence about its provenance and authenticity. 1

MR COPLEY: I suppose I should have asked you to perhaps see if anybody else wanted to be heard on that point, but that's my submission.

COMMISSIONER: Yes. Does want to be heard? Anyone want that published? No.

MR COPLEY: No, there's silence.

COMMISSIONER: I will take that as a no. 10

MR COPLEY: Okay. So 110 won't be published for the moment.

COMMISSIONER: That's right.

MR COPLEY: The next document I tender is a memo from Ms Matchett dated 17/1/1990 to Mr Peter Coyne.

COMMISSIONER: That will be exhibit 111.

ADMITTED AND MARKED: "EXHIBIT 111" 20

MR COPLEY: Now, this refers to his request pursuant to regulation 65 for copies of records that were held on him "in respect of the abovementioned investigation", meaning Mr Heiner's investigation. So it relates back to Coyne's memo to Matchett on 15 January and you will see that Ms Matchett says, "A perusal of your personal file indicates that no such records are attached."

COMMISSIONER: Now, that would be consistent with the practice that we heard about in exhibit 57. 30

MR COPLEY: Well, it's perhaps consistent with the reality that the records hadn't found their way to his personal file yet because they had been given to Mr Heiner to conduct an investigation too.

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COMMISSIONER: Would they be necessarily put on his personal file or would they be put on a separate file? 1

MR COPLEY: If the records related to a merit selection process - - -

COMMISSIONER: It would be on a separate - - -

MR COPLEY: - - - it would go on a separate file.

COMMISSIONER: Right.

MR COPLEY: If they were records adverse to Mr Coyne, then they could go on his personal file, but first of all he had to see them and initial them and be given the opportunity to make any comment about them. 10

COMMISSIONER: Under the regulation?

MR COPLEY: That's right.

COMMISSIONER: Right.

MR COPLEY: But she says here that she's perused his personal file and there are no records attached, which must mean, not literally, but no records relevant to the current investigation attached to it. 20

COMMISSIONER: Yes.

MR COPLEY: Because there would have to be records on it.

COMMISSIONER: Thank you.

MR COPLEY: She then says that she's not aware of any other departmental file containing records of the investigation which would relate to his request. 30

COMMISSIONER: So although Mr Pettigrew had an idea of separating records about grievances from personal files, the practice was not to change and grievances or grievance relevant documents would normally be put on - according to the practice would be put on the file, but in this particular case they hadn't made it to the file yet.

MR COPLEY: That would seem to be so.

COMMISSIONER: Right. 40

MR COPLEY: Then she referred Mr Coyne to regulation 46.

COMMISSIONER: Yes.

MR COPLEY: That's the one which talks about how you've got to be given the right to see the documents and comment on them before they go on your personal file and she said,

03/12/12

COPLEY SC, MR

"Please be assured that these provisions would be invoked where appropriate in respect of the records which you have requested." The next letter that I tender is dated the same date, from the same author, but this time to Ms Dutney saying the same thing.

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COMMISSIONER: Okay.

MR COPLEY: Exhibit?

COMMISSIONER: Haven't I exhibited it yet?

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MR COPLEY: No.

COMMISSIONER: Exhibit 112.

ADMITTED AND MARKED: "EXHIBIT 112"

MR COPLEY: Thank you. The next document that I tender is dated 17 January 1990 and it's a faxed letter. The fax copy should be on the front page of the exhibit and it comes from Mr Ian Berry, a solicitor from Rose, Berry, Jensen solicitors, directed to the director-general.

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COMMISSIONER: That's at 5.17 pm?

MR COPLEY: That's what time it is said to have been faxed and received - or faxed, at least, at the top of the document on the left-hand side.

COMMISSIONER: It's on the same day as the director-general wrote to Ms Dutney and Mr Collings.

MR COPLEY: Yes. But it says on the front of it that it was actually received or stamped as received in the office of the director-general of 18 January 1990.

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COMMISSIONER: Yes.

MR COPLEY: Could that be made exhibit 113 please?

COMMISSIONER: It will be made exhibit 100 and?

MR COPLEY: 13.

COMMISSIONER: 13?

MR COPLEY: Yes.

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COMMISSIONER: Yes.

ADMITTED AND MARKED: "EXHIBIT 113"

MR COPLEY: This letter states that it concerns the inquiry by Mr Heiner at the John Oxley Youth Centre. The solicitor says that he acts for Mr Coyne and Ms Dutney and

03/12/12

COPLEY SC, MR

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it says that he has instructions that late in 1989, Mr Pettigrew established an inquiry pursuant to the Public Service Management and Employment Act and that his clients - Mr Berry's clients, Coyne and Dutney, have been asked by Mr Heiner to give evidence before him. It says, "In late 1989, taped evidence was given by Mrs Dutney and that only recently taped evidence had been given by Mr Coyne."

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COMMISSIONER: We know that was on 11 December.

MR COPLEY: January.

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COMMISSIONER: 11 January?

MR COPLEY: Yes.

COMMISSIONER: Yes.

MR COPLEY: It says, "Mr Coyne requested details at the outset of the allegations made against him and that Mr Heiner's office provided him with a list of grievances and a summary of their complaints." The writer says, "Mrs Dutney was not supplied with any list and it was represented to her that no allegation had been made concerning her and it was upon that basis that she had given evidence before the inquiry."

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You'll see the next two paragraphs, which I won't read out at the moment. Then over the page on page 2, Mr Berry asserts that his clients are concerned that they have been denied natural justice in defending themselves from allegations from unknown persons and that their concerns that natural justice were denied were in the following specific areas," and there are five complaints, "No specific allegations had been put to each of them; that specific allegations should have been put which disclosed the names of the alleging party, what the allegations precisely were, and when the alleged misconduct precisely occurred so that Coyne and Dutney could answer it; that Coyne and Dutney had not been given an opportunity to examine or cross-examine witnesses; that they had been denied legal counsel to assist them at the investigation to test the evidence; that no record of the evidence had been given to them and that no opportunity to make a submission to Mr Heiner before he prepared his report had been offered to either of them."

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Mr Berry asserted that his instructions were that the inquiry had not yet ended and he said, "It is, therefore, open to you," that is to the director-general, "to review the decision of Mr Pettigrew by providing further direction to Mr Heiner to do four things." The first was, "To allow all the witnesses so far called who made allegations against Coyne or Dutney to be examined and cross-examined by Coyne or Dutney and/or their lawyer; secondly, that particulars of the allegations in terms of time and place

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03/12/12

COPLEY SC, MR

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and the actions or words alleged should be reduced to writing and given to Coyne and Dutney; thirdly, that Coyne and Dutney should have copies of all the allegations made against them and all the evidence taken to date, including copies of the tapes; and that, fourthly, Mr Heiner should be required to recall witnesses so that Mr Coyne and Ms Dutney can cross-examine them if they need to."

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On page 3 of the letter, Mr Berry said, "The principles of natural justice are well-founded," and it was his firm opinion, "our firm opinion," rather, "that we will be able to persuade a court to intervene on a writ of prohibition to injunct Mr Heiner from proceeding further with the inquiry until full compliance or full observance of the applicable principles, a précis of which we have stated herein." Then the letter says, "However, that procedure is costly and unnecessary if you recognise the correctness of the natural justice principles."

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The letter says, "Our clients must act quickly and for that reason we respectfully request your response by 2 pm on 18 January 1990. Before that time, we are quite prepared to discuss this matter with you in order to discuss the implementation of the principles," which must be a reference back to the principles of natural justice that Mr Berry said that Ms Matchett needed to instruct Mr Heiner to apply before Mr Heiner could proceed further with the inquiry.

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COMMISSIONER: When Mr Coyne was writing to the director-general, he was invoking the regulations.

MR COPLEY: Yes.

COMMISSIONER: Now, Mr Berry, on his behalf, is invoking the general law of procedural fairness or natural justice.

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MR COPLEY: Yes. He's asserting that his view was very firmly this: that he would be able to persuade a court to issue a writ of prohibition against Mr Heiner unless he accorded his clients this procedural fairness.

COMMISSIONER: He might have had a refined view of the development of the principles of natural justice as at 1989 except for the opportunity to make submissions before the report was prepared.

MR COPLEY: Yes.

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COMMISSIONER: In any event, he's flagging that they say that there has been procedural irregularity in the conduct of the inquiry and it could be remedied by taking certain steps, otherwise they had a firm opinion about their prospects.

MR COPLEY: Yes.

03/12/12

COPLEY SC, MR

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COMMISSIONER: Okay. 1

MR COPLEY: He didn't seem to be calling for the inquiry to be ended, rather than for the inquiry to continue but with an eye to procedural fairness.

COMMISSIONER: Yes; and rectifying any unfairness that had hitherto occurred.

MR COPLEY: Yes.

COMMISSIONER: Right. 10

MR COPLEY: So save and except for the last two paragraphs on page 1 of that letter, my submission is that that letter could be published. There's another person referred to in the last two paragraphs of that letter who should probably be given the opportunity to make a submission, either orally or in writing, to you about that person's attitude towards the whole contents of the letter being published.

COMMISSIONER: Do you think? Certainly, in those last two paragraphs. 20

MR COPLEY: That's all I'm talking about. I'm suggesting to you that the letter, less the last two paragraphs of page 1, could and should be published.

COMMISSIONER: Yes.

MR COPLEY: But that you might consider not including in publishing it those last two paragraphs because there's the interests of another person to be considered there.

COMMISSIONER: Yes. 30

MR COPLEY: That person hasn't yet been reminded perhaps of the contents of this letter from 20-odd years ago.

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COMMISSIONER: All right. That's what I propose to do, subject to argument. 1

MR COPLEY: It appears everybody is in agreement that the document can be published except for those last two paragraphs on page 1.

COMMISSIONER: I direct that exhibit 113 be published but that the final two paragraphs on the first page of the exhibit be suppressed until further order.

MR COPLEY: Thank you. The next document I tender is a memorandum headed John Oxley Inquiry signed by Geoff Loof, the acting principal personnel officer, dated 18 January 1990. 10

COMMISSIONER: That will be exhibit 114.

ADMITTED AND MARKED: "EXHIBIT 114"

MR COPLEY: It sets out in summary form the nature of information that had been supplied by Mr Heiner by that part of the department called personnel services. And over the page it sets out the nature of information requested by Jan Cosgrove, who was Mr Heiner's secretary, in relation to the John Oxley inquiry. What it shows is that when Mr McDermott was the manager between February 87 and November 1987 there had been three resignations; but when Mr Coyne was the manager from December 1987 to the present, there had been 32 resignations. 20

COMMISSIONER: So Mr McDermott was there for nine months, compared with Mr Coyne's two years.

MR COPLEY: Yes, that's correct. And then there's a handwritten note down the bottom, it says, "Information requested by Mr Heiner on 17/1/1990," and it's signed, Trevor Walsh, 18/1/1990." So the inference is - because eventually it will be proven to you that Mr Heiner is dead, we can't ask him - but the inference is that Mr Heiner caused Ms Cosgrove to ask these questions of the department and they were duly answered. The next document I tender is a letter from Ms Matchett to Mr O'Shea, the crown solicitor, dated 18 January 1990, containing seven attached documents. 30

COMMISSIONER: Do you want them as a bundle? 40

MR COPLEY: Yes, all as one exhibit, please.

COMMISSIONER: Exhibit 116 [sic] will be the letter of 18 January 1990 plus the attachments.

ADMITTED AND MARKED: "EXHIBIT 115"

MR COPLEY: In this letter, Mr Commissioner, Ms Matchett

03/12/12

COPLEY SC, MR

records the fact that on 13 November 1989 Mr Pettigrew appointed Mr Heiner to conduct an investigation into complaints by certain members of the staff at John Oxley; that the investigation had been established following representations from the State Service Union to both the former minister, Beryce Nelson, who's not named but is referred to as title, and to Pettigrew, the former director-general.

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She says to Mr O'Shea that:

During the course of the inquiry certain concerns have been raised by staff at the centre in relation to the propriety and legality of the inquiry." She states that on 17 January 1990 at 5.18 pm she received a facsimile of a letter, a copy attached, from Rose Berry Jensen solicitors, representing Coyne and Jutney. She says, "The solicitors are making certain demands to which they seek a response by 2 pm today." And she says, "I want you to represent the department in this matter, and in particular your urgent advice is sought as to what response, if any, she should make to the attached letter."

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And she says, "I have attached for your information a memorandum from Mr Pettigrew to Mrs Nelson concerning the establishment of the inquiry; Mr Heiner's letter of appointment; terms of reference for the inquiry, and requests made for information by Mr Coyne and Mrs Jutney and the responses provided to date." All of which have been tendered so far.

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COMMISSIONER: She's back to being acting director-general.

MR COPLEY: Yes.

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COMMISSIONER: All right.

MR COPLEY: That's exhibit 115, I think, from memory.

COMMISSIONER: It is, yes.

MR COPLEY: The next document that I tender - - -

COMMISSIONER: Sorry, 115?

MR COPLEY: Yes. The next document that I tender is another letter from Ms Matchett, acting director-general, to Mr O'Shea, also dated 18 January 1990.

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COMMISSIONER: That will be exhibit 116.

ADMITTED AND MARKED: "EXHIBIT 116"

MR COPLEY: And it begins by thanking Mr O'Shea for the opportunity to discuss with him yesterday some of the

03/12/12

COPLEY SC, MR

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concerns that had been raised in relation to the investigation of complaints by staff members at John Oxley being conducted by Mr Heiner. Following that discussion she forwarded to Mr O'Shea for comment under another letter a draft letter to Mr Heiner seeking clarification of his interpretation of his authority to request certain documents. Now, perhaps that's a reference to his request for those pieces of information that Mr Loof made the subject of a memo on 17 January.

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She stated, "I've also forwarded to you under separate cover instructions in relation to a letter I received yesterday from a solicitor representing the two staff members, and your urgent advice on that matter would be greatly appreciated." And the attachment, which is unsigned, to this letter, contains a letter unsigned from Ms Matchett to Mr Heiner referring to his request to be provided with correspondence, "Forwarded to me by people who didn't wish to appear before you."

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She said, "Your appointment to undertake the investigation, I am unclear about, as to the source of your authority to request these things, and it would assist me in resolving this issue if you could meet with me on Friday, 19 January to provide some clarification." So this is a draft of a letter that Ms Matchett wanted to send to Mr Heiner but she wanted Mr O'Shea to look at it.

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COMMISSIONER: And it relates to the source of his authority, and her letter to the crown solicitor relates to legal validity as opposed to the propriety of the manner of the investigation at this point.

MR COPLEY: Yes. Then the next document I tender is a facsimile transmission dated 18 January 1990 from Mr O'Shea to Ms Matchett which was sent at 12.45 pm.

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COMMISSIONER: That will be exhibit 117.

ADMITTED AND MARKED: "EXHIBIT 117"

MR COPLEY: If we go to the body of the document, Mr O'Shea on 18 January at 12.45 refers to a telephone conversation he'd had with Ms Matchett the day before concerning Mr Heiner. He acknowledged receipt of the draft letter that she proposed to send to Mr Heiner and what appeared to be Mr Heiner's terms of reference. He noted her instruction that Mr Heiner hadn't been appointed by the governor in council to conduct an inquiry, which meant, he said, that the Commissions of Inquiry Act 1954 - but perhaps he meant 1950 - didn't apply; and he said the effect of that was simply that Mr Heiner couldn't subpoena witnesses or examine them on oath, nor could he subpoena documents in the possession of any person.

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So that perhaps clarified one of the issues that Ms Matchett wanted to know, which was the source of Mr Heiner's authority to ask for documents. Mr O'Shea is saying there it doesn't arise under the Commissions of Inquiry Act of 1950. He then said, "It would be possible under the Public Service Management and Employment Act and Regulations for the director-general of the department to have appointed Mr Heiner to carry out the investigation," and he relied upon section 12 of the act, which he said provided an ample power in the chief executive to appoint someone to conduct an investigation.

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He then referred to section 13 about the power of delegation, but emphasised that the chief executive or director-general could only delegate to a person who holds an office.

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COMMISSIONER: Yes.

MR COPLEY: He referred to section 34, which he didn't think would be a likely source of authority. And then he referred to regulation 63, which was the regulation about grievances. He set it out in full there. You'll see that under sub-regulation (2) of regulation 63 the chief executive officer was obliged to ensure that an aggrieved officer was given the opportunity to present all aspects of the grievance; that the grievance be fully and fairly investigated unless it was frivolous or vexatious; that the chief executive might appoint an officer to investigate a grievance.

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And then he said on page 3 that the effect of it all was that provided that there was an appropriate instrument of delegation in writing to Mr Heiner and his appointment was in writing signed by the chief executive, he may carry out the investigation. But he said he didn't enjoy any of the powers such as you enjoy under Commissions of Inquiry Act. For example, not only could Mr Heiner not subpoena witnesses or documents, he could not require someone to answer a self-incriminating question.

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And Mr O'Shea observed, "The possibility of defamation proceedings arising out of any information given to Mr Heiner would also have to be borne in mind."

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He said, "It was an absolute privilege obtaining in respect of anything said or given to a commission under the Commissions of Inquiry Act, but no such absolute privilege would apply to an investigation like the one Mr Heiner was conducting." He said he wasn't suggesting that the matter oughtn't to be the subject of a commission of inquiry under the Commissions of Inquiry Act, but he said that was a matter to be considered further and he said that he thought she should send the letter to Mr Heiner requesting that Mr Heiner come for a meeting and explain the basis upon which he was proceeding.

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COMMISSIONER: At this point, the crown solicitor was concerned with the formalities, the statutory formalities, being complied with for the constitution of the investigation.

MR COPLEY: Yes; and trying to understand just how it was that Mr Heiner was in the position he indisputably was of conducting an investigation. The next exhibit I tender is, indeed, the letter to Mr Heiner from Ms Matchett dated 18 January 1990, signed by her.

COMMISSIONER: That will be exhibit 118.

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ADMITTED AND MARKED: "EXHIBIT 118"

MR COPLEY: In the letter she says that she's unclear as to certain aspects of the source of Mr Heiner's authority to request copies of documents and it would assist her if he would meet with her on Friday, 19 January 1990, at 9 am to provide some clarification. The next document I tender is a copy of a letter Mr Heiner wrote to Ms Matchett on 18 January 1990 and which was received on 18 January 1990. It's written on the Department of Family Services letterhead as well.

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COMMISSIONER: Is it in response to Ms Matchett's letter of 18 January?

MR COPLEY: It says, "I acknowledge your letter of 18 January 1990," so it is or appears to be.

COMMISSIONER: But it doesn't address the question posed to him in that letter about - - -

MR COPLEY: Coming to see her?

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COMMISSIONER: - - - resolving the source of his authority.

MR COPLEY: No, you've got to read it. It is directed, it is responsive to Ms Matchett's letter, but would you make it an exhibit first please?

COMMISSIONER: Yes. Exhibit 119.

03/12/12

COPLEY SC, MR

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ADMITTED AND MARKED: "EXHIBIT 119"

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MR COPLEY: Thank you.

COMMISSIONER: All right.

MR COPLEY: What it does, Mr Commissioner, is it refers back to Lyn Draper. You'll recall that I tendered a memo dated 4 January 1990 from Draper to Matchett saying, "I have to go before Heiner on January, 10, but I don't want to go. I want to cancel."

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COMMISSIONER: Yes.

MR COPLEY: So Mr Heiner starts by referring to that and says, "There seems to be some confusion about my request for a copy of the reasons why Mrs Draper wished to cancel her appointment for 10 January to appear before me." He says, "This is the only request which I have made for any correspondence."

COMMISSIONER: Yes.

MR COPLEY: Then he says, "Mrs Draper contacted Mrs Cosgrove and sought a time and date to be interviewed, 11 am, on Wednesday, 14 December, was set aside for Mrs Draper."

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COMMISSIONER: Yes.

MR COPLEY: "On that morning Mrs Draper contacted Mrs Cosgrove and said she couldn't come because she had a migraine," and so 11 am on 10 January was then set aside for Mrs Draper. He said that he then received Mrs Draper's letter of 4 January saying that she wished to cancel her appointment and stating that she had written to you about her reasons for this decision and Mr Heiner said, "I read from this request that I was to contact you to obtain those reasons, hence my request to you."

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COMMISSIONER: Which is a response to the first paragraph of Ms Matchett's letter.

MR COPLEY: That's right. He said, "It was at her," that is, "Draper's instigation that I set aside time for her. It is obviously within her discretion to attend or not to attend, as she wishes." So Mr Heiner seemed to recognise that he didn't have the authority to compel attendance there."

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COMMISSIONER: Yes.

MR COPLEY: "Having decided to cancel the appointment, I am at a loss to understand why a mere intimation to this effect was not forwarded to me. Certainly, no reason is required to be given." So he's perhaps complaining that

03/12/12

COPLEY SC, MR

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Mrs Draper didn't give him the courtesy of letting him know she was not going to attend. He says, "Unless there are other matters which you wish to discuss with me about my investigation, I can see no reason for me to meet with you at 9 o'clock tomorrow." He says that on the second-last paragraph on page 2. 1

COMMISSIONER: Which is a response to her third paragraph.

MR COPLEY: Yes; about having a meeting to discuss what he's up to. 10

COMMISSIONER: But there's no response to her second paragraph, which is about the source of his authority.

MR COPLEY: No.

COMMISSIONER: To initiate such a request? I see.

MR COPLEY: Yes.

COMMISSIONER: Yes, okay.

MR COPLEY: Yes. Then there's a handwritten note on the front of this letter signed by Trevor Walsh on 18 January 1990 stating, "Ms Cosgrove was advised that Ms Matchett has other matters that she wishes to discuss with him." 20

COMMISSIONER: Which isn't the source of his authority to make the request of Ms Draper, but the general source of his authority.

MR COPLEY: Probably, yes.

COMMISSIONER: All right. 30

MR COPLEY: Mr Heiner wasn't keep to meet with Ms Matchett, but it seems that Ms Matchett insisted upon it and we'll have to turn on to see if it occurred. The next document I tender is a memorandum from Mr Coyne to the director-general dated 18 January 1990. It is one page long, but attaches to it Ms Matchett's reply to him of 17 January 1990.

COMMISSIONER: Both documents will be exhibit 120.

ADMITTED AND MARKED: "EXHIBIT 120" 40

MR COPLEY: He notes that she has asserted that there's no records on his personal file and that Ms Matchett is unaware of any other departmental files that might contain records about him, but he asserts that, "Records relating to me are in the possession of the department. The State Service Union presented these documents to the department," he says. On 29 November 1989, Mr Heiner's office gave the names of the people who had given their documents to the

03/12/12

COPLEY SC, MR

State Service Union and, in turn, to the department to him and see there he lists off those names of Lannen, Pearce, Smith, et cetera, et cetera, which were the nine names on the document dated 29 November 1989. 1

He then says, "Mr Heiner on 11 January told me that he had copies of documents provided by these people. Mr Heiner had said he had obtained these from the department and that the originals were held with the department." Mr Coyne says, "Senior officers of the department are also aware that these documents exist." He said, "My request was for records held by myself relating to this investigation. The department," he says, "does hold records on me relating to the investigation. I respectfully request a copy of those records forthwith." 10

The next document I tender is another memorandum from Mr Coyne to the director-general dated 18 January 1990.

COMMISSIONER: That will be exhibit 121.

ADMITTED AND MARKED: "EXHIBIT 121"

MR COPLEY: He refers in this memo to Mr Heiner's advice that he was investigating grievances in accordance with regulation 63, "Mr Coyne complains he's been given conflicting information by senior departmental officers, namely, that the investigation has no legislative base and that it is in accordance with regulation 63." He then says, "This matter should be addressed immediately." He claims that both himself and Mr Heiner and other people need to be fully aware of the legislative basis of the investigation. He helpfully points out that Mr Heiner may have an obligation to conduct the investigation within legislative parameters and so he repeated his request for advice on the legislative basis of the inquiry. 20 30

COMMISSIONER: You can't know your parameters unless you know the source of your authority.

MR COPLEY: Yes.

COMMISSIONER: Is there material suggesting that there is conflicting advice from senior departmental officers about where the investigation has any legislative basis?

MR COPLEY: I have not come across a letter or memorandum that says that in terms. He may have been referring, of course, to verbal advice or oral advice he'd received from different people. 40

COMMISSIONER: Yes. Okay.

MR COPLEY: The next document I tender is dated 19 January 1990. It's a letter from Matchett to O'Shea.

03/12/12

COPLEY SC, MR

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COMMISSIONER: That will be exhibit 122.

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ADMITTED AND MARKED: "EXHIBIT 122"

MR COPLEY: It attaches Coyne's memos to Matchett dated 18 January 1990, as well as her reply of 17 January 1990 to Coyne.

COMMISSIONER: The attachments will be included in the exhibit.

MR COPLEY: Thank you. She simply states that she's enclosing these copies from Mr Coyne and asks Mr O'Shea for what response she should make to these requests for information. The next letter I tender is one from Ms Matchett to Mr O'Shea dated 19 January 1990.

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COMMISSIONER: It was a busy date on 18 January 1990.

MR COPLEY: The 19th it was, yes.

COMMISSIONER: No, it was a busy day on the 18th and now we're moving to the 19th.

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MR COPLEY: Yes, sorry.

COMMISSIONER: I'll give that as exhibit 126.

MR COPLEY: 123.

COMMISSIONER: 123?

MR COPLEY: Yes.

COMMISSIONER: You're right.

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ADMITTED AND MARKED: "EXHIBIT 123"

MR COPLEY: Attached to this letter of 19 January is a lengthy letter from Mr Heiner to Ms Matchett dated 19 January and which a notation at the top of it says, "11.30 am received, 19 January 1990."

COMMISSIONER: That letter - - -

MR COPLEY: Is part of - - -

COMMISSIONER: - - - will be part of 123.

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MR COPLEY: Okay. In the letter that Ms Matchett writes to Mr O'Shea, she says she had discussions with Mr Heiner this morning and at 11.30 today Mr Heiner gave her - hand delivered to her the attached letter in which he said that he was not prepared to continue any further with the inquiry and that he was ceasing from any further action until he had obtained written confirmation about the

03/12/12

COPLEY SC, MR

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legality of his actions to date, including his appointment. 1

Ms Matchett said that she intended to have discussions that afternoon with the State Service Union and the Professional Officers' Association on a without prejudice basis and the purpose was to advise them of her current concerns regarding the validity of the inquiry. That meeting was to commence at 3.00 and she wanted more urgent advice from Mr O'Shea before she went to that meeting.

COMMISSIONER: Because one of the things she wanted to discuss at that meeting was the possible action that might follow. 10

MR COPLEY: That's right; that's right.

COMMISSIONER: Yes.

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MR COPLEY: So Mr Heiner's letter is instructive because it gives you an insight into the manner in which - how he conducted his inquiry and where he focus laid so it's worth looking at in a little bit of detail. He records that there had been discussions between Pettigrew, Nix and himself, as a result of which he got the letter dated 13 November 1989 together with the terms of the reference.

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He said that the letter and the annexure authorised him to investigate and report to the minister and the director-general on certain matters numbered in the terms of reference, but he perceived his inquiry to encompass the first of these numbers, namely, number 1, which was the validity of the complaints received in writing from present or former staff and whether there was any basis in fact for those claims. He said that he believed that the other seven matters in the annexure were concomitant with the first matter and formed part and parcel of that first inquiry.

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So one can see perhaps here that Mr Pettigrew was setting up intending to set up an inquiry that encompassed not just complaints about Mr Coyne but issues to do with the centre more generally and even put that into terms of reference but Mr Heiner had proceeded on the basis that really paragraphs 2 to 8 were perhaps particulars of paragraph 1 which concerned Mr Coyne.

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COMMISSIONER: If he investigates term of reference 1, then, that being the greater, it covers the lesser of the other seven.

MR COPLEY: Yes, and it might explain perhaps why some members of staff had been writing the memos which I have tendered which suggested that there was an inordinate or disproportionate concentration or direction of attention to Mr Coyne and his relationship with staff.

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COMMISSIONER: Those who were supportive of Mr Coyne appeared to get the impression from Mr Heiner that he was focused on things adverse, that is, complaints about Mr Coyne, which he in fact was because that's how he interpreted these terms of reference.

MR COPLEY: He was required to investigate the validity of complaints, not the validity of praiseworthy - praises of Mr Coyne.

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COMMISSIONER: No, but other expectations were that he was there to look at the management of the centre more generally.

MR COPLEY: Yes, and perhaps at the numbers of staff, the numbers of inmates, the alarms and things like that, the physical structure of the place.

COMMISSIONER: Yes.

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MR COPLEY: He then says in the next paragraph that he believed that from his instrument of appointment and the terms of reference that he was to report to the minister and director-general and he inferred from that that the minister and the director-general had appointed him pursuant to specific approval from state cabinet. Of course we know, so far as we have been able to ascertain, that state cabinet had no involvement with the appointment beyond it being informed that an investigation had been commenced.

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COMMISSIONER: Was he right? Was he asked to report to the minister as well as the director-general?

MR COPLEY: We would have to go back.

COMMISSIONER: Yes.

MR COPLEY: We would have to go back to the previous exhibits to check that.

COMMISSIONER: It doesn't matter at the moment, but in any event he thought that cabinet had to approve and it had.

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MR COPLEY: Now he had doubts as to whether cabinet had approved his appointment.

COMMISSIONER: Yes.

MR COPLEY: That's why he goes on to say, "I have serious doubts as to the validity of the inquiry I am conducting."

COMMISSIONER: What, because of the possibility that cabinet hadn't approved it?

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MR COPLEY: He says, "I am not satisfied, firstly, that cabinet was aware of the intention for the director-general and the minister to authorise it and it may have been the minister solely who was responsible for the authority and my appointment to conduct it."

COMMISSIONER: That's right. The minister approved the director-general's proposed to call it. Why did he think - you don't know.

MR COPLEY: I don't know. I don't know why he was concerned whether cabinet authorised it or not. It seems to come from an assumption that unless cabinet authorised something, then he wasn't prepared to do it.

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COMMISSIONER: Yes.

MR COPLEY: Maybe he had proceeded on that assumption all the way until he found that it wasn't a cabinet-approved

03/12/12

COPLEY SC, MR

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investigation and that caused him to, to put it glibly, get cold feet. 1

COMMISSIONER: He seemed to think in the previous sentence that because his approval and authority came from the minister, somehow the minister's authority derived from cabinet.

MR COPLEY: Yes.

COMMISSIONER: Right. 10

MR COPLEY: He based all of these concerns on a document which he had undated which he had seen which purported to be notes that the minister relied on for her submission to cabinet, the last part of which read, "I have agreed to accept the recommendation of the director-general on this matter. It does not seem possible" - well, that seems to be the end of the quote and then he says, "It does not seem possible to ascertain particulars or information as to whether that recommendation was made or that cabinet has in fact authorised this inquiry."

COMMISSIONER: We know from exhibit 76 that cabinet's only involvement on 23 October was to note the - - - 20

MR COPLEY: The fact of it.

COMMISSIONER: - - - fact that the minister was advising cabinet that it was happening.

MR COPLEY: Yes, and so Mr Heiner then says, "In view of the confusion which exists and my doubt as to the validity of my actions, I'm not prepared to continue any further with the inquiry." He said that everything he had done to that point had been done in good faith and in a belief that the whole structure of his appointment and authority to act had been legally and properly constituted by cabinet downwards. So he does seem to believe that unless the cabinet had authorised what he was doing, then somehow or other there was doubt about the legality of it. 30

COMMISSIONER: He clearly had doubts, but whether or not those doubts were well-founded as a matter of law is open.

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MR COPLEY: It seems that his doubts were different from Ms Matchett's doubts. Ms Matchett's doubts seemed to be more concerning process and source of authority, but anyway he then said:

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I am therefore ceasing from now to conduct any further the matter until I have obtained written information and confirmation that my actions to date, including my appointment and authority to act are validated. I have had each of the interviews recorded by tape-recorder and these tapes have been transcribed. I will retain possession of each of these records of interview personally and take no further action until I receive further advice from the director-general along the lines I have suggested.

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If after the director-general has received legal advice and she determines no further action be taken, I will produce to her all the documents which I have maintained as a result of my inquiry and she may do with them as she is advised to do. There has been reference to legal proceedings being taken as a result of my inquiries. I believe if there is any legal action, the department should take action to indemnify all my actions to date.

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Now, what legal action he's referring to there is not clear, but he's concerned about his own position.

COMMISSIONER: What we know at this point in time that he probably knew was from the memo he got from Mr Coyne on the previous day that Mr Coyne was saying that he's got conflicting departmental advice that the investigation had no legislative base and alternatively it was in accordance with regulation 63. So that's what Mr Coyne was saying.

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MR COPLEY: Yes.

COMMISSIONER: Ms Matchett was simply saying, "What is the source of your authority?" and he is saying in answer to none of those questions, "It's a cabinet approval and if it wasn't done properly, then - and it looks like it hasn't been - I'm going to pull up stumps."

MR COPLEY: Yes. So to that extent his answer was responsive to her inquiry. His belief was it was cabinet approval.

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COMMISSIONER: Yes, but then he goes on to say, "I have got some doubts about that now so I'm not going to continue."

MR COPLEY: "I'm not going to act further," yes.

COMMISSIONER: Until he receives further advice along the

03/12/12

COPLEY SC, MR

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lines he has suggested.

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MR COPLEY: Yes.

COMMISSIONER: Yes, "Until I have obtained written information and confirmation that my actions to date, including my appointment and authority to act are validated." So he's waiting to hear from Ms Matchett at this point on 19 January whether his appointment and authority to act have been validated which is the same question sort of she asked him.

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MR COPLEY: Yes.

COMMISSIONER: All right.

MR COPLEY: Could we resume at 2.00?

COMMISSIONER: Yes. Is that suitable to everybody? Okay. We will resume at 2 o'clock.

THE COMMISSION ADJOURNED AT 1.04 PM UNTIL 2.00 PM

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THE COMMISSION RESUMED AT 2.05 PM

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COMMISSIONER: Mr Copley.

MR COPLEY: Mr Commissioner.

COMMISSIONER: Pick up where we left off.

MR COPLEY: Yes. So the next - - -

COMMISSIONER: I'm assuming we won't get to any oral evidence today.

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MR COPLEY: I made the decision at lunchtime with the police that they should send today's witnesses away; that there was no realistic prospect of reaching them today.

COMMISSIONER: Okay.

MR COPLEY: So there'll be a different list for tomorrow now, and that will be settled this afternoon. The next document I tender is a facsimile letter to Ms Ruth Matchett from Mr Ken O'Shea dated 19 January 1990 and it was sent at 12.27 pm.

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COMMISSIONER: That will be exhibit 124.

ADMITTED AND MARKED: "EXHIBIT 124"

MR COPLEY: If you look at that letter, it begins by considering the power to appoint Mr Heiner. Mr O'Shea considers and rejects the notion that regulation 63 of the Public Sector Management and Employment Act regulations might be the source of that power because that is confined to delegating powers to an officer, who is defined as an officer of the public service, and Mr Heiner wasn't that.

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COMMISSIONER: Yes.

MR COPLEY: Mr O'Shea then wondered about section 34 and wondered whether or not that section of the act, coupled with section 13, might contain the power, but said that it wasn't a matter he'd reached a concluded opinion about yet.

COMMISSIONER: Yes.

MR COPLEY: In the letter he then turned to the question of natural justice at the fourth paragraph, which he said was a very real and serious question which had been raised by the solicitors. He said, "At the least it demanded that a person who might be affected by the inquiry had the right to be told of what is alleged against him and to be heard in his defence before the person conducting the inquiry."

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COMMISSIONER: Certainly before the person conducting the

03/12/12

COPLEY SC, MR

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inquiry reported.

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MR COPLEY: Yes. He went on to say that the full extent of his rights under natural justice would vary from one case to the next, and whether the right extended to cross-examining witnesses was not possible for him to say at that stage. But, he said, "It may be that further research will show that as long as it Mr Heiner, before he reports on his evidence, informs anyone adversely affected as to what his conclusions are and gives them the right to lead evidence and address him with a view to rebutting the proposed findings, then that might be sufficient."

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COMMISSIONER: Yes.

MR COPLEY: He said that he noted that Ms Matchett was having conferences that day with Mr Heiner and with the representatives of the unions. He said that the problems concerning the possibility of defamation proceedings, and indeed the general power of Mr Heiner to be conducting the inquiry remained, but they could be addressed further if and when she was in a position to give him more complete instructions. And he confirmed his telephone advice to her, Mr Walsh, given earlier that day, that for the time being it would be better for her not to respond to the solicitor's - Mr Berry's - letter.

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Mr O'Shea observed that Barry Thomas from the appeals and advocacy branch of crown law would be handling the matter and he suggested that she get in touch with him or Mr Conrad Lowe. So as I say, that letter went off at about lunchtime, and I think you made that exhibit - - -

COMMISSIONER: I did, I make that Exhibit 124.

MR COPLEY: So far as one can discern, the next event that occurred on 19 January of relevance occurred at about 3 pm when there was a meeting had with Ms Matchett and various union officials. There is a minute or a summation of that meeting which I tender under the hand of S. Ball, industrial officer with the QSSU.

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COMMISSIONER: That's exhibit 126 [sic].

ADMITTED AND MARKED: "EXHIBIT 125"

MR COPLEY: Present at that meeting, according to these minutes, was Ms Matchett and Ms Crook from the department, Mr K. Lindeberg from the Professional Officers Association, and Ms Walker and Mrs Ball from the State Service Union. The minutes record that Ms Matchett had requested the meeting and she was of the belief that the departmental investigation being conducted by Mr Heiner had not been properly constituted. Then Ms Crook from the department said that it was believed that Mr Pettigrew did not in fact

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03/12/12

COPLEY SC, MR

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have the power to establish the inquiry that was being conducted, nor to appoint Mr Heiner to do it. 1

It was further indicated that certain management staff at John Oxley had threatened legal action against the department as a result of the inquiry, and that was also causing concern to Ms Matchett.

COMMISSIONER: Just remind me, the only legal action that had been threatened at that point was Mr Berry's intimation that they might seek prerogative relief in the Supreme Court. Is that right? 10

MR COPLEY: As far as the documents we've been able to locate reveal, that seems to be the extent of any threat of legal action, at least emanating from a solicitor, namely the government.

COMMISSIONER: This meeting at 3 pm, is that the without prejudice meeting that was foreshadowed in Ms Matchett letter of the 19th to the crown solicitor?

MR COPLEY: It's fair to conclude that it probably was because that letter on the 19th said that she was meeting with the QSSU and the POA and the only unions at this meeting were people from the POA and the QSSU. 20

COMMISSIONER: Yes.

MR COPLEY: You may recall that on earlier occasions there'd been meetings involving Nurses or Australian Workers Union people. This meeting appears to be confined to the parties that she nominated in the letter to Mr O'Shea.

COMMISSIONER: As far as Ms Matchett's belief and Ms Crook's statement is concerned, the crown solicitor hadn't reached a final conclusion about the constitution of the Heiner inquiry by the chief executive. 30

MR COPLEY: Well, he'd certainly not opined that there was no power to appoint him.

COMMISSIONER: No.

MR COPLEY: He'd simply canvassed various possible sources of power, rejected some, and said that at the moment as at the 19th, he was still considering section 13 of the PSMEA coupled with section 34. 40

COMMISSIONER: What time was that?

MR COPLEY: That letter was faxed to the director-general at 12.27, yet at 3 o'clock, if the minutes of this are accurate - and they're not Ms Matchett document - - -

COMMISSIONER: No. 1

MR COPLEY: It's not a document done by the department, it's done by the union person who may or may not have kept the minutes accurately - it's asserted that Ms Matchett has already formed the view that this inquiry wasn't properly constituted and that they may not have been power to constitute it. Where she got that view from, from the material, if in fact it was what she said, it's hard to know.

COMMISSIONER: And clearly the meeting had been called before she sought the advice of the solicitor general or the crown solicitor. 10

MR COPLEY: The acting solicitor general and crown solicitor.

COMMISSIONER: Yes, okay.

MR COPLEY: The solicitor general may well have been on holidays at this time of the year or he may have been appointed to the Supreme Court, I can't remember. Ms Crook said that the department was seeking advice from crown law as to how to proceed and Ms Matchett said the inquiry wasn't legally constituted and should be abandoned as it is possible. Ms Walker from the union expressed some sort of disappointment about that because her members would be upset about it. 20

COMMISSIONER: And they were the ones agitating for a management review.

MR COPLEY: Yes.

COMMISSIONER: Her members. 30

MR COPLEY: Her members were.

COMMISSIONER: Yes.

MR COPLEY: And the foot of the document records that although Ms Matchett remains supportive of resolving staff issues at JOYC, pending further legal advice it was her intention to abandon the inquiry, but she asked that all those present it is confidential until she obtain further legal advice. So she seemed to take into her confidence members of various unions. 40

COMMISSIONER: Well, it was without prejudice according to the earlier exhibit, wasn't it?

MR COPLEY: Yes. Now, the next document that I tender is a one-page handwritten note dated at the top - well, it bears the date at the top, 11 am, 22/1/1990.

03/12/12

COPLEY SC, MR

03122012 18/ADH (BRIS) (Carmody CMR)

COMMISSIONER: Did I give that last exhibit 125? 1

MR BOSSCHER: No, your Honour, you gave it 126 - - -

COMMISSIONER: And I was wrong?

MR BOSSCHER: Yes, it should be 125, Commissioner.

COMMISSIONER: Yes, thanks.

MR COPLEY: Thank you. So this one should be 126. 10

COMMISSIONER: The handwritten document dated 22 January 1990 will be Exhibit 126.

ADMITTED AND MARKED: "EXHIBIT 126"

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03/12/12

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MR COPLEY: This document records the names R. Matchett, S. Crook and B. Thomas at the top, which may be a reference to Barry Thomas. It refers to something called "a-fact," with a hyphen, under that, "Not satisfy any new APPTT, reference to terms of reference-union, Heiner reply indemnity, grievance, destroy files, reply and sols." We don't know at the moment who wrote this document, so I would submit in the circumstances, even though you've admitted it as an exhibit, it would be better not to publish it until we can ascertain who the author of the document is.

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It will either be one of the people mentioned at this meeting or someone who was present with them who was taking notes, so it should be able to be readily ascertained from any of those people as to whether they recognise the writing and, if not, whether they recall who made the note and we'll sort that out in the fullness of time.

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COMMISSIONER: Without the author, it's a matter of interpretation what the words or what the writing looks to say.

MR COPLEY: I can't read all of it.

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COMMISSIONER: No. That's another reason, I think, for not publishing the document until further order. Does anyone want to be heard on that?

MR BOSSCHER: Not on that point, specifically, commissioner, but your order not to publish the document, is that on similar terms to the conditions that you put in place when admitting the earlier exhibits which formed part of the statements?

COMMISSIONER: Yes.

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MR BOSSCHER: In that it should be available to be able to take instructions, et cetera, upon it.

COMMISSIONER: Yes, yes, yes.

MR BOSSCHER: Yes.

COMMISSIONER: You have got a copy, haven't you?

MR BOSSCHER: I do. I just wanted to clarify that point.

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COMMISSIONER: Yes. You can use it for the purposes of taking instructions, but it otherwise can't be published.

MR BOSSCHER: Thank you, commissioner.

COMMISSIONER: It can't be published to or by anyone who doesn't have leave to appear, unless they're a client of those who have.

03/12/12

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MR BOSSCHER: Thank you.

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COMMISSIONER: Is that fair enough?

MR BOSSCHER: That clarifies it. Thank you.

MR COPLEY: So I won't say any more about that document at this stage. The next document I tender is a letter from J.M. Walker from the State Service Union to Ms Matchett dated 23 January 1990 concerning staffing levels at the John Oxley Centre. I tender it.

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COMMISSIONER: That will be exhibit 127.

ADMITTED AND MARKED: "EXHIBIT 127"

MR COPLEY: Thank you. The next document that I tender is a memorandum, which is five pages long, dated 23 January 1990. It's signed by B.J. Thomas, senior legal officer, appeals and advocacy branch, and it's a memorandum directed to the crown solicitor.

COMMISSIONER: That will be exhibit 128.

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ADMITTED AND MARKED: "EXHIBIT 128"

MR COPLEY: This memorandum is important because in the second paragraph Mr Thomas writes that on January 22, 1990, he attended a meeting with Ms Matchett and Ms Crook, the personnel manager, and had further discussions about the John Oxley Youth Centre. So that's why I have some confidence that he may be able to assist in identifying the author of the previous exhibit - - -

COMMISSIONER: 127.

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MR COPLEY: That's correct. Mr Thomas wrote to Mr O'Shea that it appeared that there was a prospect of a strike should the matter not be resolved speedily. He records that he was told, presumably by Crook or Matchett, that 55 people worked at John Oxley and about 35 had been interviewed by Mr Heiner, who had tape-recorded most of the interviews, and there were some other documents he had collected during the investigation and Mr Thomas understood that all of that material had been collected in a sealed envelope and given to Ms Matchett.

COMMISSIONER: This is at?

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MR COPLEY: 23 January 1990. Mr Thomas then speaks about what Mr Heiner did - how Mr Heiner approached his task. He opines or states in the fourth paragraph that he approached it on the basis that the first ground of his term of reference concerning the validity of staff complaints about management subsumed all the other grounds listed in the terms of reference and he viewed the inquiry, Mr Thomas

03/12/12

COPLEY SC, MR

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said, as an inquiry into staff grievances and that he intended to make findings of fact, but no recommendations in his report.

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Mr Thomas says that that point of view did not seem to accord with the view held by the union, who had given over the various complaints more as symptoms of the problem of management than about individual matters to be investigated. The attitude of Ms Matchett was that the issue was a management problem rather than a problem of resolving grievances and, therefore, Mr Thomas said, "It would seem that the inquiry that Mr Heiner was conducting had not addressed the needs or the desires of any of the parties who appeared to be affected by it."

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He referred to the fact that Mr O'Shea knew that Mr Heiner said that he wasn't prepared to proceed further until his actions could be, as he put it, validated. Mr Thomas recorded in the next paragraph that Ms Matchett stated that her preferred option was that the inquiry not continue and that another totally independent inquiry be constituted. The next bit isn't so important, but she desired speedy advice from the Crown Law office about whether the inquiry can or should continue, a reply to Mr Heiner concerning his actions and what he should do and a reply to the solicitor, Mr Berry, and also advice on what to do with the material that Mr Heiner had given to her.

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Before dealing with those issues, Mr Thomas said that he wanted to consider or look at the basis upon which Mr Heiner was appointed. In the next paragraph he stated that it was clear that he was not an officer of the public service within the meaning of the Public Service Management and Employment Act, so section 34 couldn't assist in his appointment. In the following paragraph, he said, "It was not possible for the chief executive, Mr Pettigrew, to have lawfully delegated his functions pursuant to section 13 to Mr Heiner under the Public Service Management and Employment Act because Mr Heiner was not an officer of the department."

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At the foot of this page, Mr Thomas decided that the only basis under the Public Service Management and Employment Act that he could find to authorise the appointment was the general power outlined in section 12 of that act, which stated, relevantly, "The chief executive was responsible for the efficient and proper management and functioning of the department in accordance with that act and every other act," and I miss out some words that aren't important, "and was thereby authorised to do and to suffer, subject to this act and such other acts, all such acts and things as he thought necessary or expedient to the proper discharge of his responsibility."

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COMMISSIONER: So at this point Mr Thomas, on behalf of the crown solicitor is saying - to the crown solicitor -

03/12/12

COPLEY SC, MR

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that the crown solicitor's unconcluded view about the effect of sections 13 and 34 should be decided against them being a valid source of power, but he referred to section 12 which might be a source of power which the crown solicitor hadn't previously referred to in exhibit 126.

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MR COPLEY: That's correct. He then set out some subsections from section 12 and he said, "It is this general power to administer the department that is called into force to authorise the appointment of Mr Heiner." He said, "The appointment would seem to fit within the description of an act of the chief executive which he thought necessary or expedient for the proper discharge of the responsibility for training and development or appraisal of staff performance." Then he said, "If that wasn't the case then the only other option for a lawful appointment was to rely on the general power of the crown to engage services except where regulated by legislation," and he then considered and rejected the possibility that the Family and Youth Services Act of 1987 was able to be prayed in aid of the appointment.

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He concluded in the last big paragraph on page 3 that he believed the appointment of Mr Heiner was a lawful exercise of the power of the chief executive under section 12. So that contradicted what Ms Matchett was alleged to have said to the unions the day before or some days before. Mr Thomas went on to say, "It would appear, however, that the services that Mr Heiner had provided were not in keeping with the wishes of the chief executive and, in fact, there may well have been a misunderstanding underlying the basic inquiry from its inception, therefore, in his opinion the most appropriate course was to indicate to Mr Heiner that the chief executive no longer wished him to carry out the investigation and that his services would be terminated."

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At the foot of page 3, he said, "As some of the material Mr Heiner had received was of a defamatory character. It was natural that Mr Heiner was concerned about his legal position," and Mr Thomas thought it was most reasonable that an approach be made to the cabinet by the acting director-general seeking an indemnity for any legal costs that Mr Heiner might incur down the track should action be taken against him.

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He thought the prospect of legal action was very unlikely but that was, nevertheless, small comfort to Mr Heiner in the absence of an indemnity. In the second paragraph on page 4 he turned to the question of what would be done with the material gathered and Mr Thomas said that it should be sorted into those documents which were originally in the possession of the department, such as the nine letters that came from the union, one would imagine, and those which had been created as a process of this inquiry.

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He said, "If the inquiry is terminated, the new documents" - presumably meaning the ones created as a part of the process of the inquiry. He said, "If the inquiry is terminated, the new documents become unnecessary and well contain defamatory matter." He said:

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As no legal action has been commenced concerning these documents, I believe the safest course would be the immediate destruction of them to ensure confidentiality and to overcome any claim of bias if such documents somehow became available to any new investigation.

COMMISSIONER: He didn't want any second investigation to be tainted by anything that might have been contained in the first.

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MR COPLEY: Yes; yes.

COMMISSIONER: So, according to Mr Thomas's view anyway, contrary to Mr Heiner's view cabinet authority wasn't required in order for the inquiry to be valid.

MR COPLEY: That's right.

COMMISSIONER: The chief executive had legislative authority under section 12 of the 1988 act to set the inquiry up.

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MR COPLEY: Yes.

COMMISSIONER: But that inquiry could only be into the matters related to the management and otherwise of the centre and didn't carry with it any coercive or intrusive power.

MR COPLEY: No, but I did say to you earlier it appeared Mr Heiner was aware of that limitation on his authority.

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COMMISSIONER: And said he hadn't purported to exercise any.

MR COPLEY: That's correct. He had said that if someone could satisfy him he was validly appointed, he would have continued the inquiry, but it didn't get to that because Ms Matchett decided she wanted this inquiry simply to be ended.

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COMMISSIONER: According to Mr Thomas's advice to the Crown Solicitor in any way, the belief attributed to Ms Matchett in the union meeting minutes wasn't correct because she hadn't actually been advised about section 12 and its effect at the time the meeting was held.

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MR COPLEY: No.

COMMISSIONER: Her state of knowledge in any event, as opposed to her belief, was that the Crown Solicitor himself hadn't reached a concluded view about the legal effect of sections 13 and 34 which Mr Thomas rejected as a source of power.

MR COPLEY: That seems to be the position from these documents.

COMMISSIONER: All right.

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MR COPLEY: Mr Thomas went on in the fourth paragraph to notes that Mr Coyne and Ms Dutney's solicitors had written to the chief executive seeking an opportunity to examine and cross-examine people who gave evidence before the inquiry and to allow for Mr Coyne and Ms Dutney to have copies of all allegations and evidence taken to date, including copies of tapes used in recording the evidence. Mr Thomas said:

As these matters all relate to the inquiry which I suggest should be terminated, I do not believe there would be any impropriety in destroying the material gathered by that inquiry without affording these people an opportunity to view the material. Further, I believe the solicitors should be advised that the inquiry has been terminated and the material collected at the inquiry has been destroyed.

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So Mr Thomas thought it could be destroyed, that it should be destroyed and that the solicitors should be advised straightaway that it had been destroyed.

COMMISSIONER: He didn't refer to the regulations.

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MR COPLEY: No.

COMMISSIONER: Yes.

MR COPLEY: He then canvassed the other option about the solicitors being advised that the inquiry had been terminated and that the material would be destroyed within

03/12/12

COPLEY SC, MR

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a limited time, but he said he didn't favour that course because it would only generate further problems in an already confused situation, as he put it. He then canvassed the possibility of a new appointment and, of course, we know no new appointment was ever made so that matter can rest there.

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COMMISSIONER: Yes.

MR COPLEY: The Crown Solicitor and Mr Thomas obviously had some discussions because in the paragraph below Mr Thomas's signature Mr Thomas writes something and he then signs it on 23 January and it says:

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Crown Solicitor, re our discussion concerning the Libraries and Archives Act, I have examined the legislation and I am of the opinion that it contains no prohibition on destruction of any tapes, transcripts or documents created by Mr Heiner as part of his investigation. If he had progressed to compiling a report, that would be a "public record", but I do not believe his working papers, no matter how comprehensive, fall within the meaning of "a public record" in section 5 subsection (2) of the act.

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Now, that's not necessarily a view Mr O'Shea shared, as we will see shortly, but that's what he wrote and Mr O'Shea then wrote, "Mr Thomas, I agree generally with your views. Proceed as discussed," signed Mr O'Shea, 23/1/1990. Presumably proceeding as discussed meant that Mr Thomas compiled for Mr O'Shea's signature the next exhibit which is a letter. There are a number of copies of this that I have got attached to this one bundle and I will ask you to make it all one exhibit. It's a letter. In one of the copies it's signed "K.M. O'Shea" to the acting director-general dated 23 January 1990.

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COMMISSIONER: The letter of 23 January 1990 and copies of it will be exhibit 129.

ADMITTED AND MARKED: "EXHIBIT 129"

MR COPLEY: Thank you. The first copy in your bundle which is the unsigned copy of the letter is the more legible of the two copies that are part of exhibit 129. Now, in this advice Mr O'Shea states in the second paragraph that Mr Heiner, in his opinion, was lawfully appointed pursuant to section 12 of the Public Service Management and Employment Act. Then two paragraphs on Mr O'Shea said, "The next question is whether the inquiry can or should continue." Mr O'Shea said there was no legal impediment to the continuation of it, "However, a number of considerations had arisen which might cause Ms Matchett to conclude that no useful purpose would be served by continuing the inquiry."

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03/12/12

COPLEY SC, MR

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In the next paragraph Mr O'Shea said, "It would seem that the conditions under which it had been conducted are such that through no fault of Mr Heiner's any report is unlikely to satisfy any of the parties affected by the inquiry," and he said, "In fact it seems that the whole matter has gone astray from its inception." He then said that he believed the better course would be to advise Mr Heiner that although he was lawfully appointed, there was no good purpose to be served in the current situation by asking him to continue and that therefore his services were no longer needed. He said that it was natural that Mr Heiner was concerned about the risk of legal action and Mr O'Shea said it would be appropriate for cabinet to be approached for an indication that should any proceedings be commenced against Mr Heiner, then the government would stand behind him; in short, give him an indemnity for costs and things of that nature.

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He then turned in the next big paragraph to consider the position of those who gave evidence to Mr Heiner. He observed that none of those people gave evidence pursuant to any act legislation so those informants - by that he would mean witnesses or people that gave information - had no statutory immunity from suit or action for defamation, although they might have what he called a qualified privilege. Therefore, he said, it seems that some of the material which has come into his hands may well be regarded as defamatory:

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This material is now in your hands, Ms Matchett, and if you decide to discontinue the inquiry, I would recommend that, as it relates to an inquiry which has no further purpose, the material be destroyed to remove any doubt in the minds of people concerned that it remains accessible or could possibly affect any future deliberations concerning the management of the centre or the treatment of any staff at the centre.

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He then said:

Naturally any material removed from official files should be returned to those files but the tape-recordings of the interviews had with the people or any notes or drafts made by Mr Heiner should, I suggest, be destroyed.

Then he put this caveat or qualification on it, and you will see that, "This advice is predicated on the fact that no legal action has been commenced which requires the production of those files and" - this was the second caveat - "that you decide to discontinue Mr Heiner's inquiry".

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He said:

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I note that in the letter of January 17, Mr Berry requested that Mr Coyne and Ms Matchett be allowed to have copies of all of the allegations and the evidence taken to date. However, such request is related to the continuation of the inquiry which is now to be halted and, therefore, it is my recommendation that the solicitor be advised that the inquiry has been terminated. No report has been prepared and that all documentation destroyed relating to the material collected by Mr Heiner has been destroyed -

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and he said -

I enclose a draft letter to that effect.

Indeed, if you turn forward a couple of pages, you will see, Mr Commissioner, that there is a letter to Rose, Berry, Jensen with the word draft on the top dated 23 January 1990 to that effect, but it is not signed and it would appear was not sent on 23 January or at any time near to that date and then the remainder of the letter concerned the possibility of establishing another inquiry. The other draft that Mr O'Shea provided was a draft letter to go to Mr Heiner explaining the position to him, which is dated 22 January 1990 and also is not signed.

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If you turn further forward, you'll see in connection with the draft letter to Rose, Berry, Jensen another copy of it with a handwritten note around the word "draft", the words "not sent" and, indeed, all the copies of that that we've found are not signed. This is, no doubt, a document that we will have to return to at some stage more than once in the future and, of course, the very important paragraph is that contained where he set out the caveats that his advice - or the fact that his advice was predicated on some assumptions.

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Meanwhile, on 23 January, Mr Nix had been busy writing another memorandum to the director-general, which is dated that date, and I tender it.

COMMISSIONER: That will be exhibit 130.

ADMITTED AND MARKED: "EXHIBIT 130"

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MR COPLEY: It is headed Issues for Consideration at John Oxley Youth Centre. When on 23 January he composed that, we don't know, but this seemed to be a letter which, from its terms, summarised all of the issues that were floating around out there at the youth centre, not simply ones confined to staff management relationships, but also issues about staff safety, staff training and things of that nature and stating perhaps the obvious that if

03/12/12

COPLEY SC, MR

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positive outcomes to these issues could be found, they would go a long way to creating harmony at the centre. The next document - excuse me for a minute.

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COMMISSIONER: What was the confusion that needed clarifying about grievance procedures to staff at all levels at this stage?

MR COPLEY: One answer would be the question of where grievances are recorded on files, but that was probably an issue that was more agitating the minds of the senior executive of the department than the staff.

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COMMISSIONER: It might be how you make a grievance and who to under the regulations.

MR COPLEY: It might be something like an educative program to explain to people that if you've got a problem with management, setting up a retired magistrate to investigate it isn't the best way. There's a procedure set out in the regulations for this. I don't know.

COMMISSIONER: Okay.

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MR COPLEY: The next document which was located in numerous places, that is to say by numerous three places in Family Services files, but not so far as we could ascertain on Crown Law files, is a handwritten note to the dir-gen, which is certainly signed Ian Peers, 24 January 1990. There are three copies of it. The second copy is the easiest one to read, "Mr Peers said on 24 January that he'd spoken with Peter Coyne that morning and that he and Anne Dutney had been thinking and were now prepared to leave the director-general," presumably that's what dir-gen means, "to make her decisions with regard to the inquiry."

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Then Mr Coyne said, "Mr Peers said this means that although they intend to continue their District Court action for access to the documents, they will drop their Supreme Court action for a writ of prohibition until the rules of natural justice are complied with." Now, that paragraph doesn't make a great deal of sense when read in the context of the documents which precede it, but nevertheless that's what it states. Then it says, "They were expecting their solicitor Mr Berry to phone Trevor Walsh with this advice and then on the basis of a phone conversation yesterday they have asked to meet with me to discuss the re-establishment of stability at JOYC," signed Ian Peers.

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COMMISSIONER: That will be exhibit 131.

ADMITTED AND MARKED: "EXHIBIT 131"

MR COPLEY: And all its copies.

COMMISSIONER: Yes. All the copies of that document by

03/12/12

COPLEY SC, MR

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Mr Peers dated 24 January 1990. At this stage Mr Peers is referring to a District Court action for access to documents, which is the first time, according to the documents, that you've tendered so far is mentioned. 1

MR COPLEY: Yes.

COMMISSIONER: The only mention of an action for a writ of prohibition was one that Mr Berry said he would take if he had to, but would prefer not to and wouldn't need to if certain remedial steps were taken. 10

MR COPLEY: Yes, but it doesn't make sense because it says, "They will drop their Supreme Court action for a writ until the rules of natural justice are complied with."

COMMISSIONER: Yes.

MR COPLEY: It should presumably be trying to convey unless the rules - - -

COMMISSIONER: Unless.

MR COPLEY: - - - or as long as the rules are complied with, they'll drop that action. 20

COMMISSIONER: Which may or may not have been on foot.

MR COPLEY: Yes; and, of course, the people who are making -Mr Coyne presumably doesn't know that the director-general is going terminate the inquiry because although she told that to the union, she had asked them to keep that quiet.

COMMISSIONER: Then he's proceeding along as if the inquiry is proceeding to a court and he still doesn't know the information that he asked for sometime ago. 30

MR COPLEY: That's right; in December. The next document I tender is a memorandum from Mr Coyne to the director-general dated 24 January 1990, one page long. I tender it.

COMMISSIONER: That will be exhibit 132.

ADMITTED AND MARKED: "EXHIBIT 132"

MR COPLEY: Mr Coyne asserts in that memorandum that Mr Heiner finished taking evidence on January 17, 1990. He then sets out in the second paragraph what he understood Mr Heiner's task was. In the third paragraph he asserts again, "Complaints have been made about me," Coyne, "that those complaints have been investigated by Heiner and so, therefore, respectfully request to be notified of the outcome of any investigation." 40

Again, the terms of that memo would tend to suggest that

03/12/12

COPLEY SC, MR

Mr Coyne was still proceeding on the basis that Mr Heiner would be reporting. Now, the next document is a one page handwritten note. Who authored it is not clear, but it has up the top, R. Matchett, 9, perhaps 30, 24/1/1990. So it was probably not Ms Matchett who wrote it. It refers to the, "POA-letting up; staff very concerned, something going through, MIN not prepared to start indemnity till briefed and discussed AGM premier; union want off record discussion about something."

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Then it says, "Destruct documents," so although I've tendered it, until we can establish who the author of it is, the more responsible course would simply be to make it an exhibit but order that it not be published at this stage. I don't know what the other parties think, but it does seem as though it could be a crown law document. "BT" may be the initial.

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COMMISSIONER: Yes. All right, well, unless anyone wants to be heard to the contrary, I propose to do what Mr Copley suggests, and I'll make this document dated 24 January 1990, exhibit 133, and order that it not be published until further order.

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ADMITTED AND MARKED: "EXHIBIT 133"

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MR COPLEY: Thank you. The next document is a letter dated 29 January 1990 to Ms Matchett from Mr Martindale, general secretary of the POA, concerning the investigation at John Oxley. I tender that letter.

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COMMISSIONER: That will be exhibit 134.

ADMITTED AND MARKED: "EXHIBIT 134"

MR COPLEY: The effect of the letter is to complain about what is said to be the denial of natural justice to the POA's members at John Oxley. Only two members are nominated, Mr Coyne and Ms Jutney. On page 2 of the document in the third-last paragraph it is asserted that their members were entitled to see the allegations that had been laid against them and that it was unacceptable that unknown persons be allowed to make allegations against other officers in the public service without such persons having to substantiate their claims.

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That appears to be a bit nonsensical because that was the purpose of the Heiner inquiry, to investigate the complaints. But perhaps the meaning of it is this, that it's really just another complaint that the people the subject of the inquiry haven't been able to see what is alleged against them so they can respond to it. The second-last paragraph asserts a breach of regulation 63 of the Public Service Management and Employment regs, and that that breach had to be remedied.

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The next document I tender is one written by S. Ball, industrial officer for the PSSU, concerning a meeting held on Tuesday, 6 February 1990 at 1 pm.

COMMISSIONER: That will be exhibit 135.

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ADMITTED AND MARKED: "EXHIBIT 135"

COMMISSIONER: Can we just go back to the previous exhibit?

MR COPLEY: Yes.

COMMISSIONER: Mr Martindale is saying to the acting director-general that it's come to the association's attention that Mr Heiner's appointment wasn't within the provisions of the Public Service Management and Employment Act.

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MR COPLEY: Yes.

COMMISSIONER: Now, at this stage that's contrary to Mr Thomas's advice to the crown solicitor.

MR COPLEY: Yes.

03/12/12

COPLEY SC, MR

COMMISSIONER: But do we know if as at 29 January the letter drafted under the hand of the crown solicitor to the acting director general on 23 January had actually been sent and received? 1

MR COPLEY: By the director general?

COMMISSIONER: Yes, been sent by the crown solicitor and received by the acting director general?

MR COPLEY: Well, let me just - - -

COMMISSIONER: I'll tell you why I'm asking the question, I'm wondering if it's the basis of the assertion that it's come to the association's attention is Ms Matchett's belief at that without prejudice meeting, or whether it's got some other source. 10

MR COPLEY: Well - - -

COMMISSIONER: Or might possibly have some other source.

MR COPLEY: It could certainly be sourced at the without prejudice meeting because Mr Lindeberg of the POA was at that meeting when that was allegedly said by her. 20

COMMISSIONER: Yes.

MR COPLEY: But if that's not the source of the POA's belief that the Public Service Management and Employment Act didn't operate, then the possibilities range from an educated guess to the fact that they'd taken their own legal advice.

COMMISSIONER: Yes, but the one thing it wouldn't have been was Mr Thomas's advice. 30

MR COPLEY: No. No, that wouldn't have been conveyed to the POA by that stage, otherwise they presumably wouldn't have written a letter.

COMMISSIONER: Yes.

MR COPLEY: Now, in is next exhibit, which is 135, you'll see that Ms Matchett has divided of the POA from the State Services Union by this time.

COMMISSIONER: Right, so their interests, at least at this point, are being physically separated. 40

MR COPLEY: By Ms Matchett.

COMMISSIONER: Yes.

MR COPLEY: Because in the first paragraph she indicated to the QSSU representatives that she'd call the meeting

with them separately to the POA, "As we stood on different ground."

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COMMISSIONER: Yes.

MR COPLEY: Now, the different ground is presumably this, that the staff who were making the complaints were not members of the POA but in some cases were members of the QSSU.

COMMISSIONER: Yes.

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MR COPLEY: That may have been the only difference they're referring to, that would account for it. It is said that the department - and there were two people from the department at the meeting, Matchett and Crook - outlined that as a result of legal advice they had abandoned the inquiry headed by Mr Heiner and they were yet to be advised as to whether to destroy all of the evidence provided to the inquiry. Well, the letter of 23 January, if received by Ms Matchett, didn't leave that issue up in the air.

COMMISSIONER: And it wouldn't have been the legal advice that would have resulted in the abandoning of the departmental inquiry by Mr Heiner unless the basis for a abandoning it wasn't its invalidity but the fact that it had gone astray from inception.

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MR COPLEY: Well, Mr O'Shea said in that letter of 23 January that legally Mr Heiner could continue, but that practically - or perhaps in a political sense there were reasons for him not continuing.

COMMISSIONER: Yes.

MR COPLEY: Again, this is not Ms Matchett's document, this is a summation made by Ms Ball of what Ms Matchett said all was saying, or Ms Crook said all was saying.

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COMMISSIONER: Yes.

MR COPLEY: The summation goes on that, "They were yet to be advised as to whether to destroy all of the evidence provided to the inquiry to protect staff from legal action by the management and staff at JOYC." So we don't know who actually said that out of Ms Matchett or Ms Crook according to this document.

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COMMISSIONER: But if it was said and if it was true it sort of suggests that the letter of the 23rd from the crown solicitor had been received, doesn't it?

MR COPLEY: I don't know. I don't know. Ms Matchett indicated she: 1

Still didn't want to tell our members that the inquiry was abandoned, but rather she wanted to visit the centre the following Wednesday and tell all this stuff herself and also provide them with proposals to resolve problems. The union again restated its view that the inquiry had been valid and that it was a tragic waste of time, money and resources to abandon it because staff had given information in good faith with an expectation something would be achieved. 10

I asked the director-general what she was proposing to do to resolve the issues but the department indicated they couldn't enlighten us at this stage but would tell them at next Wednesday's meeting. The union said morale was at rock bottom. The acting director-general reiterated her view that their members should have used the grievance procedures as provided by the regulations to air their concerns in the first place and the inquiry would have been unnecessary. 20

COMMISSIONER: That might answer the question I asked before about exhibit 130.

MR COPLEY: Yes. The next document I tender is a letter dated 7 February 1990 signed by Matchett to Mr Heiner terminating his inquiry. The original was delivered by hand to Mr Heiner by someone or other whose name is not discernible. The letter says that - I'll let you mark it at an exhibit.

COMMISSIONER: That will be exhibit 136. 30

ADMITTED AND MARKED: "EXHIBIT 136"

MR COPLEY: The letter says that, "I have received advice from the Crown Solicitor and he confirms that your appointment to carry out the inquiry was in accordance with section 12 of the act." So by this stage at least, Mr Commissioner, the letter of 23 January would appear to have been received. The next paragraph says the decision had been made not to continue it and that he was relieved of the necessity to supply a report. And then in the last paragraph she advised that the material he collected in the form of interviews would remain confidential and that she was continuing to pursue the matter of his indemnity for legal costs. 40

Then on that same date the union must have been advised, because the next letter I tender is a circular dated 7 February under the hand of Janine Walker to QSSU members employed at John Oxley.

COMMISSIONER: She calls it the inquiry into certain matters affecting staffing.

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MR COPLEY: Yes. So I ask you to make that an exhibit.

COMMISSIONER: Exhibit 137.

ADMITTED AND MARKED: "EXHIBIT 137"

MR COPLEY: She tells the staff out there in the union that Ms Matchett is going to visit them early the next week to address them about their position concerning the security and staffing issues at John Oxley.

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COMMISSIONER: Yes.

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MR COPLEY: The next memo I tender is dated 8 February 1990. It's to the acting director-general, Ms Matchett, from Trevor Walsh and the subject is "Peter Coyne".

COMMISSIONER: That is exhibit 138.

ADMITTED AND MARKED: "EXHIBIT 138"

MR COPLEY: The memo is to advise Ms Matchett that he had called at 5.10 pm the day before to say he knew that she was coming there the following Tuesday, that Sue Bell from the State Services Union had told him that she was going to address staff on 16 February, that Mr Coyne assumed it would be about the Heiner inquiry and that it would be very difficult for him to sit in the room with staff who had made complaints about him, that he didn't want to sit in a room with a group of people who "hate his guts" and Mr Coyne wanted this comment passed on to the acting director-general and Mr Walsh said he would pass it on.

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COMMISSIONER: Of course at that point in time Mr Coyne doesn't know what Ms Matchett has decided or is going to tell the meeting on the next Tuesday.

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MR COPLEY: That's right.

COMMISSIONER: Is that reference to Sue Bell likely to be Sue Ball?

MR COPLEY: It could well be because Mrs S. Ball worked for the QSSU, yes.

COMMISSIONER: Right.

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MR COPLEY: The next memo is one from Mr Coyne on 8 February 1990 to the director-general. I tender it.

COMMISSIONER: Exhibit 139.

ADMITTED AND MARKED: "EXHIBIT 139"

MR COPLEY: The relevant bit of that is in the last paragraph:

If your visit to John Oxley on 13 February is about the Heiner inquiry, I would express the following: you and your predecessor have given me no opportunity to defend myself against allegations. I have been insulted and humiliated by people. I and my family have been hurt and upset. I believe this was unnecessary. I have absolutely no intention of allowing anyone else to further humiliate me or further hurt my family.

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Signed "Peter Coyne". The next memo I tender is dated 8 February 1990. It's from Peter Coyne to the

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director-general.

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COMMISSIONER: Exhibit 140.

ADMITTED AND MARKED: "EXHIBIT 140"

MR COPLEY: Complaining that most of his correspondence has gone unanswered for a long period of time and he would appreciate some answers. The next letter I tender is one from Ian Berry of Rose Berry Jensen solicitors dated 8 February 1990 to the acting director-general.

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COMMISSIONER: Exhibit 141.

ADMITTED AND MARKED: "EXHIBIT 141"

MR COPLEY: Now, this letter concerns, according to its heading, the Public Service Management and Employment Act 1988, requests for information by Coyne and Dutney and it starts off by saying that those persons wished to exercise their rights as contained in regulation 65 of the regulations made pursuant to that act and that they requested copies of two documents or two types of documents: first, statements made to the department by employees concerning complaints against Coyne and Dutney which might have been the subject of Mr Heiner's inquiry and, secondly, transcripts of evidence taken either by Mr Heiner or in respect of the complaints which specifically refer to allegations or complaints against Dutney and Coyne.

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The writer says, "These documents would fall within regulation 65 and they are within your control as director-general," and it concludes by asking if she would advise as to the attitude of the department to supplying these documents within seven days.

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COMMISSIONER: Yes.

MR COPLEY: The next document I tender is a memorandum to the Crown Solicitor from B.A. Stewart, Brian Stewart, director-general, dated 8 February 1990.

COMMISSIONER: That will be exhibit 142.

ADMITTED AND MARKED: "EXHIBIT 142"

MR COPLEY: That document advised the Crown Solicitor that on Monday, 12 February 1990 cabinet was going to consider the appointment of Mr Heiner to investigate and report on management matters relating to the centre. Mr Stewart said, "It would appear that you had provided advice to Ms Matchett," and it states:

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In order that the Honourable, the Minister -
which must be a reference to the attorney-general -

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can be fully briefed for this meeting of cabinet I would be appreciative if you could ensure that all copies of all relevant advices are provided to me by 3 pm today.

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The next document I tender is a letter Mr O'Shea wrote to Mr Stewart on 8 February 1990.

COMMISSIONER: That will be exhibit 143.

ADMITTED AND MARKED: "EXHIBIT 143"

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MR COPLEY: That would appear to respond to the memo requesting a copy of the advices. For the first page and a half Mr O'Shea sets out the history of the matter.

COMMISSIONER: Yes.

MR COPLEY: Then in answer to your question about when the letter of 23 January went, if it did at all, halfway down page 2 in the paragraph saying "On Monday, 22 January" you will see a sentence:

On 23 January 1990 a letter of advice, including draft replies to Heiner and solicitor for Coyne and Dutney was provided to Ms Matchett. The advice was to the effect that Mr Heiner's appointment was a lawful exercise of power under section 12.

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So Mr O'Shea was asserting that that advice had gone that day.

COMMISSIONER: If that advice was accepted, unlawfulness wasn't the reason for abandoning it, but there might have been other reasons for doing so.

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MR COPLEY: Yes.

COMMISSIONER: Yes.

MR COPLEY: He records in the next paragraph his advice that the thing should be terminated. The material which had been collected from departmental files should be returned to those files but the material created by Mr Heiner should be destroyed. He then says, "Since that time further discussions have taken place," and then he says this, "It appears that the decision whether to destroy any material is to be referred to cabinet on 12 February; likewise the issue of an indemnity for Mr Heiner is to be addressed that day."

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It's not really clear from the documents we have tendered so far - in fact it's quite unclear where Mr O'Shea obtained that understanding from because it was very clear that cabinet was going to be approached for an indemnity. That's in the material we have tendered, but there doesn't

03/12/12

COPLEY SC, MR

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seem to be any reference to cabinet being approached about the question of destruction.

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COMMISSIONER: Mr Thomas had already given advice about that.

MR COPLEY: That's right. They had given advice about it but it wasn't in the context of, "This must be taken to cabinet."

COMMISSIONER: No, or that there was any legal impediment.

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MR COPLEY: That's right. The next document I tender is a fax to Mr Stewart from Mr O'Shea dated 9 February 1990 apparently sent at 11.30 am.

COMMISSIONER: Exhibit 144.

ADMITTED AND MARKED: "EXHIBIT 144"

MR COPLEY: The object of the letter would appear to be contained in the first paragraph, namely, Mr O'Shea confirming, "The only written advice to the department concerning the destruction of documents was contained in my letter of 23 January 1990 to Ms Matchett," but that discussions had gone on, on a number of occasions between Mr Thomas, Ms Matchett or Ms Crook concerning that issue.

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Mr O'Shea said that he was of the opinion that the tapes and transcripts created by Mr Heiner were not public records within the meaning of the Libraries and Archives Act because Mr Heiner was never an officer of the department and was retained only to supply a report to the director-general. Therefore, he said, the documents were not brought into existence by a public authority but, rather, by someone like a consultant and they were not records for future reference to the department.

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He then said that discussions had been had as to whether any of the written complaints from the staff which the union gave to the department were addressed to the director-general. Ms Crook was going to advise if that were the situation and he said it may be necessary for the procedure under section 55 of the act - that would be the Libraries and Archives Act - be followed to authorise the destruction of those particular documents. From that paragraph it seems as though something was thought to turn upon whether the letter of complaint was addressed to anyone and, if so, whether that anyone was the director-general, and you will recall that some of them were just addressed to no-one or to whom it may concern.

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COMMISSIONER: Yes.

MR COPLEY: The next document is a letter from Martindale, general secretary of the POA, to Ms Matchett dated 9

03/12/12

COPLEY SC, MR

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February 1990.

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COMMISSIONER: That will be exhibit 145.

ADMITTED AND MARKED: "EXHIBIT 145"

MR COPLEY: This is a letter which effectively telegraphs that there's going to be industrial action taken by the two POA members because they haven't got copies of these - they haven't been given natural justice and the industrial action will be a refusal to be available for on-call duties outside normal working hours.

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COMMISSIONER: And that the denial of natural justice was linked to what was normally afforded to public servants involved in grievance procedures which is a sort of technical term, I guess, in the public service to describe procedures under the regulations.

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03/12/12

COPLEY SC, MR

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MR COPLEY: Well, it makes it plain that our members' rights under the PSME regulations have not been upheld. 1

COMMISSIONER: Does it say that? Yes, in the next paragraph.

MR COPLEY: It says that. Yes.

COMMISSIONER: Yes. Again, this is something different to what Mr Berry is talking about.

MR COPLEY: Yes. 10

COMMISSIONER: He's talking about the general law concept of natural justice - - -

MR COPLEY: Yes.

COMMISSIONER: - - - and prerogative relief for that, which he says could be obviated if remedial steps were taken which haven't yet been taken as far as he's concerned.

MR COPLEY: No, but you will recall that on February 8, he wrote that letter saying, "We want copies of these things under regulation 65." 20

COMMISSIONER: Yes, I see.

MR COPLEY: So there is a degree of - - -

COMMISSIONER: Overlay.

MR COPLEY: - - - synchronisation between or perhaps unknown synchronisation between Mr Berry and the POA gentleman. 30

COMMISSIONER: Yes.

MR COPLEY: The next document I tender is a memorandum from Ian Peers to the director-general dated 9 February 1990.

COMMISSIONER: Just before you go to that, see the handwritten - on the previous exhibit, 145, it says, "Noted Mr Lindeberg has subsequently advised on the 12th that decision not to be" - I see. He said that they would be not available on call any more as a protest. 40

MR COPLEY: Yes.

COMMISSIONER: Then that was lifted after three days.

MR COPLEY: Yes, yes.

COMMISSIONER: That's according to Mr Lindeberg.

03/12/12

COPLEY SC, MR

MR COPLEY: Well, according to the person who said that's what Mr Lindeberg said. 1

COMMISSIONER: Yes.

MR COPLEY: Yes.

COMMISSIONER: If that's accurate. Okay.

MR COPLEY: Nextly, the memorandum, 9 February 1990, Ian Peers to Ruth Matchett. 10

COMMISSIONER: Exhibit 146.

ADMITTED AND MARKED: EXHIBIT 146

MR COPLEY: It sets out in detail a telephone call had between Ian Peers and Peter Coyne the day before; that Coyne was upset about the proposed visit on the Tuesday, that he had been reasonably satisfied with the course of events until George Nix had told him to call a meeting of staff. He wanted to know what the meeting with the staff would be about, but George Nix told him he didn't know. Peers said he didn't know what was going to occur before it occurred either, but Coyne had spoken to Sue Ball of the Queensland State Service Union who led him to believe that the meeting was about the Heiner inquiry and that a further meeting with staff was to be arranged by the QWSU. 20

Coyne said that if the meeting was about the Heiner inquiry and he had to call it, why could he not be shown the courtesy of being told what the meeting was about; further, if it was about the inquiry he had no intention of attending in a public forum to hear the outcome of a process which had concerned him so personally. It then said he said that if he was disadvantaged by the inquiry process, he would consider legal action against the department. He felt that he had already been considerably harmed. 30

COMMISSIONER: So, again, if this is accurate and the inference is a viable one then Mr Coyne was concerned, it appears, that on Tuesday morning at that meeting that he had to call about an investigation largely into himself, the outcome of the process was going to be announced.

MR COPLEY: Yes. 40

COMMISSIONER: That's what he was worried about.

MR COPLEY: Yes.

COMMISSIONER: He was saying that if he's disadvantaged by that outcome, as he felt he already had been - - -

MR COPLEY: Well, not perhaps so much by the outcome,

03/12/12

COPLEY SC, MR

though, but by the inquiry process.

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COMMISSIONER: Process, yes.

MR COPLEY: Yes.

COMMISSIONER: Yes. Okay.

MR COPLEY: I mean, it's a bit hard to know what exactly he was saying because this is just someone's record of it.

COMMISSIONER: Yes. But there is a distinction drawn by the reporter between the outcome, which was expected to be announced on the Tuesday, including by Mr Coyne perhaps, and the inquiry process.

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MR COPLEY: Yes. Yes. Mr Coyne's said if the meeting was about the Heiner inquiry and if any announcement was interpreted as a victory by one group over another, he thought that there might be a possibility of violence, such was the feeling in the centre. Mr Peers consoled him by saying that he hoped the matter could be resolved in the next week, et cetera, etc. He said, "Peter was very upset at the moment and his upset is not likely to subside before he is given some clear advice and some chance to react," Mr Peers wrote.

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The next document I tender is a memorandum to Ms Matchett from Trevor Walsh dated 9 January 1990.

COMMISSIONER: That will be exhibit 147 and am I right in thinking that the blackout is part of the exhibit. It's not something the commission has done.

MR COPLEY: No, we didn't black it out. It was blacked out. I don't think I would be giving any secrets away by saying that in context it's probably a reference to Anne Dutney. I think it might have been blacked out for FOI purposes years ago.

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COMMISSIONER: Right.

MR COPLEY: It records that at 10 am on that date, Peter Coyne phoned and that he requested that he and the person, whose name is obscured, be given an opportunity to meet with Ms Matchett either that day or Monday concerning JOYC. They wanted to receive information from her about the inquiry, including responses to his letters which have still got unanswered and Walsh said to Coyne that he would pass that on to Ms Matchett. The next memo is one from a 12.20 phone call on 9 February 1990 from Walsh to Matchett. I tender that.

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COMMISSIONER: Exhibit 148.

ADMITTED AND MARKED: "EXHIBIT 148"

03/12/12

COPLEY SC, MR

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MR COPLEY: And this is a phone call, sorry, from Mr Lindeberg of the POA informing Mr Walsh that his members had received word that the union had arranged a meeting at JOYC after Ms Matchett's meeting on 13 February, but Mr Lindeberg was most annoyed that the State Service Union had pre-empted the Tuesday announcements; that his members were angry that they were not being advised about what was happening and that they were talking of taking strike action and that, "Mr Lindeberg was going to talk to his general secretary today to discuss the need to give seven days' notice of strike action and Mr Lindeberg wanted Ms Matchett to understand that his members were unaware."

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Sorry. This is a bit more complicated. Mr Lindeberg wished Ms Matchett to know that his, Lindeberg's, members were unaware that he had had a without prejudice meeting with her and he felt compromised by the State Service Union's actions in announcing their planned meeting at JOYC; that Mr Lindeberg recommended in favour of Ms Matchett discussing with Peter her proposed actions on Tuesday in an attempt to calm him down.

COMMISSIONER: Basically to tell him what she was going to say on Tuesday - - -

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MR COPLEY: Yes.

COMMISSIONER: - - - because at this point in time he didn't know and he was assuming or inferring that she was going to announce the outcome of Heiner.

MR COPLEY: Possibly, but he was concerned for her to know that his members, Coyne and Dutney, didn't know that he had been offered a without prejudice meeting with her.

COMMISSIONER: And, again, that assumes that Mr Walsh's note of his discussion with Mr Lindeberg on the phone on the 9th is accurate.

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MR COPLEY: That's right. Yes. The next document I tender is another memo from Mr Walsh to the director-general dated 9 February 1990.

COMMISSIONER: Just before you go, that second-last paragraph of 148 says that Mr Lindeberg, according to Mr Walsh's note, "Advised that he wishes to keep this matter under control but that he still has a responsibility to his members," presumably Mr Coyne and Ms Dutney.

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MR COPLEY: Yes. I tender the next document.

COMMISSIONER: Exhibit 149.

ADMITTED AND MARKED: "EXHIBIT 149"

MR COPLEY: This concerns a phone call at 3.50 pm from the
03/12/12 COPLEY SC, MR

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above named Peter Coyne that he and the person whose name is blanked out, and it wasn't blanked out by the commission, wanted to have a meeting prior to 10.30 next Tuesday to discuss a process of reconciliation after Heiner to sort out the mess. Mr Coyne advised, according to Walsh, that he had had discussions with his union but had backed off from taking legal action as he felt there was a need to end all of this.

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Mr Coyne then advised that while he didn't wish the following to be taken as a threat, after 5 pm today he was not prepared to sit back and wait any longer. He advised that he would commence legal action, industrial action and there would be other courses of action planned if he did not receive a phone call and a proposal for a reconciliation meeting by 5 pm. He reiterated the threat, "He reiterated it; said it wasn't a threat and that after 5 pm today it's all over."

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COMMISSIONER: Again, the meeting about Heiner, was that scheduled for 10.30 am next Tuesday?

MR COPLEY: Yes, yes.

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COMMISSIONER: So he wanted to meet prior to that meeting - - -

MR COPLEY: Yes.

COMMISSIONER: - - - which he expected to be an announcement of the outcome of Heiner.

MR COPLEY: Yes.

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MR COPLEY: Yes.

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COMMISSIONER: Discuss reconciliation before the announcement.

MR COPLEY: Yes. And all of those phone calls that had been made by Mr Coyne that day or Mr Lindeberg that day resulted in the director-general, it would seem, picking up the phone and ringing Mr Coyne at 4.15 pm on 9 February 1990, because the next document I tender is a transcript of the telephone call made by the acting director-general to Mr Peter Coyne.

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COMMISSIONER: Okay. That will be exhibit 150.

ADMITTED AND MARKED: "EXHIBIT 150"

MR COPLEY: Transcribed by her secretary, Wendy Jones. And basically if you read that document you will see that Ms Matchett told Mr Coyne that she would be determined with whom she would meet and at what time she would make them, because she had a very big department to be running and a lot of interests occupying her attention.

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COMMISSIONER: Yes.

MR COPLEY: Now, the next document that I'll tender - and I've got the copy that bears the original stamp here on it - it's called a cabinet minute dated Brisbane, 12 February 1990, decision number 101, and it concerns submission number 100. And so I tender that document.

COMMISSIONER: The cabinet minute dated 12 February 1990, decision number 00101, will be admitted and marked exhibit 151.

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ADMITTED AND MARKED: "EXHIBIT 151"

MR COPLEY: And attached to it is the submission numbered 100.

COMMISSIONER: And the exhibit includes submission number 100.

MR COPLEY: So the starting point to read, Mr Commissioner, is page 2 of the document, which is the submission numbered 100.

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COMMISSIONER: All right.

MR COPLEY: You will see that the title of it is a very long title, but it concerns the provision of an indemnity to Mr Heiner from the costs of legal action which might ensue from his involvement with the investigation at John Oxley; that the relevant minister was the Minister for Family Services and Aboriginal and Islander Affairs.

03/12/12

COPLEY SC, MR

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And indeed if you go to the end of document you'll see that this admission is signed Anne Warner, Minister for Family Services and Aboriginal and Islander Affairs and it's dated some days before the cabinet meeting, it's dated 5 February. 1

COMMISSIONER: It's the week before.

MR COPLEY: Yes.

COMMISSIONER: Yes.

MR COPLEY: The first paragraph records, "The purpose of the Heiner inquiry, being to investigate management matters relating to JOYC and that doubts arose about the legal status of the appointment of Mr Heiner and authority." It correctly states that the crown solicitor had advised that he was lawfully appointed, but that the nature of his appointment does not afford him any statutory immunity from legal action in relation to his involvement in the investigation." 10

It refers to current government policy providing that Crown and police be indemnified for costs associated with legal claims arising out of the performance of their duties; that Mr Heiner as an independent contractor would not be covered by that policy; that furthermore, during the course of his investigation he gathered information of a potentially defamatory nature; and that in view of the crown solicitor's advice and the limited value of the investigation continuing, the acting director-general had terminated the investigation and had taken possession of all of the documents. 20

COMMISSIONER: The potential defamatory matter presumably were the statements, oral and written, made by people who were members of the service union complaining about the management style of Mr Coyne. 30

MR COPLEY: Yes. Then there's a heading Objective of Submission, It Says "Extension of the above-mentioned policy" - that is about indemnification to Mr Heiner - "will provide him with indemnity from the costs of future legal action from his part in the JOYC investigation." Then it says, "Destruction of the material gathered by Mr Heiner in the course of his investigation would reduce risk of legal action and provide protection for all involved in the investigation." 40

COMMISSIONER: But in a previous page it says, "The acting director-general has taken possession of all documents."

MR COPLEY: Yes. And it says, "The crown solicitor advises that there is no legal impediment to destruction." Under the heading Urgency it says, "Speedy resolution will benefit all concerned and avert possible industrial

03/12/12

COPLEY SC, MR

unrest." Those consulted included the crown solicitor, the QSSU, and the QPOA, and that no specific objections have been raised to the proposed course of action; that there were no financial considerations, nil public presentation - whatever that means. 1

Then it says, "What General or Sectional Support Can Be Expected?" That's probably because it's a document to politicians, because it says, "It is expected that the course of action will be acceptable to the majority of the parties involved. What criticism is anticipated? Some may be dissatisfied that their concerns haven't been resolved, some staff might be, but that these complaints can be addressed individually through the grievance process established under the PSMEA." 10

The recommendation from Ms Warner was that the government indemnified Mr Heiner, in subparagraph (1), and that all material collected by Mr Heiner with the exception of material forming part of the official files, be destroyed. Then you will see the decision on page 1 of the document. Cabinet made one positive decision and another decision to defer. So the positive decision was that the government would accept full and sole responsibility for all legal claims, including the cost of defending and settling them against Mr Heiner if such claims occurred as a result of the investigations, but that a further memorandum to cabinet be made concerning what approach should be taken regarding the papers spoken of in submission number 100. 20

COMMISSIONER: Which was the investigation documents Mr Heiner collected that were now in the possession of the acting director-general.

MR COPLEY: Yes. 30

COMMISSIONER: And if this admission is right then both the unions - at least two of the unions, the State Service Union and the Queensland Professional Officers Association - had been consulted and neither had raised any specific objections to the destruction or the indemnity proposal.

MR COPLEY: That's what the cabinet was told.

COMMISSIONER: And that the course of action will be acceptable to the majority of the parties involved.

MR COPLEY: Yes. It doesn't, of course, speak about what Mr Coyne's views, for example, would be, though, about it. 40

COMMISSIONER: Know, or whether he was part of the majority.

MR COPLEY: Yes. The next document - this is so that you understand the picture completely - is dated 12 February 1990. It's a memo from the acting director of

03/12/12

COPLEY SC, MR

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organisational services, whose name can't be made out, to the acting director-general concerning the secondment of Peter Coyne away from John Oxley.

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COMMISSIONER: Does that make it exhibit 152?

MR COPLEY: 152, I think.

ADMITTED AND MARKED: "EXHIBIT 152"

MR COPLEY: Thank you. I don't think we need to go into that further at this stage.

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COMMISSIONER: Can we go back to the previous one, the cabinet in confidence submission, on page 6 under the heading Consultation - well, under Urgency it says "In light of possible industrial unrest," and then under Consultation it says, "Discussions have been held with the Queensland State Service Union and the Queensland Professional Officers Association, both of which have members affected by the investigation. Neither union has raised any specific objections to the proposed course of action." Is that one that the minister's was based on?

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MR COPLEY: Sorry?

COMMISSIONER: That's a separate submission, isn't it?

MR COPLEY: No. Well, I think it might have something to do with - see, there's a cover sheet. The first one is Security Classification B, submission 100, Cabinet submission coversheet.

COMMISSIONER: Yes.

MR COPLEY: Then there seems to be the same document again, but it says, "Body of submission."

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COMMISSIONER: Yes.

MR COPLEY: And it gives more detail.

COMMISSIONER: I see.

MR COPLEY: It seems as though it's all part of the one submission number 100, but perhaps to make things faster for them they summarise the submission.

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COMMISSIONER: Yes. And the minister signs and dates both of them.

MR COPLEY: As she has done, yes, with the same date.

COMMISSIONER: Yes, okay.

MR COPLEY: And I suppose you can note that at paragraph 7

03/12/12

COPLEY SC, MR

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of the body of submission it refers in more detail to Mr O'Shea's advice about destruction. But in any event, cabinet wasn't prepared to make a decision about destruction that day and deferred until further advice could be obtained.

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COMMISSIONER: Yes.

MR COPLEY: So we've tended the next document. The document after that is a letter from Ms Matchett to Mr O'Shea, attention Barry Thomas, dated the - it's not dated, but there's a handwritten notation, "Received 14/2/1990," on the right-hand side at the bottom. It's attaching the letter that Mr Berry wrote on 8 February 1990 about access under regulation 65 and asking Mr O'Shea for advice as to how she was to respond to that letter.

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COMMISSIONER: I have got a previous document about a different subject dated 12 February 1990.

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MR COPLEY: I think you made that exhibit 152. Is that called "Secondment of Officer"? 1

COMMISSIONER: Yes, I did.

MR COPLEY: You have made that exhibit 152 and I said we didn't need to look at it at this stage.

COMMISSIONER: Okay. So I will make the letter from Ms Matchett to the Crown Solicitor exhibit 153.

ADMITTED AND MARKED: "EXHIBIT 153" 10

MR COPLEY: Thank you. As I say, it just attaches Berry's letter of 8 February 1990 and seeks advice as to how to respond to that.

COMMISSIONER: Yes.

MR COPLEY: The next document I tender is headed "Notes prepared by Ruth Matchett for use in her meeting at 9 am on Tuesday, 13 February 1990 with Mr Peter Coyne (Mr George Nix, deputy director-general also present)" and it's a two-page document. I tender that. 20

COMMISSIONER: That will be exhibit 154.

ADMITTED AND MARKED: "EXHIBIT 154"

COMMISSIONER: This is at 9 o'clock on the day that Ms Matchett was going to address the John Oxley Youth Centre staff about the Heiner inquiry.

MR COPLEY: I think she might have been, from memory, going to address them at 10.30 or 10 am. 30

COMMISSIONER: Yes, that's right. It's an hour or an hour and a half before that.

MR COPLEY: That's right, yes. The long and the short of it was that Mr Coyne was to be told in this speech of notes here that he was going to be seconded away from the centre to do a special project in the head office and various reasons were advanced for that and that the secondment would take effect from the next day and be for six months at least.

COMMISSIONER: So before she announced what Mr Coyne was expecting to be the outcome of Heiner's inquiry he was being seconded away from the management of the centre. 40

MR COPLEY: Yes.

COMMISSIONER: He was told that an hour and a half before Ms Matchett was about to address the centre staff.

MR COPLEY: Yes.

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COMMISSIONER: The one he didn't want to go to because he didn't want to be in the same room as some of the people there.

MR COPLEY: That's right.

COMMISSIONER: Yes.

MR COPLEY: The next document I tender is an unsigned copy of a letter dated 13 February 1990 from Matchett to Coyne advising him that he was being seconded for a period of six months with classification and salary arrangement as at present but, in addition, he was going to get a special allowance basically to bring his classification level up to I-12. You will recall this morning I tendered a document where he was on I-11. So I tender that document.

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COMMISSIONER: All right. So he was being seconded to a different position which had an extra \$188 per fortnight attached to it.

ADMITTED AND MARKED: "EXHIBIT 155"

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MR COPLEY: Yes. The next document I tender is the speech that Ms Matchett presumably or apparently made at 10.30 on 13 February 1990 to the staff at JOYC.

COMMISSIONER: That will be exhibit 156.

ADMITTED AND MARKED: "EXHIBIT 156"

MR COPLEY: On page 2 of the document about halfway down the staff are told that Mr Coyne is going to go and work on a project under the supervision of Mr Peers involving services to young offenders and at the foot of the page the second matter she wished to discuss was the Heiner inquiry. She sets out her views about it, her concerns about it, that Mr Heiner was appointed as an independent contractor, not a Crown employee, not legally protected from civil action if his report said one single thing that was, say, his opinion or his view on the balance of information and was subsequently found to be wrong, he was legally unprotected.

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Secondly, and of more relevance to you, anyone who gave information to Mr Heiner was not provided with statutory protection from civil action, potentially, say, information given in good faith and in confidence to Mr Heiner could be the subject of civil action by a person aggrieved by the information and she records in response:

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I asked Mr Heiner to seal all documents and records in his possession. He did this the same day. I have kept them sealed and secured. These records have not been examined by me or any other officer. Those records include tapes and word processor disks.

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Then she says:

I have now decided that Mr Heiner's investigation will not be resumed and no report will therefore be submitted to me or the minister.

She sets out the reasons why the inquiry was to be ended. One of them was the need to minimise the exposure to legal liability of both the staff and Mr Heiner:

The terms of reference didn't allow a proper investigation of certain things, hence there will be no report, plus the risk of staff being exposed to legal action would be reduced.

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Then she speaks about how individual grievances could be investigated. The next document I tender is a series of photocopies from foolscap notes that were made by somebody over a period from 19 January 1990, it seems. They're a series of notes that are in different handwriting and until they can be identified, although I have tendered them as an exhibit, I again suggest that they not be published until they can be identified unless someone has a view to the contrary.

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COMMISSIONER: It's agreed? All right. I will make for that exhibit 157 an order that it not be published until further order.

ADMITTED AND MARKED: "EXHIBIT 157"

MR COPLEY: The next document I tender is a letter from Mr Tate, the acting secretary to cabinet, to Mr O'Shea dated 13 February 1990.

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COMMISSIONER: That will be exhibit 158.

ADMITTED AND MARKED: "EXHIBIT 158"

MR COPLEY: In this letter Mr Tate, the secretary to the cabinet or the acting secretary, sought advice as to what action might be taken should a writ be issued to obtain information that is considered to be part of the official

03/12/12

COPLEY SC, MR

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records of the cabinet and the letter invited Mr O'Shea to contact someone called Mr Littleboy to discuss the matter further. 1

It appears the Mr O'Shea did ring Mr Littleboy because there is a file note on the side of the letter:

I rang Ken Littleboy. They - that is, the cabinet secretariat -

have a large sealed box containing all Noel Heiner's tapes, et cetera; want to know whether they would be cabinet documents and thus be secret. I explained to him that unless they were made for a submission to cabinet, then they would not be. I told him I would let him have a considered advice as well. 10

The next document I tender is a memorandum to the acting director-general Matchett from T. Walsh dated 14 February 1990.

COMMISSIONER: So if the last exhibit is correct, then the cabinet secretariat had had a box containing all Mr Heiner's tapes, et cetera, at this stage. 20

MR COPLEY: Yes, it seems to have gone from Ms Matchett to the cabinet secretariat.

COMMISSIONER: The cabinet secretariat was asking the Crown Solicitor, "Because they're in our possession, are they secret as cabinet documents?"

MR COPLEY: Yes.

COMMISSIONER: In confidence. 30

MR COPLEY: Yes, and maybe that letter was sent by Mr Tate as a result of the decision not to make a decision about destruction on 12 February.

COMMISSIONER: Yes.

MR COPLEY: Now, could I tender the memo from Walsh to the director-general dated 14 February 1990?

COMMISSIONER: Exhibit 159. 40

ADMITTED AND MARKED: "EXHIBIT 159"

MR COPLEY: Now, there's a file note on the side of this which says, "Noted this was conveyed to me verbally on 16/2 in Hobart." I can read that because I have seen numerous copies of this which are a better photocopy than that note, but that's what it says.

03/12/12

COPLEY SC, MR

COMMISSIONER: Yes.

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MR COPLEY: This is a document which Ms Matchett saw on 15 or 16 February 1990 even though it's dated the 14th and it refers to a telephone call made on 14 February 1990 from Ian Berry in which Berry sought an assurance from her that the documents relating to the Heiner inquiry would not be destroyed. It then spoke about the devastation that Mr Coyne felt about being seconded elsewhere; that Mr Berry said that they had a barristers' opinion that they couldn't proceed to court until it could be proven that Peter Coyne had been adversely affected. Presumably, he means in terms of his career or economically.

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03/12/12

COPLEY SC, MR

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COMMISSIONER: Yes, that's right. So he's complaining about being seconded against his will to other duties - - - 1

MR COPLEY: Yes.

COMMISSIONER: - - - and then the next paragraph there's this barrister's opinion that they cannot proceed to court unless it can be proved that Peter Coyne has been affected adversely. That might be a reference to the secondment.

MR COPLEY: A secondment wouldn't have been adverse in an economic sense in that he was getting extra pay - - - 10

COMMISSIONER: Yes.

MR COPLEY: - - - but it might have been, as the note goes on to state, "The client's career path has been denied or, at least, prejudiced perhaps by the secondment."

COMMISSIONER: Yes.

MR COPLEY: Mr Berry made it quite clear that there is still an intention to proceed to attempt to gain access to the Heiner documents and any departmental documents relating to the allegations against Coyne and that they have every intention to pursue the matter through the courts. Mr Berry wanted to know the name of the officer in the Crown Law office who was handling it, but Mr Walsh wasn't prepared to give him that name without conferring with the crown solicitor. Mr Walsh said, "I advised Mr Berry that I did not recall having previously received any request in writing for an assurance in relation to the possible destruction of documents relative to the inquiry and that I presumed that he would be forwarding his request in writing." 20

The next document I tender is a file noted dated 4.30, 13 February 1990. 30

COMMISSIONER: It's exhibit 160.

ADMITTED AND MARKED: "EXHIBIT 160"

MR COPLEY: Again, we don't know who wrote this, so I would ask that you not publish it at the moment.

COMMISSIONER: Exhibit 160 not be published until further order. 40

MR COPLEY: The next document is a letter from Mr Ian Berry to Ms Matchett dated 15 February 1990.

COMMISSIONER: That will be exhibit 161.

ADMITTED AND MARKED: "EXHIBIT 161"

MR COPLEY:

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Referring to the conversation with Trevor Walsh on 14 February 1990 and noting Mr Walsh did indicate to Mr Berry his intention to communicate with you to advise of our intention to commence court proceedings in view of the fact that against the wishes of our client, he has been seconded to another section. That move being only after a discussion with Mr Heiner.

It seems as though in the solicitor, Mr Berry's mind, the decision to second Coyne was somehow linked to Ms Matchett's - to a discussion he believed Ms Matchett had had with Mr Heiner.

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COMMISSIONER: That's how it reads, doesn't it?

MR COPLEY: Yes.

COMMISSIONER: So the implication is that the prejudice to Mr Coyne's career path that was referred to in the conversation was linked somehow to something said in that discussion with Mr Heiner.

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MR COPLEY: Yes. There's a file note in writing directed to the manager of personnel services saying, "For referral to crown solicitor as a matter of urgency," signed Trevor Walsh. The next document I tender is a memo or minutes of a meeting compiled by S. Boyle, industrial officer, dated 16 February 1990 at 2 pm.

COMMISSIONER: That will be exhibit 162.

ADMITTED AND MARKED: "EXHIBIT 162"

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MR COPLEY: It purports to contain Ms Boyle's notation or recollection of the meeting that was had with staff at John Oxley on 16 February, which meeting was attended by Ms Matchett.

COMMISSIONER: Is that another meeting, a second meeting?

MR COPLEY: Yes, yes. There was going to be two meetings. There was the one on the 13th.

COMMISSIONER: Yes.

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MR COPLEY: Then there was going to be one that QWSU organised for the 16th and this is the email about the 16 February meeting.

COMMISSIONER: Ms Matchett addressed that one as well?

MR COPLEY: That's right. There were about 20 members there plus Ms Sue Boyle and Mr Brian Mann.

03/12/12

COPLEY SC, MR

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COMMISSIONER: That's the one the Professional Officers' Association is complaining about. 1

MR COPLEY: That's right because they didn't like the way the State Service Union had organised that.

COMMISSIONER: Right; without telling them?

MR COPLEY: It appears so, yes.

COMMISSIONER: Yes. 10

MR COPLEY: You'll note in the asterisk points that it is asserted in the asterisk, "The inquiry is abandoned and all documentation is destroyed," but it doesn't say who said that. Certainly, the inquiry had been abandoned by then, but the idea that all documentation is destroyed wasn't the case, but we don't know who actually said that.

COMMISSIONER: If it was said on the 16th.

MR COPLEY: If it was said and who said it, "Staff were in a very hostile mood. They felt betrayed and confused. There were many questions about their legal rights as many fear Peter Coyne will act on his threats to sue them for giving evidence. Members felt that Ms Matchett was just whitewashing their problems. They felt that there might be a riot or a bad accident at the centre. Members were bitter towards each other and the union. They thought nothing had been achieved despite supporting the inquiry. They are unhappy that Peter Coyne was moved as they feel that that is not solving the real problems of the centre, but rather causes more friction between the staff. Many complained that Peter had in fact also been trying to solve their problems before he was moved and that the feeling was that the new government was heading down the path that the old government had followed by not supporting the staff." So it didn't seem to be a very happy meeting. 20 30

COMMISSIONER: What was sought to be achieved by the Heiner inquiry in fact caused more trouble than it solved.

MR COPLEY: Yes, yes.

COMMISSIONER: But you still have the two factions of the staff - - -

MR COPLEY: One. 40

COMMISSIONER: - - - one, the complainants, had exposed themselves to potential action by Mr Coyne for defamation and still didn't get a result.

MR COPLEY: Yes.

COMMISSIONER: The others were saying that Mr Coyne was

doing something to solve the problems before he was being
seconded and they both said, "Seconding him wasn't the
solution to their problems because it left a vacuum and all
it did had divided factions." 1

MR COPLEY: Yes. The next document I tender - there's two
copies of this, they're both in the same terms, dated
16 February 1990, Ms Matchett to Mr Berry.

COMMISSIONER: All right. That's exhibit 164.

MR COPLEY: 163, I think. 10

COMMISSIONER: Is it? 163.

ADMITTED AND MARKED: "EXHIBIT 163"

MR COPLEY: Yes. This referred to Mr Berry's letter of
8 February and his request for documents pursuant to
regulation 65 and Ms Matchett said she had referred his
request to the department's legal advisers - - -

COMMISSIONER: Yes. 20

MR COPLEY: - - - and she would advise him in due course
and in the meantime she was in a position to advise that
none of the material that he had sought in the letter of 8
February 1990 was contained on a file or a record held in
relation to either Dutney or Coyne.

COMMISSIONER: Which was consistent with what she had said
previously with Mr Coyne.

MR COPLEY: Yes.

COMMISSIONER: And Ms Dutney. 30

MR COPLEY: Yes.

COMMISSIONER: All right.

MR COPLEY: The next letter I tender is a facsimile
transmission to Mr Tate, the acting secretary of cabinet,
from Mr O'Shea. It was sent at 4.31 pm on 16 February
1990.

COMMISSIONER: That's exhibit 164. 40

ADMITTED AND MARKED: "EXHIBIT 164"

MR COPLEY: It is a lengthy letter which discusses the
concept of public interest immunity and - - -

COMMISSIONER: What's the upshot of it?

MR COPLEY: Well, the upshot of it all is that the

03/12/12

COPLEY SC, MR

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documents that Mr Tate had were not brought into existence for the purposes of cabinet, therefore, it would be difficult to resist a claim for public interest immunity. It would be difficult to resist an application for third party discovery; that the documents were public records probably within the meaning of the Libraries and Archives Act and that they were in the possession of the crown from the time they went to the director-general so, therefore, the Libraries and Archives Act had to be complied with.

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In that case, section 55 of the Libraries and Archives Act said:

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Documents of that nature could only be disposed of by depositing them with the state archivist or by obtaining the consent of the state archivist to disposal of the documents or after receiving notice in writing of an intention to dispose of the documents, the state archivist has not within a period of two months exercised his power to take possession of the documents.

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COMMISSIONER: So this is saying, "Yes, the documents probably aren't cabinet documents, therefore are not secret. You couldn't withhold them against" - you probably couldn't resist the third party discovery application or it had little likelihood of success, and contrary to earlier advice the documents were public records - - -

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MR COPLEY: That's right.

COMMISSIONER: - - - within the Libraries and Archives Act and they - - -

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MR COPLEY: And that there was a mechanism for disposal of them under section 55 if that was complied with.

COMMISSIONER: Through the chief archivist.

MR COPLEY: That's right, or the state archivist.

COMMISSIONER: State archivist, okay.

MR COPLEY: Yes. The next document I tender is a facsimile to Ms Matchett from Mr O'Shea dated 16 February 1990 and it was sent at 4.36 pm.

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COMMISSIONER: That's 165.

ADMITTED AND MARKED: "EXHIBIT 165"

MR COPLEY: It's stamped as having been received, though, on one of the copies on 19 February 1990. So the 16th was a Friday - and I'll tender a calendar shortly - the 19th was a Monday. And in that letter Mr O'Shea just attaches a copy of the letter that he sent to Mr Stewart and he points out that the advice that he gave Mr Stewart, "Differs from that I gave to you insofar as ownership of the material and the applicability of the Libraries and Archives Act are concerned."

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COMMISSIONER: All right.

MR COPLEY: I next tender a letter from Mr O'Shea to Mr Brian Stewart, director general of the Department of Attorney General, dated 16 February 1990.

COMMISSIONER: 166.

ADMITTED AND MARKED: "EXHIBIT 166"

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MR COPLEY: That encloses a copy to Mr Stewart of the letter sent to Mr Tait pointing out that there was a difference concerning ownership under the Libraries and Archives Act from earlier advice. The next letter I tender - or memorandum I tender - is one dated 16 February 1990. It's a memo to the Honourable the Attorney General from Mr O'Shea.

03/12/12

COPLEY SC, MR

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COMMISSIONER: Exhibit 167.

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ADMITTED AND MARKED: "EXHIBIT 167"

MR COPLEY: And it just attaches a copy of the advice that had been sent that day to Mr Tait. The next document that I tender is the cabinet minute dated Brisbane 19 February 1990, Decision number 118. And cabinet submission number 117.

COMMISSIONER: That will be exhibit 168.

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ADMITTED AND MARKED: "EXHIBIT 168"

MR COPLEY: Thank you. If you go to the second page of it, all that's been provided to us here is something called cover sheet. The title is, "The provision of an indemnity to Mr Heiner."

COMMISSIONER: Yes.

MR COPLEY: The responsible minister is Ms Warner.

COMMISSIONER: Yes.

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MR COPLEY: Then it set out the background about the indemnity for Mr Heiner. Then under the heading Issues, this is said, "The fate of the material gathered by Mr Heiner has yet to be determined. This is a matter of some urgency as there have been a number of demands requiring access to the material, including requests from solicitors on behalf of certain staff members.

COMMISSIONER: Getting a bit old now, isn't it?

MR COPLEY: Yes. The options are destruction, in paragraph 1, on the basis the investigation has been ended and the material has no further purpose; secondly public release of the material; or thirdly retention of the material plus making it part of departmental official records; or fourthly referral of the material to cabinet for noting.

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COMMISSIONER: And that one's signed by Ms Matchett.

MR COPLEY: Yes. Well, it's signed by someone for Ms Matchett.

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COMMISSIONER: Yes.

MR COPLEY: Yes.

COMMISSIONER: But not by the minister this time.

MR COPLEY: No. And the consultation heading says, "General discussions regarding the investigation have been

03/12/12

COPLEY SC, MR

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held with the QSSU and the QPOA. However, the specific options outlined above have not been canvassed." 1

COMMISSIONER: Yes.

MR COPLEY: So destruction would appear not to have been canvassed with those organisations.

COMMISSIONER: Yes. Which doesn't sit comfortably alongside the previous cabinet submission, does it?

MR COPLEY: No. But nevertheless if you go to the decision of cabinet on 19 February 1990, they didn't make a decision. The decision was to defer the matter to allow the secretary to cabinet to liaise with the state archivist. 10

COMMISSIONER: Because by this time they'd been told the way you destroyed public records is via the state archivist under section 55.

MR COPLEY: Yes, there has to be compliance with that section. 20

COMMISSIONER: Yes.

MR COPLEY: So no decision was made. The next document I tender is a letter from Mr Tait to Mr O'Shea dated 20 February 1990.

COMMISSIONER: 169.

ADMITTED AND MARKED: "EXHIBIT 169"

MR COPLEY: It contains the draft of a letter that Mr Tait wanted to send to the state archivist regarding the destruction of the material and it asks Mr O'Shea to comment upon whether that letter would be suitable to be sent. 30

COMMISSIONER: Yes.

MR COPLEY: We'll come back to what Mr O'Shea says in a minute. The next letter that I tender is also dated 22 February 1990 from Ms Matchett to Mr O'Shea.

COMMISSIONER: Exhibit 170. 40

ADMITTED AND MARKED: "EXHIBIT 170"

MR COPLEY: It encloses the letter of 15 February 1990 saying that legal action is going to be commenced.

COMMISSIONER: Right.

MR COPLEY: And it points out that Mr Wash's recollection

03/12/12

COPLEY SC, MR

of the conversation differed from Mr Berry's, and she states that, "You may be aware certain issues relating to the material gathered by Mr Heiner were referred to cabinet. On 19 February 1990 cabinet decided that a memorandum on the matter should be deferred pending consultation between the secretary to cabinet and the state archivist."

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COMMISSIONER: Yes.

MR COPLEY: Though it's possible that this letter wasn't received by Mr O'Shea until the 23rd if you look at the handwritten note on the right-hand side.

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COMMISSIONER: Yes.

MR COPLEY: The next document I tender is a memorandum to Mr O'Shea from a Di Fingleton dated 22 February 1990. In this memorandum she states that, "The attorney has asked that you please advise Ms Anne Warner as to what should be her reply to solicitors for the former manager of the centre who have written in relation to the availability of documents. We have advised Ms Warner that proceedings for defamation would have to be on foot before she would have to comply with any request for documents."

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COMMISSIONER: That's exhibit 171.

ADMITTED AND MARKED: "EXHIBIT 171"

MR COPLEY: Thank you.

COMMISSIONER: And down the bottom left is - looks like appeals and advocacy, and Mr Thomas is mentioned there again.

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MR COPLEY: Yes, "Mr Thomas, please discuss."

COMMISSIONER: Yes.

MR COPLEY: The next letter I tender is a facsimile letter sent to Mr Tait by Mr O'Shea on 22 February 1990 and it was sent at 5.17 pm.

COMMISSIONER: Exhibit 172.

ADMITTED AND MARKED: "EXHIBIT 172"

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MR COPLEY: In it Mr O'Shea says that he can't see anything objectionable in the draft letter to the archivist being sent to the archivist in that form.

COMMISSIONER: Yes.

MR COPLEY: The next letter I tender is one dated 23 February 1990 from Mr Tait to the archivist.

03/12/12

COPLEY SC, MR

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COMMISSIONER: That's exhibit 173.

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ADMITTED AND MARKED: "EXHIBIT 173"

MR COPLEY: And the archivist was a lady, Ms McGregor, and advice was sought from her regarding certain public records which Mr Tait said fell within the meaning of the Libraries and Archives Act. He set out the history of the matter and said that, "Because of the potentially defamatory nature of the material gathered and the limited value of the continuation of the inquiry, the Department of Family Services had ended the investigation. The material was handed to the department by Mr Heiner and it was forwarded to the cabinet secretariat for safekeeping pending a submission seeking cabinet's view on what should be done with the material."

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As Mr Heiner had given it to the crown, the crown solicitor had said that the government would be entitled to claim possession of it and that it was a public record within the meaning of the Libraries and Archives Act and it couldn't be described as cabinet documents, said Mr Tait, because they weren't created for the purposes of submission to cabinet; but a claim for crown privilege would not succeed; but the government was of the view that the material, which he said he understood included tape recordings, computer discs and handwritten notes, was no longer required or pertinent to the public record, and so the question of the destruction of the material under section 55 of the act was a matter for her urgent consideration and advice.

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COMMISSIONER: No longer required is fair enough. Pertinent to the public record; the point is they were public records.

MR COPLEY: Yes. He seems to distinguish between the public record and public records that might make up the public record, perhaps.

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COMMISSIONER: And the pertinence of one to the other.

MR COPLEY: Yes. The next document I tender is a memo signed by Ms McGregor and dated 23 February 1990 noting a phone call.

COMMISSIONER: Yes. That will be exhibit 174.

ADMITTED AND MARKED: "EXHIBIT 174"

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MR COPLEY: Thank you. She records the fact she got a phone call from Mr Ken Littleboy of the cabinet office.

COMMISSIONER: Yes.

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MR COPLEY: It's not clear why some of that document has got crossing out on it, but importantly the records seem to have made their way out to her because in the second-last paragraph she says one carton of records was delivered to her office and she and Kate McGuckin went through them, but they consisted mainly of tapes and transcripts of interviews with staff of JOYC, plus a small quantity of related notes and correspondence. On the transcript of Peter Coyne it was clearly stated that the proceedings were being recorded solely for Mr Heiner's use so she must have read the transcript. In general she said:

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The interviewees complained about various aspects of the management style. Staff transferred from other youth centres were the main complaints. Most of the correspondence consisted of copies of letters and reports which would be in the Family Services Department's own records. The state librarian was notified of the situation and I also notified Ken Littleboy that disposal would be approved.

In the absence of Mr Heiner that is probably the best evidence as to what was contained in that box, that file note which was made, it would seem, on 23 February 1990 because it's really the only record, as far as we know now, that anyone actually opened the box and either listened to tape or read transcripts. It's not clear whether she listened to tapes or read transcripts to make those observations.

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COMMISSIONER: So Ms McGregor and Ms McGuckin went through them.

MR COPLEY: Yes. Then the next document I tender is a letter dated 23 February 1990 from Ms McGregor to Mr Tate, a one-page letter.

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COMMISSIONER: Exhibit 175.

ADMITTED AND MARKED: "EXHIBIT 175"

MR COPLEY: She asserts there that the records were delivered on that date; that they were examined by herself and Ms McGuckin. She described what they consisted of physically and said she was satisfied they were not required for permanent retention and she gave approval under section 55 of the Libraries and Archives Act for their destruction.

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COMMISSIONER: Is that the test being required for permanent retention under section 55?

MR COPLEY: I didn't bring a copy of my Libraries and Archives Act from 1988.

03/12/12

COPLEY SC, MR

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COMMISSIONER: You don't carry one with you. 1

MR COPLEY: No, it's been repealed, but there is a copy back in my office over there.

COMMISSIONER: Okay.

MR COPLEY: The tests seem to be one basically completely within the discretion of the state archivist, as I recall it though. Did he give that an exhibit?

COMMISSIONER: 175 I gave that one. 10

MR COPLEY: Thank you. The next document I tender is a letter from Mr O'Shea to Ms Matchett dated 26 February 1990 attaching a draft reply to Rose Berry Jensen.

COMMISSIONER: That will be exhibit 176.

ADMITTED AND MARKED: "EXHIBIT 176"

MR COPLEY: Mr O'Shea said in response to the letter from them of 15 February that Ms Matchett should simply state that until cabinet makes a decision - well, it would appear the matter couldn't be advanced further from her point of view until cabinet made a decision so he believed that a prompt reply be sent pointing out to the solicitors the possible dispute in relation to the conversation of 14 February and advising that the other matters were still subject to consideration. That appears to be a reference to the dispute between Mr Walsh and Mr Berry about who said what to whom in one regard. 20

COMMISSIONER: Yes.

MR COPLEY: The next document tender is a letter from Steve Knudsen, the acting general secretary of the Queensland Teachers' Union to Ms Matchett dated 27 February 1990 which is mostly obscured by the received stamp. 30

COMMISSIONER: Exhibit 177.

ADMITTED AND MARKED: "EXHIBIT 177"

MR COPLEY: The next document I tender is a letter from - it might be a Mr or Ms Ros Kinder, assistant general secretary of the Queensland Professional Officers Association, to Ms Matchett dated 1 March 1990. 40

COMMISSIONER: 178.

ADMITTED AND MARKED: "EXHIBIT 178"

MR COPLEY: The next document I tender is a memorandum dated 2 March 1990 from Ian Peers to Ruth Matchett.

COMMISSIONER: Exhibit 179.

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ADMITTED AND MARKED: "EXHIBIT 179"

MR COPLEY: This concerns a phone conversation that he had the previous day with Peter Coyne and of relevance is the foot of the page where Mr Coyne said that he wanted the issues to be discussed and in some way resolved outside of the legal arena and not in the public arena. There are some obliterations on the document on the first and second page. They were not put on there by the commission.

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COMMISSIONER: The second-last paragraph on page 2.

MR COPLEY: Yes, there's a matter there that again makes it such that there's someone else's interest in this matter that need to be considered before publication and so even though I tender exhibit 179, I would ask you to order that it not be published until further order.

COMMISSIONER: I will make the non-publication order in respect of that paragraph. Can legal representatives get their instructions from their clients as to whether or not, despite what the person who may have an interest in having those passages that I have ordered not be published, whatever that person might say - whether your clients have a position as to whether it needs to be published at all. Do you understand what I mean?

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MR COPLEY: Yes. The next document that I tender is one that bears no date, but it's a memo to the Honourable, the Minister and it's two pages long and it concerns material gathered by Mr Heiner during the course of his investigation.

COMMISSIONER: That will be exhibit 180.

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ADMITTED AND MARKED: "EXHIBIT 180"

MR COPLEY: It obviously logically falls after the two cabinet meetings because the first sentence says, "Matter considered by cabinet on two previous occasions."

COMMISSIONER: Yes.

MR COPLEY: So in the sequence of events it falls between 19 February and the decision day which was 5 March 1990.

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COMMISSIONER: Yes.

MR COPLEY: It's clearly some sort of advice prepared by someone about the fate of the documents.

COMMISSIONER: Yes.

MR COPLEY: The next document that I tender is the cabinet

03/12/12

COPLEY SC, MR

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- it's called "Cabinet Minute Brisbane 5 March 1990, decision number 162" and attached to that is submission number 160 of 1990.

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COMMISSIONER: That will be exhibit 181.

ADMITTED AND MARKED: "EXHIBIT 181"

MR COPLEY: If you go to the end of the three-page submission, you will see that it is signed by Anne Warner, the minister, on 27 February 1990.

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COMMISSIONER: Yes.

MR COPLEY: The submission is titled on the second page in "Material gathered by Mr M.J. Heiner during the course of his investigation". Under the heading "Purpose/Issue", second paragraph:

During the course of this investigation Mr Heiner gathered information of a potentially defamatory nature. A recommendation to destroy this material was deferred to enable other options to be explored. The objective of the submission was this: destruction of the material would reduce the risk of legal action and provide protection for all involved. However, the Crown Solicitor has advised that the material in the Crown's possession constituted a public record, therefore the approval of a state archivist had to be obtained.

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The state archivist has now given her approval in writing for the destruction of the records. It was said to be urgent because speedy resolution would benefit all concerned and avert possible industrial unrest, but it noted that representations had been received from a solicitor representing certain staff members at JOYC. These representations have sought production of the material referred to in this submission. However, to date no formal legal action seeking production of the material has been instigated.

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Again it was thought that the majority of people involved would be happy with the decision but that some staff might be dissatisfied that their concerns had not been resolved and it didn't seem to contemplate that one of the people that might be unhappy might be the person that wanted the documents individually anyway.

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COMMISSIONER: Yes.

MR COPLEY: The cabinet decided that following advice from the state archivist and the Crown Solicitor that the material gathered by Mr Heiner be handed to the state archivist for destruction under section 55 of the Libraries

03/12/12

COPLEY SC, MR

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03122012 29/CES(BRIS) (Carmody CMR)

and Archives Act 1988. The next document I tender is a memorandum to Mr Coyne from Ms Matchett dated 19 March 1999.

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COMMISSIONER: Exhibit 182.

ADMITTED AND MARKED: "EXHIBIT 182"

MR COPLEY: Probably no more need be said about that at the moment. The next document I tender is a letter from Ms Matchett to Mr O'Shea dated 19 March 1990.

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COMMISSIONER: Exhibit 183.

ADMITTED AND MARKED: "EXHIBIT 183"

MR COPLEY: In this letter Mr O'Shea has asked if he could advise about an appropriate response to Mr Berry's letter requesting production of certain material and Mr O'Shea was asked to note that the cabinet decision didn't extend to the statements that Mr Pettigrew had received from the State Service Union prior to Mr Heiner's investigation beginning. The next document I tender is a letter to Mr Berry from Ms Matchett dated 19 March 1990.

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COMMISSIONER: Exhibit 18.4

ADMITTED AND MARKED: "EXHIBIT 184"

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03/12/12

COPLEY SC, MR

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MR COPLEY: That concerns advice that Mr Walsh's recollection of the conversation differed from that contained in Mr Berry's letter. Then I tender a series of letters as follows: 19 March 1990, Ms Matchett to Mr Martindale.

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COMMISSIONER: Exhibit 186.

MR COPLEY: 19 March 1990, Ms Matchett to Mr Knudsen.

COMMISSIONER: Hang on. I'm told that's 185. Is that right? Exhibit 185 is the letter from Mr Martindale.

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ADMITTED AND MARKED: "EXHIBIT 185"

MR COPLEY: Ms Matchett - - -

COMMISSIONER: Sorry, Ms Matchett to Mr Martindale.

MR COPLEY: Right.

COMMISSIONER: 186 is Ms Matchett to Mr Knudsen.

ADMITTED AND MARKED: "EXHIBIT 186"

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MR COPLEY: Then I tender a letter from Mr Knudsen to Ms Matchett dated March 19, 1990.

COMMISSIONER: 187.

ADMITTED AND MARKED: "EXHIBIT 187"

MR COPLEY: And then I tender a letter dated 22 March 1990 from Mr Tate to Ms McGregor.

COMMISSIONER: That's exhibit 188.

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ADMITTED AND MARKED: "EXHIBIT 188"

MR COPLEY: That's to advise Ms McGregor that cabinet had decided that the material was to be destroyed and that he was forwarding the material to her for necessary action.

COMMISSIONER: All right.

MR COPLEY: The next note I tender is a file note from C. McGuckin dated 23 March 1990.

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COMMISSIONER: Exhibit 189.

ADMITTED AND MARKED: "EXHIBIT 189"

MR COPLEY: In which Ms McGuckin says that a Mr Ken Littleboy from the cabinet office collected her from state archives at 2.30 on 23 March 1990; that they went to the executive building and collected the records of the

03/12/12

COPLEY SC, MR

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inquiry by Mr Heiner; that she and Ms McGregor had inspected on 23 February 1990; that they took the box of records to the Family Services building where she took possession of the records, "And myself and Trevor Walsh from the department destroyed them in a shredding machine. All the records were destroyed, paper, cassettes and computer disk," in the singular.

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COMMISSIONER: So the shredding machine destroyed the cassettes as well as the paper?

MR COPLEY: Yes, apparently. Even though Ms McGuckin said that she and Mr Walsh destroyed them, Mr Walsh made a notation for the file dated 2 April 1990, which I tender as the next document.

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COMMISSIONER: That will be exhibit 190.

ADMITTED AND MARKED: "EXHIBIT 190"

MR COPLEY: In which Mr Walsh confirmed that Ms Kate McGuckin destroyed the relevant material in his presence. The next letter I tender is a letter unsigned, but from Mr O'Shea to Ms Matchett dated 18 April 1990.

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COMMISSIONER: Exhibit 191.

ADMITTED AND MARKED: "EXHIBIT 191"

MR COPLEY: And that concerned the fate of the nine letters which, of course, you know were not destroyed because we tendered them.

COMMISSIONER: Yes.

MR COPLEY: The next document that I tender is a letter from Steve Knudsen to Ms Matchett dated 20 April 1990.

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COMMISSIONER: Yes. Sorry. Exhibit 192.

ADMITTED AND MARKED: "EXHIBIT 192"

MR COPLEY: The next document that I tender is a memo to the acting director-general from D.O.C. Smith dated 8 May 1990.

COMMISSIONER: 193.

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ADMITTED AND MARKED: "EXHIBIT 193"

MR COPLEY: The obliterations on it were not put on there by the commission. The next letter I tender is a letter dated 8 May 1990 from Ms Matchett to Mr O'Shea.

COMMISSIONER: Exhibit 194.

ADMITTED AND MARKED: "EXHIBIT 194"

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MR COPLEY: It again concerns the fate of those letters that had been given to Mr Pettigrew and records that Ms Matchett didn't want to approach cabinet about the matter further and she would prefer to return these documents to the union or at least invite the union officer to receive the documents back. I tender, nextly, a letter dated 17 May 1990 from Mr Coyne to Ms McGregor.

COMMISSIONER: This is exhibit 195.

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ADMITTED AND MARKED: "EXHIBIT 195"

MR COPLEY: Yes. In this letter, Mr Coyne states that his solicitor and himself have made a legitimate request for a copy of the Heiner documents, but the director-general was still seeking legal advice and had been fully aware of the possibility of legal action, but that according to the Sun Newspaper of 11 April 1990, all the documents and material tendered at the inquiry were destroyed, but he felt certain that the director-general would not request the destruction of documents before legal advice was received and when legal action was known to be forthcoming if the documents were not provided and he requested that the state archivist not dispose of the documents for the present time. I tender a facsimile transmission dated 18 May 1990 from Ms McGregor, the archivist to Trevor Walsh.

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COMMISSIONER: 196.

ADMITTED AND MARKED: "EXHIBIT 196"

MR COPLEY: And attached to that is Mr Coyne's letter to her of 17 May 1990. The next document I tender is a file note, two pages long, made by Ms McGregor. It's not dated, but it refers to events culminating on 17 May of 1990.

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COMMISSIONER: Exhibit 197.

ADMITTED AND MARKED: "EXHIBIT 197"

MR COPLEY: In that document she again records the fact that she examined the records and describes what they consisted of. I tender a memorandum dated 18 May 1990 from Trevor Walsh to the acting director-general concerning Mr Peter Coyne.

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COMMISSIONER: This is exhibit 198.

ADMITTED AND MARKED: "EXHIBIT 198"

MR COPLEY: I tender a memorandum to the state librarian from Ms McGregor concerning the John Oxley documents dated 18 May 1990.

03/12/12

COPLEY SC, MR

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COMMISSIONER: It's exhibit 199.

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ADMITTED AND MARKED: "EXHIBIT 199"

MR COPLEY: I tender a letter dated 18 May 1990 to Ms Matchett from Mr O'Shea referring to her letter of 8 May 1990 and enclosing draft responses to Mr Knudsen, Ms Walker, Messrs Rose, Berry and Jenson and Mr Martindale.

COMMISSIONER: They're said on the basis that they're useful if the material has been destroyed or returned to the union?

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MR COPLEY: That's correct.

COMMISSIONER: Yes. By the date of exhibit 198, that's 17 May, had they been destroyed?

MR COPLEY: Well, the letters had been returned to the union or were returned to the union, but there is a note in here that the government destroyed copies; some officer of the department destroyed the copies that they had. That should be exhibit 200.

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COMMISSIONER: Yes, exhibit 200. Yes, that's exhibit 200.

ADMITTED AND MARKED: "EXHIBIT 200"

MR COPLEY: Nextly, I tender a letter from Trevor Walsh to the acting director-general concerning Peter Coyne. It is not dated.

COMMISSIONER: That's exhibit 201.

ADMITTED AND MARKED: "EXHIBIT 201"

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MR COPLEY: Then I tender a letter from Ms Matchett to Mr Knudsen dated 22 May 1990.

COMMISSIONER: Exhibit 202.

ADMITTED AND MARKED: "EXHIBIT 202"

MR COPLEY: A letter from Ms Matchett to Mr Martindale dated 22 May 1990.

COMMISSIONER: That's exhibit 203.

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ADMITTED AND MARKED: "EXHIBIT 203"

MR COPLEY: A letter from Ms Matchett to Ms Walker dated 22 May 1990.

COMMISSIONER: Exhibit 204.

ADMITTED AND MARKED: "EXHIBIT 204"

03/12/12

COPLEY SC, MR

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03122012 30/JJT(BRIS) (Carmody CMR)

MR COPLEY: A letter from Ms Matchett to Messrs Rose, Berry and Jensen dated 22 May 1990 concerning Mrs Dutney.

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COMMISSIONER: Exhibit 205.

ADMITTED AND MARKED: "EXHIBIT 205"

MR COPLEY: A letter from Ms Matchett to Messrs Rose, Berry and Jensen dated 22 May 1990 concerning Mr Coyne.

COMMISSIONER: Exhibit 206.

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ADMITTED AND MARKED: "EXHIBIT 206"

MR COPLEY: A memorandum from Mr Walsh to the acting director-general dated 24 May 1990 concerning Mr Coyne.

COMMISSIONER: That's 207.

ADMITTED AND MARKED: "EXHIBIT 207"

MR COPLEY: A memo dated 19 June 1990 to Ms Matchett from Mr Coyne making a request under regulation 65 for a copy of the complaints made against him.

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COMMISSIONER: Exhibit 208.

ADMITTED AND MARKED: "EXHIBIT 208"

MR COPLEY: And the obliterations on that document were not put on there by the commission. A letter from Mr O'Shea to Ms Matchett dated 2 July 1990.

COMMISSIONER: Exhibit 209.

ADMITTED AND MARKED: "EXHIBIT 209"

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MR COPLEY: And attached to that is a draft response to Mr Coyne's memorandum of 27 June 1990.

COMMISSIONER: That will be included as part of exhibit 9.

MR COPLEY: A memorandum from Matchett to Peers dated 1 August 1990.

COMMISSIONER: Exhibit 210.

ADMITTED AND MARKED: "EXHIBIT 210"

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MR COPLEY: That concerns nominations to the position of John Oxley manager. Presumably by then the classification process had gone through and been upgraded and advertising had occurred and selections had been made. The next document I tender is a memo from Ms Matchett dated 1 August 1990 headed Consideration of Recommendations for Appointment to the Position of Managers of Departmental

03/12/12

COPLEY SC, MR

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Institutions, Reasons for Decision. 1

COMMISSIONER: This relates to the manager's position at the John Oxley that Mr Coyne had held?

MR COPLEY: That's right.

COMMISSIONER: Before his secondment?

MR COPLEY: That's correct.

COMMISSIONER: That's exhibit 211. 10

ADMITTED AND MARKED: "EXHIBIT 211"

MR COPLEY: Yes; and her decision is in the last paragraph:

My decision is not to proceed at this stage to make an appointment to the position of manager, John Oxley Youth Centre, but to have the position readvertised at a later date.

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Then the last document that I tender for today is a letter from Mr Tate dated 29 April 1991 addressed to Sir Max Bingham, chairman of the Crime and Misconduct Commission. It's dated 29 April 1991 and I tender that.

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COMMISSIONER: The Criminal Justice Commission.

MR COPLEY: Yes.

COMMISSIONER: Exhibit 2012.

ADMITTED AND MARKED: "EXHIBIT 212"

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MR COPLEY: That represents all of the documents that we intended to tender today.

COMMISSIONER: Can you tell me when were the documents destroyed, so far as we can tell?

MR COPLEY: They were destroyed. The date I just can't remember, but I think it was 23 March 1990.

COMMISSIONER: 23 March, and when was Mr Coyne told that they had been destroyed?

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MR COPLEY: Yes, 23 March 1990 they were destroyed, while he read about it in the Sunday Sun or The Sun on 11 April 1990.

COMMISSIONER: Then having read that they had been destroyed, he asked the archivist to not destroy them.

MR COPLEY: Not destroy them, yes.

COMMISSIONER: Yes, and when was he actually told that what he asked for not to be destroyed had in fact already been destroyed?

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MR COPLEY: I don't know.

COMMISSIONER: What about his solicitor? When was he told?

MR COPLEY: I don't know. Perhaps, lastly, I will just hand up - if you want to make these an exhibit, I don't mind, but it's a calendar for the year 1989, a calendar for the year 1990 and a calendar for the year 1991 which just shows what days of the week various dates were in the relevant period.

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COMMISSIONER: Yes, I think I will exhibit them. Those calendars together will be exhibit 213.

ADMITTED AND MARKED: "EXHIBIT 213"

MR COPLEY: Thank you.

03/12/12

COPLEY SC, MR

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COMMISSIONER: That is all you have, Mr Copley? 1

MR COPLEY: That's all to be tendered today and, given the lateness of the hour, there are no witnesses to be called this afternoon.

COMMISSIONER: All right. Has anyone else got anything that we can deal with in the time that's left before I adjourn?

MR COPLEY: My learned friend Mr Selfridge points out that part of the - that an answer to the question that you raised is indeed contained in the documents. If you go to exhibit 206, Mr Coyne was told - sorry, Mr Berry was told on 22 May 1990 that all the material gathered by Mr Heiner in the course of his investigation had been destroyed. 10

COMMISSIONER: So that is two months after the event.

MR COPLEY: Yes.

COMMISSIONER: How long after the acting director-general asked for speedy advice about what she should do? That was in February or January. 20

MR COPLEY: January she wanted speedy advice about what to do in relation to a request for the documents.

COMMISSIONER: Okay, thank you. No more business today. We will adjourn till 10 am tomorrow. Is that okay?

MR COPLEY: Thank you.

COMMISSIONER: Thanks very much.

THE COMMISSION ADJOURNED AT 4.19 PM UNTIL 30
TUESDAY, 4 DECEMBER 2012

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