



SPARK AND CANNON

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THE HONOURABLE TIMOTHY FRANCIS CARMODY SC, Commissioner

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

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

BRISBANE

..DATE 13/02/2013

Continued from 11/02/13

DAY 22

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

THE COMMISSION COMMENCED AT 10.08 AM

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COMMISSIONER: Yes, good morning, everyone. Mr Keim, welcome.

MR KEIM: Thank you, Mr Commissioner. Yes, I did - instructing solicitors did send an email to the commission staff, but could I formally request leave to appear in the commission on behalf of Ms Matchett, who was the acting director-general during the period that the commission is currently investigating.

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COMMISSIONER: And Ms Matchett was formerly represented by Mr Hanger?

MR KEIM: She was, yes, but that's not been the case since, as I understand it, about seven days ago.

COMMISSIONER: Okay. I propose to give leave subject to what everybody else has to say.

MR KEIM: Can I just formally indicate - I should have done, I appear with my learned junior, Ms Juhasz of counsel, initials KV, and we're instructed by Adam Guest Lawyers.

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COMMISSIONER: Excellent.

MR KEIM: Thank you, Commissioner.

COMMISSIONER: All right, thanks, Mr Keim, you've got leave to appear.

MR KEIM: Thank you.

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COMMISSIONER: Yes, Mr Copley.

MR COPLEY: Mr Commissioner, I call Donald Andrew Cameron Smith.

SMITH, DONALD ANDREW CAMERON sworn:

ASSOCIATE: For recording purposes please state your full name and your occupation?---Donald Andrew Cameron Smith, retired.

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COMMISSIONER: Good morning, Mr Smith, welcome.

MR COPLEY: Could Mr Smith be shown a copy of his statement, please?

Mr Smith, would you just have a look at that document to confirm that it's the statement that you provided on 6 February 2013?---Yes, that's correct.

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Okay. I tender that statement.

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COMMISSIONER: Mr Smith's statement will be exhibit 321.

ADMITTED AND MARKED: "EXHIBIT 321"

COMMISSIONER: Is there any reason why it can't be published in full?

MR COPLEY: No.

COMMISSIONER: I direct its publication.

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MR COPLEY: That can be returned to Mr Smith when you're ready. He's got a copy, okay.

COMMISSIONER: Mr Copley, you know I'm breaking at quarter past 12 today until quarter past 2?

MR COPLEY: Yes.

Mr Smith, in 1989 were you the director of court services in the Department of Family Services?---I have some trouble with the dates, but I believe that is correct.

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All right. Well, there was certainly a period of time when you were the director of court services, wasn't there? ---Yes, that's correct.

You don't need to speak into that microphone because it won't make your voice louder. When you did that I had the impression you were at first a bit hard of hearing, so I was yelling?---I am a bit hard of hearing.

Good, okay. So eventually you ended up working in the office of the director-general of Family Services, didn't you?---Yes.

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Now, do you remember the date that you started in that office?---I haven't got the date, but it was a little way after the change of government.

Yes. So therefore it was in 1990?---I believe that's correct.

Okay. Well, I'm just going to show you a document that you did not make, but it's a photocopy, it's from the diary of a fellow called Trevor Walsh?---Yes.

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Does that name mean anything to you?---Yes.

Okay. So accept from me that it's a photocopy of Trevor Walsh's diary, and I'm just going to show you an entry that he's written in this diary which he's confirmed he wrote and it's highlighted, just to see if that assists you when

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you started in the office of the director-general. His entry in his diary suggests you started on 7 March 1990, doesn't it?---Yes. 1

Now, do you dispute that or aren't you - - -?---No, not at all. I'm sure that would be correct.

All right. Thank you. That can be returned. So when you first came to work in the office of the director-general, we can take it that there was a director-general there? ---Yes. I believe an acting director-general. 10

Ms Matchett?---Yes.

Yes. Trevor Walsh?---Yes.

Some secretaries?---Yes.

Two of them?---Yes.

Derman Roughead: remember him?---Yes.

Anyone else?---Don't think so at that time, no. 20

Okay. In the hierarchy in that office you fell somewhere below the director-general but somewhere above the secretaries, did you?---Yes, that's correct.

Where did you fit in within those boundaries?---I certainly would have been above Mr Roughead.

Right?---Probably a very similar level to Mr Walsh.

Okay. All right, thank you. Now, by the time you had commenced the cabinet had decided to destroy or have destroyed what were referred to as the Heiner documents? ---Yes. 30

When you began there did you hear any discussion about that decision or about the fate of those documents? So you're being asked to divorce what you might have heard, read, seen - - -?---Yes, I know.

- - - or ingested in the last 23 years?---I don't recall that specifically, although I obviously became aware that that had occurred.

Yes, all right. Well now, I'd like you to have a look at some exhibits, some documents here today. So I'll get you first of all to have a look at exhibit 193. Now, this is a memorandum to the acting director-general and it bears the signature DAC Smith, 8 May 1990. Do you see that?---Yes, I do. 40

Do you recognise the signature?---Yes, that's my signature.

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Okay. Did you draft that document and - not only did you sign it, but did you draft it?---Yes. 1

All right. And do you remember why you drafted it? Were you asked to do so or was it something you did of your own volition?---To be honest, I did not remember this document until it was shown to me when the police officers interviewed me a little while ago for the statement.

Okay, yes?---But I accept it as it is. I wouldn't have drafted that just off my own bat, so I must have been asked to do that by the acting director-general. 10

All right. Now, in paragraph 2 of the document you state that:

Amongst other things final advice needed to be given to the State Service Union, who wrote on behalf of their members.

You said that:

There are some issues to be resolved regarding this and that the letters of grievance from staff were provided to Mr Pettigrew and if they are retained they will have to be shown to Mr Coyne, but they were not initially provided on that basis. 20

In reference to that paragraph do you recall the documents you were speaking about there?---I don't recall any detailed content of them but I'm aware that they were documents which were provided, I think, to Mr Pettigrew by the union.

Okay. Well, we'll just get you to have a look at exhibit 72B through to 72J. You won't need to perhaps read all of these in detail, but I'd like you to look at all of them and see whether or not you've seen copies of these or originals of these before, or whether indeed perhaps you might have destroyed some copies. 30

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Have you recognised any of those yet?---No. I mean, I may have seen them previously but I don't recognise them, no. 1

All right. From what you've read of them so far, and you've only looked at two of them, would you concede that they could be characterised as letters of grievance from staff?---Yes.

I'll just get you just to look through each one of them simply in terms of the length of them, the handwriting, the way they're set out, just to see if it jogs your memory about whether you have in fact or did in fact see them back in 1990. They've all got a signature on the end of them of a human being, of course, who signs by their surname and Christian name, except for one person who signed their name "Very concerned". Does that ring a bell at all?---No. 10

You don't need to read every word of that really long one if you don't want to?---Okay, no. I was just trying to get a general picture of it.

Yes. I'm not going to ask you really about the contents of them any more than I have done, that would you concede that they can be categorised as letters of complaint or grievance?---Sorry? 20

I really just wanted to get confirmation from you that you would concede that they were letters of grievance or complaint?---Yes. Yes, they are.

Yes, so just look at the last one briefly and I'll just ask you at the end of that - or to bear in mind whether or not you've seen anything there that refreshes your memory about having seen the letters before?---No, it doesn't jog my memory, although I accept, as you said, that they are in the nature of grievances, yes. 30

All right, yes. Well, the commission will probably be able to draw some inferences anyway?---Yes.

Indeed, the inferences mightn't be controversial about these things, but it's just important to see if we can get the actual author of the letters' recollection. So you were the author of this letter I showed you, exhibit 193, which referred to letters of grievance coming from the union to Mr Pettigrew that then had to be dealt with? ---Yes. 40

In exhibit 193 you said, "The crown solicitor will be briefed to consider further this issue of these letters." Do you see that in the second paragraph under paragraph 2? ---Yes.

You will agree with me that exhibit 193 bears the date of 8 May 1990?---Yes.

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I'll get you now to look at exhibit 194. This is a letter to Mr K.M. O'Shea, the crown solicitor, and even though it bears the name "R.L. Matchett (Ms)" in typing at the end it's not her signature, is it?--No.

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Whose signature is that?---That's my signature.

So can we therefore work on the basis that you wrote that letter?---Yes.

If we look at the second paragraph on the first page it says, "It is correct that cabinet wasn't asked to consider the documents forwarded by Ms Walker of the State Service Union because those documents were regarded as being in a different category to those which came into existence during the course of the inquiry." Now, I suggest to you the reference to the inquiry was the Heiner inquiry?---Yes.

10

Do you know where you got that information from or who told you that for you to put that into the letter?---I would have either got it from the director-general or from the file.

In the next paragraph it says, "I do not wish to approach cabinet further and I note your advice" et cetera et cetera. Can we take it that when you refer to "I" there you're referring to the director-general?---Yes.

20

So is that something that she told you, that she did not wish to approach cabinet about these, about documents of this nature, again?---That would be my understanding, yes.

You then state, "I would like to draw attention for further consideration to the letter of 10 October 1989 from the union and in particular to the second-last paragraph which states the basis upon which the documents written by the union were supplied." Now, did you have access to that letter of 10 October 1989 to compose this letter?---Well, I believe I would have, yes.

30

Okay, well, we might just show you the letter of 10 October 1989 to see if that helps. That is exhibit - exhibit 72, sorry. Have you seen that letter before?---I can't say definitely I have but I could have, yes.

40

There would appear to be some connection, I would suggest, between the second-last paragraph in the letter of 10 October 1989 and the paragraph that I read out to you before from exhibit 194 where you said, "I would like to draw attention to that letter"?---Yes. 1

And in particular to the second-last paragraph which states the basis upon which the letters were handed over. You would agree with me that in exhibit 72 there's a caveat put upon the use that could be made of those letters of complaint?---Sorry, which was that? 10

If you look at the letter of 10 October 1989, exhibit 72, which you're holding, the second-last paragraph in the second sentence says that these letters were supplied personally on the understanding they wouldn't be widely circulated?---Yes.

And I'm taking you to this to see whether or not the inference that is open to be drawn that when you wrote this paragraph in exhibit 194, you had in mind that paragraph and those words is a correct and fair inference. So I'm seeing if I can get you to comment on that, but it seems as though you have got no recollection now?---Well, I mean, I think at the time it was probably one of many things we were dealing with. 20

Yes?---I would have had access to the file in preparing correspondence and it's likely that I did see that letter.

Right?---I mean, I was aware, for instance, that the statements had been categorised in a different category to normal documents that came to the department.

Okay. You go on in exhibit 194 to say: 30

I would prefer, being fair to all concerned and now that the inquiry has been discontinued, to return these documents to the union officer who provided them or to at least invite that officer to receive the documents back.

Was that something you wrote because Ms Matchett told you that's what she wanted to do or is it a solution you devised for her?---No, it would've been something that came out of a discussion with the director-general.

All right. We will take back exhibit 72 and exhibit 194. Now, I want you to have a look at exhibit 191, please. Are there two photocopies of this letter as part of that exhibit that you have got?---Yes. 40

It's really the second copy that I'm interested in because there's a note in handwriting on the second page, isn't there?---Yes.

Do you recognise that writing?---Yes, that's my writing. 1

Because it's in running writing, can you read into the record what it says?---"These copies were photocopies. They were destroyed today."

And it's signed "Don Smith, 23/5/90"?---Dated 23 May 1990.

Now, you have seen that document in recent weeks, haven't you?---Yes.

The police showed it to you?---Yes. 10

With the benefit of seeing it in recent weeks and thinking about it since, do you remember what documents you were referring to there when you said these copies were photocopies and were destroyed?---I believe they were the copies of statements the union had given to the previous director-general and which had been made to send to the crown solicitor.

Okay. Now, in your statement you state that because they were merely photocopies, you considered that there was no impediment to destroying the photocopy of a document? 20
---That's right, yes.

Was the destruction of a photocopy of a document or photocopies of a document commonplace in the public service in that period of time, the early 1990's?---Yes, I believe so; yes.

And would a reason for the destruction of photocopies be that if you photocopy a document many times, you end up with many copies and they take up a lot of room on the file?---Yes, that would be one reason. 30

That would be one reason, yes. Another reason could simply be that there might have been another photocopy of a document and you didn't need a second, third or fourth photocopy of them?---That's correct, yes.

But that thinking did not lie behind and did not explain the destruction of these photocopies, did it?---Well, I believe it did; not the volume reason but the fact that it was a duplicate of something. Once the original - when the original was there, the duplicates weren't required.

Right. If the originals weren't there any more though, for example, if they were returned to the union, then if a photocopy was destroyed and it was the only photocopy of what was returned to the union, then there would be no record left though, would there?---That's correct, but I believe those two things were done at the same time but the - when the original would be returned to the union, the duplicates were destroyed then. 40

All right; and what was your understanding of the thinking behind the destruction of the duplicates? To put it more simply, why did you destroy the duplicates, the copes? ---Well, I don't know that I destroyed the duplicates. I made a note that they had been destroyed. 1

I see; so I shouldn't read too much into the note that where it says, "They were destroyed today," you were actually the actor who destroyed them?---Not necessarily.

You might have asked somebody else to do it?---Or I might have just been aware they were destroyed. 10

Do you remember now just thinking back on it what the situation was there?---No. I mean, I did say, I think, in the statement - I'm not sure if I did but I'll say that I hadn't even remembered that letter or that notation until it was highlighted in the Morris inquiry.

Right?---I think it was probably regarded as a routine thing and that was the thing that made me aware that I had written that.

Right?---I mean, my interpretation would be, if I can give an interpretation, that - - - 20

Well, if you're interpreting your own words, you can, yes? ---Yes, well, I'm believing that - I believe that that was consistent with what was - the intention of what was trying to be achieved where people were put in the same position they were in before those papers had been given to the director-general and that left the way open for them to pursue their concerns through the grievance process.

All right. No further questions. 30

COMMISSIONER: So basically the idea was to put everyone back into the position they would have been if Heiner had never occurred?---That was my understanding, Mr Commissioner, yes.

Thank you. Mr Hanger?

MR HANGER: Yes, just a couple of things.

In respect of paragraph 18 of your statement - I will just take you through a couple of the exhibits. First of all, can you see 194? I'm looking at the second sentence in paragraph 18, "When Crown Law advised that the documents should be returned, they were." If I can take you first to exhibit 194, you will see this is a letter which appears to be signed by you on behalf of Ruth Matchett and in the bottom paragraph of that page you say there: 40

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I would prefer, being fair to all concerned and now that the inquiry has been discontinued, to return these documents to the union officer who provided them or to at least invite that officer to receive the documents back. 1

You said that?---Yes.

Now, that advice you got is in exhibit 191. Can you see that?---Yes, I've got that one.

If you go down to about the fifth paragraph there, you see it says: 10

Therefore it appears that only two options exist. Firstly, to destroy them in accordance with the Libraries and Archives Act or to retain them with the consequent problems which may arise?

-----Yes, I can see that; yes.

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COMMISSIONER: What were those problems that you envisaged, Mr Smith?---That the Crown solicitor was referring to? I mean, he goes on to refer to regulations 46 and 65 of the Public Service Management et cetera, law, and - - -

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"The problem" meaning? What was the problem?---Well, I think it would be that anyone who - or if there was a complaint against someone that's likely to be adverse then that person would need to be shown those documents.

And that was a problem because? Why was that a problem to anybody?---I mean, I'm reading my understanding into it.

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Yes, I know, but why would you - - -?---Well, I think it would have been contrary to the desire to put people back in the position they were in prior to the inquiry being set up.

MR HANGER: The point I was trying to make is that paragraph 18 - and I'm sure it's not deliberate - but paragraph 18 in the second sentence isn't quite correct, is it?---No. I have only seen this document after that.

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After 23 years?---That was in an interview and, yes, I mean, I accept, yes, the Crown law didn't say they should be returned.

No?---I think after that, the further letter back to them raised - or it was clear that the desire was to return them.

Thank you.

COMMISSIONER: Yes, thank you Mr Hanger. Mr Keim?

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MR KEIM: Yes, thank you.

Mr Smith, my name is Stephen Keim. I appear in this inquiry for Ms Matchett?---Yes, Mr Keim.

Just explain who I am. You drafted the memorandum which is exhibit 193 which is dated 8 May 1990, that was the memorandum addressed to the acting director-general?---Yes.

You were taken to that, you recall that?---Yes.

And then subsequently there's the annotation that you were taken to with regard to the copy documents having been destroyed?---Yes.

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Are you able to say whether between writing the memorandum and any subsequent action that was taken, did you handle the matter within the office? Were you dealing with the

matters that you dealt with in the memorandum? What your recollection with regard - - -?---Sorry, with the matters raised as outstanding matters?

1

Yes?---Yes.

Did you continue to handle them?---I think I may have conveyed further instructions to the Crown solicitor.

Yes?---I'm not sure of the timing of that.

Yes. Did you continue to receive correspondence from the Crown solicitor?---Sorry, did I see it?

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Did you receive correspondence when it came back from the Crown solicitor?---Yes, it would have come back addressed to the director-general but I would have seen that, yes.

Yes?---The other matters in there, I understood that letters were drafted by the Crown solicitor to go back to those other parties.

Yes?---I would need to refresh my memory on that, but that was my understanding. I believe the clarification to staff of the grievance procedure took place when the director-general visited the John Oxley Centre and advised the staff about the developments about the inquiry. No, I'm not sure about paragraph 5 and 6 now.

20

Yes. But in terms of action and the letter that came back from the Crown solicitor, did you handle that - cause those letters to be sent?---Sorry, which one was that?

The letter from the Crown solicitor contained within it a number of draft letters. Is that correct?---Well, that's my memory. I haven't seen that to refresh my memory of any recent years.

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Yes, I'll just see if I can - could the witness see exhibit 200, please, Mr Commissioner?---Yes, I've got that now, Mr Keim.

Yes. That's a letter to the acting director-general dated 18 May 1990?---Yes.

It carries the reference of Mr B. Thomas. Is that correct?---Yes, that's right.

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And it refers to some draft responses to a number of people referred to there, Mr Nunce and Mr Walker, who were both union people at that time?---I'm not sure who Mr Martindale is, but Ms Walker certainly was a union person.

Yes. And the last paragraph says, "These letters are only of use if the material concerned has been destroyed or return to the union officer in accordance with your expressed intention"?---Yes. 1

And if you go further down that page you can see those draft letters. Is that right?---Yes.

Okay. Did you cause letters in that form to be sent eventually? Did you continue to handle the matter in terms of acting in accordance with that letter from the Crown solicitor, can you recall?---I'm not sure if I caused the letters to be sent, but I would imagine that those drafts would have been used to prepare letters. 10

Yes. By you?---Sorry?

Prepare letters - were you involved in the preparation of the letter, I suppose?---I don't know that, sorry.

You can't recall?---I would think that the director-general would have looked at those and if she didn't want any changes someone would have been asked to type them up as drafted. 20

Okay. And that's your best recollection?---Yes.

I suppose what you're doing is you're attempting to reconstruct what would have happened from having a look at that document?---Yes.

But you don't have any precise recollection as to what you did or how it happened?---I don't have a recollection of what I specifically did. I mean, I could have asked the typist to type them. 30

But you can't recall?---No.

Nothing further, thank you, Mr Commissioner.

COMMISSIONER: Thank you. Mr Harris?

MR HARRIS: No questions, Commissioner.

COMMISSIONER: Mr Bosscher?

MR BOSSCHER: Just some, Thank you, Commissioner. 40

Mr Smith, I want to ask you some questions about paragraph 19 of your statement, if you could just have a look at that for me?---Yes.

The first sentence indicates that you were aware that Mr Coyne was attempting to access the documents we've been talking about?---Yes.

And of course I assume to your knowledge the director-general was aware of that as well?---Yes. 1

And other people in the office, Mr Walsh perhaps, were aware of that?---Most likely, yes.

And your understanding was that the steps that were being taken, to quote yourself, "To protect the staff, to put them back in the position they were in prior to the basis of the material being lodged in the first place"?---Yes.

What was the threat that was being endeavoured to protect those members of staff from?---I'd don't know that it was so much a threat. I believe my understanding at the time was that they hadn't been protected by the way the inquiry was set up originally and I think also Mr Heiner and that - the only way of doing that was to return the documents. 10

But the only person, as I understand it - and correct me if I'm wrong - seeking those documents at that time was Mr Coyne?---Yes, I'm not sure about that. I mean, there were other parties and I don't know if they were asking for them as well. 20

And the reason why the department didn't want to release them to Mr Coyne and was looking for another avenue to deal with them was because there was potential legal action that may flow either to the department or to those persons who had authored those statements. Is that right?---I mean, I'm not sure about that. I don't know what the repercussions would have been for the people. 30

I thought that when the inquiry was set up they would have been interviewed by Mr Heiner on the basis that they had protections for anything they may have said and I assume that went also to those documents that had been given to him as well. 1

Are you aware of any other potential action or threat to the persons who made those statements coming from any party other than Mr Coyne?---I wasn't even aware of that, actually.

Thank you, commissioner. 10

COMMISSIONER: Thank you. Mr Copley, anything more for Mr Smith?

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

COMMISSIONER: Yes. Mr Smith, thanks for coming in. We appreciate your time and your response to the summons. You're formally excused from its obligations?---Thanks, Mr Commissioner. 20

WITNESS WITHDREW

MR COPLEY: I call George Nix.

COMMISSIONER: Thank you.

NIX, GEORGE ERNEST sworn:

ASSOCIATE: For recording purposes, please state your full name and your occupation?---George Ernest Nix; retired.

COMMISSIONER: Good morning, Mr Nix. Welcome. Yes, Mr Copley? 30

MR COPLEY: Mr Nix, I'll get you to have a look at your statement, please, just to confirm that it is indeed the statement that you provided to the police on 18 January 2013?---Yes, that is correct.

I tender that document, Mr Commissioner.

COMMISSIONER: Mr Nix's statement will be exhibit 322.

ADMITTED AND MARKED: "EXHIBIT 322" 40

MR COPLEY: It can be published.

COMMISSIONER: I direct its publication.

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SMITH, D.A.C. XXN
NIX, G.E. XN

MR COPLEY: Mr Nix, in your statement you said that in 1988 you applied for and were granted the position of deputy director-general in the Department of Family Services?---Yes. 1

Do you remember the month in 1988 that you commenced work in that role?---I think - it was April, I think, from memory.

All right. At that time Alan Pettigrew was the - - -? ---Director-general. 10

The director-general?---Yes.

Do you remember who the minister was?---I think it might have been Craig Sherrin at that time. I'm not sure.

Your particular area of responsibility was youth and youth and community service?---Correct.

You weren't the only deputy director-general in 1988, were you?---No.

How many others were there?---Two others, Myolene Carrick and Col Thatcher. 20

What was Myolene Carrick responsible for?---I can't remember her title.

No?---No.

That's all right. What about Col Thatcher?---He was manager of administration.

So were you the deputy director-general who was responsible for things like youth detention centres?---Yes. 30

You state in your statement that you had two executive directors working under you. One was Ian Peers?---Yes.

One was Ruth Matchett?---Correct.

Which one of those two was responsible for detention centres?---Ian Peers.

What was Ms Matchett responsible for?---Community programs.

Just moving forward a little bit, in January of 1990 did you go on holidays?---Yes. 40

Do you remember where you went?---Adelaide - or Nuriootpa on a national caravan rally.

Nuriootpa. Is that in the state of South Australia?---Yes.

Did you go to Adelaide on that holiday in 1990?---Yes.

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Do you recall having any contact with the department when you were on holidays in Adelaide in 1990?---Yes. We didn't have mobile phones in those days but I provided a detailed itinerary at the start with phone numbers of caravan parks et cetera.

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Yes?---I was contacted by - I think it was by Derman Roughead - I think.

Right, and do you remember - - -?---From what - - -

Well, whether it was Derman Roughead or not you're not 100 per cent?---No.

10

But you were contacted by somebody?---Yes.

Do you remember what they wanted to discuss with you?---Can I look at the diary?

Yes. Do you have your diary from those years here?---I've got 89 and 90.

Okay, well, if you want to have a look at your 1990 diary you can?---I didn't make a note of it in that diary, but from - gee, it's a long time ago. From my memory, it was to tell me that - I don't think it was in January, though, I think it was in late December.

20

Right?---We went down on about 22 December 89 and I'm pretty certain it was something about Col Thatcher had been removed to - they call it the Gulag, but it was up - the distance education building in Brisbane.

What do you mean by "the Gulag"?---Well, at that time there seemed to be a lot of senior officers, middle management and above, that were being dispensed with by the new government and a lot of them were sent straight up there. I wasn't sent up there, I was frozen in the building where I was.

30

COMMISSIONER: It was a place where they were sent with nothing to do and a long time to do it in?---Yes.

A place where they had nothing to do and a long time to do it in?---That's right.

MR COPLEY: You see, I want to suggest to you that you were contacted when you were in Adelaide regarding the whereabouts of a folder of documents?---Yes, well, I've got two memories of that. I've got - one was about that and it was documents relating to the Heiner inquiry, notes I'd made et cetera and Alan Pettigrew had asked me to keep hold of them, not to let anyone see them et cetera so I kept them locked in my credenza or the drawer of the desk; I'm not sure which now. So I gave that information. My

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NIX, G.E. XN

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other memory of that is that Trevor Walsh came round and demanded them off me and I asked him what for, and that the acting DG Ruth Matchett wanted them. I have them to him and I've never seen them since.

1

All right?---Some shorthand notebooks and transcripts of - I don't know.

Well, we'll perhaps come to Trevor Walsh's request of you shortly, but I just want you to have a look at exhibit 101, which is a memorandum signed by Ian Peers. You will see it's dated 2 January 1990 and Ian Peers has testified that he signed it, if you look on page 2, okay?---Yes.

10

I want you to go back to page 1. See there's a - it's a memorandum addressed to the acting director-general and if you look through the first five paragraphs it concerns the John Oxley Youth Centre and the appointment of Mr Heiner? ---Yes.

And 21 questions that Peter Coyne had sent in to Ms Matchett, and then paragraph 5 says, "A file compiled by Mr Nix, including the original letters of complaint"? ---Yes.

20

Do you see that?---Yes.

Then there's an asterisk besides the 5, isn't there?---Yes.

If you turn over the page there's an asterisk again and it says, "The folder has come to light after the preparation of the memo. Mr Nix phoned from Adelaide and was able to locate it"?---Yes.

You didn't have it in Adelaide with you, did you?---No, I didn't.

30

Okay?---I advised - after the initial phone call to the caravan park I can remember going out to a public phone and phoning them up and telling them where they could find it.

So you have a recollection of that now?---Yes.

That did indeed occur, as the note claims, when you were in Adelaide?---Yes, I was in Adelaide till 22 January.

40

All right, and the document which you did not write in paragraph 5 says, "The file compiled by Mr Nix included original letters of complaint." Do you see that?---Yes. 1

Okay. I will get you to have a look at exhibit 72 and 72B through to J. Have a look at 72 first. That's a letter from Janine Walker at the State Service Union dated 10 October 1989 to Mr Pettigrew, isn't it?---Yes.

In the course of that letter it refers to the provision of some statements or letters on a particular basis in the second-last paragraph, namely, they wouldn't be widely circulated?---Yes. 10

Now, the next lot of documents I'm going to show you are exhibit 72B through to J and what I want to ask you is whether or not these letters that I'm showing you now - whether you would regard them as being the original letters of complaint?---I would assume so.

Just look through them all?---Yes.

You can see as you go through them that they're clearly original documents, aren't they, because they have a signature in biro?---Yes. They've also got the spiking from the file. 20

Right. Just looking at the names of the people that wrote them, does that ring a bell?---I assume they're - it says in the first paragraph "youth worker". I didn't know the names of all the staff at John Oxley.

No, but what I'm trying to find out from you is whether by looking at those documents you can confirm or not that they were the things that you kept locked in your credenza in your office as a result of Mr Pettigrew saying, "Keep these things under lock and key"?---They could've been because we had discussions with Mr Heiner, drew up terms of reference et cetera but I don't know whether they were part of it. It could quite well have been. 30

Okay?---I'm not sure.

All right. We might come back to them a bit later and have another look at them?---I'll just check.

Now, just on this topic, you mentioned before that you had an approach from Trevor Walsh?---Yes. 40

Now, did that occur before or after your trip to Nuriootpa? ---After.

Were you back at work by that time?---Yes, I resumed duty on 22 January, I think it was.

I would suggest to you that 22 January was a Monday?---Yes, 1
Monday, it is too. I've got in the diary here, "Returned
from leave".

"Returned from leave"?---Yes.

Okay. So the conversation with Trevor Walsh where he came
to see you occurred after that date?---I would've thought
so, yes.

Do you remember when it occurred?---No, I don't.

10

Do you remember if you made a note about it at all?---No,
there's many days blank when I first returned.

Well, in your statement at paragraph 12 you state that
Trevor Walsh came to your office one day and asked for all
the papers relating to the Heiner matter?---That's my
recollection, yes.

You asked him, "What for?" and he said, "Ruth's asked me to
get them. The Premier's Department, the cabinet secretary,
has been in touch and she wants to brief them"?---Yes,
that's my recollection.

20

That's your recollection, but you don't remember when
Trevor Walsh came and said those things to you?---No.

So you can't relate it to something like, "I'd only been
back at work or day or two" or "I'd been back at work a
while." You can't help me there?---No, I can't, sorry.

All right; and you consented to him, you say, having them
and said, "There's the folder there," and you gave him the
folder with what you describe as all the typed stuff you
had done, plus all your shorthand notes and you never saw
it again?---That's right.

30

Now, the folder that you gave to Trevor Walsh - did it
include copies of documents such as those letters of
complaint that I showed you before?---It could've done.

It could have done. Do you remember what was actually in
the folder that you gave Trevor Walsh?---Not in totality,
no.

Okay?---I remember my shorthand notes and the typed
transcripts of those notes that I've made with meetings
with Mr Heiner and Alan Pettigrew. That was in the folder
definitely.

40

In your statement at paragraph 14 you refer to a document
that we'll come to shortly that came from Janine Walker.
It's not important?---Right.

What's important for present purpose is that you said, "I later received complaints in writing from JOYC staff which I filed in the folder I referred to in paragraph 10 of this statement"?---That's right. 1

So what I'm wanting to know now is whether, when you refer to statements of complaint from JOYC staff which were filed in the folder referred to in paragraph 10, you're meaning to convey that the material that you gave to Trevor Walsh included the letters of complaint?---I could've done, but my recollection is, as those complaints came in, I wrote a memo to the DG attaching the complaint. He showed it to the minister and it came back to me and I put those in the folder. 10

You put them in a folder?---I think so, yes.

Okay. Did you have any understanding why you were hanging onto them and keeping them in a folder under lock and key for Mr Pettigrew?---No, he just - he asked me to do that. He didn't want it to go out to the general office - into the filing system of the department because - I don't whether you know what public service departments are like, but if there's a sniff of a rumour or something or a sniff of a complaint, it goes round like wildfire so he wanted to keep it contained because it might have jeopardised Mr Heiner's inquiry. 20

Okay?---That's my recollection.

All right. Moving forward a bit, there came a time when you vacated that office that you were occupying in January of 1990, didn't there?---Yes; yes.

What month did you vacate the office?---Here we go. I had a hostile interview on 1 May for my own job. 30

Yes?---It had been divided up. I was phoned by Ruth Matchett at the Pancake Manor on 14 June - - -

Sorry, I can't hear you, Mr Nix?---I was phoned by Ruth Matchett on 14 June. I was at the Pancake Manor having a luncheon with a member of staff and told I didn't have the job and I handed over half my duties to Leigh Carpenter on 4 July.

Yes, but what I'm more after is when - - -?---Then I went downstairs. 40

Yes, when?---On the 7th of - bear with me. I made a note here, "Isolation begins in earnest on 9 August," so that's when I went downstairs.

So when you say you went downstairs on 9 August, from what floor did you leave and what floor did you go to?---The seventh floor where the minister's office and DG is up there down to the first floor. 1

So when you came back from holidays from South Australia in January 1990, did you go back to the same office you had been occupying before you went on holidays in December 1989?---Yes.

Did you stay occupying that office from January then until you went downstairs in August 1990?---That's my belief, yes. 10

Okay; and where was that office at all times; on which floor?---On the seventh floor.

On the seventh floor?---Yes.

All right?---I had to brief people that were taking over my role there before I was sent downstairs.

Now, I'm just going to go back in time a bit to have a look at some documents to see if you can help me with the significance of them because there are a few of them. 20
First of all I just want you to look at exhibit 60, which is a letter that Mr Pettigrew wrote to Mr O'Shea, the Crown solicitor, and it concerns seeking advice regarding the operation of regulations 46 and 65 of the Public Service Management and Employment Act. Now, does it bear Mr Pettigrew's signature?---No.

It doesn't?---No.

30

40

Do you know who signed it?---Col Thatcher. 1

Okay. Did you play any role in drafting that letter?---No, I didn't.

Okay, thanks. That can be returned. Could you look at exhibit 63, please? You will see it's a letter again to Mr O'Shea dated 29 August 1989 and it's again concerning regulation 46 of the Public Service Management Act. Does it bear Mr Pettigrew's signature?---No.

Whose signature does it bear?---Col Thatcher's. 10

Okay. Did you play any role in drafting that letter?---No, I didn't.

Do you remember back in those days the fact that the Public Service Act of 1921 or 1922 had been repealed and replaced by this new act called the Public Service Management and Employment Act?---I have a recollection of that occurring, yes.

Right. Do you have a recollection of it being a matter that caused any difficulty to the department you were in, in understanding the ambit of various public service regulations made under the new Public Service Management and Employment Act?---No, I don't - - - 20

It wasn't a difficulty you were aware of if there was one? ---Not aware of that at all, no.

Okay, thank you. Okay. Now, I'll get you to look at exhibit 65. You'll see this is dated 12 September 1989 to Pettigrew from Janine Walker?---Yes.

And it concerns a complaint about how a Mr Lannen, an employee of John Oxley, was still on probation, and it asserts in the second-last paragraph that there was personality conflict between Mr Lannen and the manager of John Oxley, Mr Coyne. Do you see that?---I read that, yes. 30

Yes. Then on the next page it asserts in the first paragraph that it wasn't the first occasion that members of the union at John Oxley had had cause to complain about Mr Coyne and it referred to a meeting that had been held in November before that Ian Peers has attended?---I read that, yes. 40

Do you remember that meeting or the fact of that meeting occurring?---9 November 88.

Okay?---No, I don't. I don't remember that at all.

And then the next paragraph says that the union consider that a meeting with you, Mr Pettigrew, was now desirable? ---Yes, I see that.

13/2/13

NIX, G.E. XN

Yes. So you were the deputy director-general with responsibility for youth detention centres?---Yes. 1

So did Mr Pettigrew draw this letter to your attention after he received it?---Probably discussed it with me, yes.

You don't specifically remember seeing it?---Not specifically the letter, but I remember getting hold heaps of letters as a result of that.

All right. Now, do you recall after that attending - and I'm not asserting you did, I'm just wondering whether you did or not - do you recall attending a meeting with Mr Pettigrew and others with the State Service Union, Janine Walker, on 14 September 1989?---Yes, that was at 3 pm. 10

Okay. That's in your diary, is it?---It's in my diary, yes.

Good. Could you have a look at exhibit 66. See, this document asserts at the top of it that you did attend that meeting?---Yes. 20

And the first question to ask you is do you know who typed that document up? Does it not to you as though it was typed in a government department or could it have been typed up by someone from the State Service Union for you know?---No, I'd say it would be typed up by Mr Pettigrew's secretary. 20

Is that because of the way it's set out, the typing font, or what do you base that on?---Well, it's the way things were done. These are the days of the typewriter, not the computer. 30

Yes. And are you mean to convey by that that if Mr Pettigrew attended a meeting with people, including people from outside the department, Mr Pettigrew would have someone keep minutes of what was discussed at the meeting? ---On some occasions, yes, not every occasion.

Right, okay. Do you remember attending this meeting? ---Yes, I do.

Okay?---There was quite a few people there.

Yes. You knew or were acquainted with all of them, weren't you?---Yes. David Herbert, Ted Clarke, Johnny - - - 40

Yes. And the first five or six or seven paragraphs all concern complaints about Mr Coyne's behaviour, don't they? ---Yes.

And then in paragraph 8 it says that the union wanted an inquiry into management-staff relationships at the centre and the union was prepared to provide specific details of incidents between management and staff to assist the inquiry, doesn't it?---Yes. 1

Do you remember that being said?---Vaguely. I think I do.

The next paragraph asserts this, that the director-general - not a minister, not anybody else, not the union - but the director-general decided that an investigation into the operations of the centre would be held. Now, do you remember Mr Pettigrew saying that or making that decision? ---I can't really but I - he would have discussed with the minister, I imagine. 10

Yes?---Before he took that action.

Okay. Well, we've got some evidence to suggest that the minister at this time was Mr Sherrin?---That could be right, yes.

Okay. At the top is a hand-written note - two handwritten notes - one is written by a bloke called Ian, we've had that read to us, and above that there's a signature which might be ACP?---It is. 20

It is? That was Alan Charles Pettigrew?---Yes.

Can you read his writing there?---"Thanks George. Please see that this" - can't read the next word.

Yes, what's the word after that?---Something "moving" (indistinct).

Would say, "Thanks, George. Please see that this starts moving" or "gets moving" or "keeps moving"?---Might be "keeps moving". 30

Well look, you played, I'd suggest, an integral role with Mr Pettigrew in getting an inquiry into management-staff issues at John Oxley going, didn't you?---Yes, well, I was part and parcel of it, I had responsibility for the place.

That's right. So it could be entirely natural for you to be involved in getting an inquiry moving into the centre, wouldn't it? I mean, you mightn't have particularly wanted an inquiry or mightn't have seen much value in it but if Alan Pettigrew said that there was going to be one - - -? ---Yes. 40

- - - and that you had to get it moving or keep moving, have you would have obeyed his wishes in that regard, wouldn't you?---That's correct.

How did you get along with Alan Pettigrew?---Excellently.

13/2/13

NIX, G.E. XN

Excellently. Had he been the director-general when you started as deputy?---Yes. 1

Had he, for example, picked you or appointed you as his deputy director-general, or was he not a party to that process of selection?---I assume he was party of it.

Right. Okay?---I can't remember the names of the interview panel.

COMMISSIONER: And what about your relationship with Ms Matchett by comparison? 10

MR COPLEY: Well, perhaps we can deal with it in segments. In September, October, November 1989 what was your relationship with Ms Matchett like?---A bit frigid, I would imagine.

And why would you imagine it to be frigid?---Well, I hadn't been appointed in the job.

No, 1989. This is - - -?---Sorry.

You're the deputy director-general and she's under you? ---September, October, yes. I inherited her. My appointment was to replace Barry Neilsen, who was retiring. 20

Yes?---And there was only the one deputy director-general position available and I applied for it, with my experience around treasury and that sort of thing. For a whole range of reasons I felt I had the expertise to undertake the job.

Yes?---And I loved it, that was it. I got the appointment. I think Ruth Matchett had her heart set on getting the job and didn't get it, I don't know. 30

Yes. So how did you end she - - -?---She was doing the job that she had, the executive director's job, when Barry Neilsen was there.

Yes?---And she retained that job.

40

Right, and so how did you get along with her in 1989, in the period between September and December 1989?---Quite well, I think. 1

How did you get along with Ian Peers in that period?---Very well. He was the conduit from the detention centres to me - went to the director-general to the minister.

Okay, and you said - - -?---Ruth was the conduit from the community programs area to me to - that sort of thing.

You said you had an excellent relationship with Alan Pettigrew?---Yes. 10

Could you look at exhibit 71, please? This is a letter addressed to Mr Pettigrew from a person called Fred Feige? ---Fred Feige.

He was a worker at the John Oxley Youth Centre?---Right.

He refers to a meeting which occurred there on 28 September 1989 and he states that he understood from yourself and Mr Nix that there have been allegations made against the manager. Do you see that in the second paragraph?---I see that, yes. 20

Do you remember seeing this letter after it obviously arrived at Mr Pettigrew's office?---I could have done.

I want you to go back to exhibit 72, which is the letter from the State Service Union dated 10 October, but before I show you that, do you remember Beryce Nelson?---Yes.

Do you remember her taking over as minister?---Yes.

If I suggested 25 September 1989 as her date of commencement would you accept that? You might have it in your diary?---No, I haven't. That could quite well be true. 30

If you accept that to be the case, then the decision to have the inquiry by Mr Pettigrew transcended the reigns of two ministers, didn't it?---Yes.

In the sense that he made the decision under Mr Sherrin and the matter continued forward under the new minister Beryce Nelson?---Yes. 40

Just have a look at exhibit 72 again. You've looked at it before?---Yes.

See in the second-last paragraph it says, "Certain of the enclosed statements contain serious allegations. For this reason they are supplied personally on the understanding

they will not be circulated widely. They are supplied for the purpose of substantiating our concerns in relation to the management of the centre"?---Yes. 1

Were you aware that when the union provided the statements they did so with the caveat that they didn't want the statements being broadcast to all and sundry?---Yes.

Okay, so you were aware of that particular expression in that letter, were you?---Yes, and there's - yes, nine letters came in with it, yes, handwritten letters. 10

Right, and I showed you some documents before, didn't I, which were largely handwritten?---Yes.

They could have been them?---Could have been.

Did that wish of the union that these letters not be circulated widely have any effect on the way you and Mr Pettigrew decided to go about establishing an inquiry or was it something you just thought, "We'll ignore that. They've given them to us now. It will all be inquired into come what may"?---Not that I'm aware of. 20

Which one aren't you aware of?---Well, I think they weren't circulated. I didn't circulate them to anyone.

No?---It was part and parcel of those - I was given the custody of - - -

Yes. I'm not saying that you circulated them yourself, but what I'm trying to find out from you is whether or not - because Mr Pettigrew is dead, isn't he?---Yes.

What I'm trying to find out from you is whether or not the union request that they not be widely circulated was as far as you were concerned a matter to be honoured or a matter to be disregarded or a matter not even discussed between you and Alan Pettigrew in dealing with this issue?---No, it would have been honoured. 30

Honoured, okay. Now, I'm going to show you exhibit 73 which is dated 17 September 1989 and you will see it's a memo to the Honourable the minister and it bears the initials, doesn't it, of Alan Pettigrew? Do you agree? ---Yes.

Did you draft that memo for Mr Pettigrew?---No. 40

Is any of the writing on the bottom of it your writing? ---No, that's Alan's writing.

Is all of that writing on the bottom Alan's writing, Alan Pettigrew's writing?---Yes, including the shorthand notes.

Can you read what that shorthand says? See, the words above it say, "Minister is very sympathetic," don't they? ---Yes. Something, "Will be able to have by next Monday."

1

So is that effectively what all those squiggles say underneath "sympathetic" and above the word - - -?---Yes. There's one I can't read.

So read it out to me again in English?---That first one has got me a bit puzzled.

Beg your pardon?---The first outline has got me a bit puzzled.

10

Right?---(indistinct).

Well, if you could just - - -?---Something, "Able to have by next Monday."

Okay?---"Will" - something.

That shorthand that you - well, those squiggles there that you say are shorthand, was that a shorthand peculiar to Alan Pettigrew or was it shorthand symbols that you were familiar with yourself?---That's Pitman shorthand.

20

It's Pitman?---Yes. I'm familiar with Pitman.

Did he sometimes write in Pitman shorthand?---Yes. You find when you've learnt a lot of shorthand - I worked with the State Reporting Bureau. You find you start writing in longhand and your brain gets ahead and you do it in shorthand.

Okay?---He was a former journalist. He had the same problem.

30

I'll get you to look at exhibit 74. This is a letter from the State Service Union to Mrs Nelson dated 18 October 1989 pointing out certain physical or staff shortcomings at the John Oxley Centre?---Yes.

Have you seen - did you see that letter in October 1989 when it came in to the minister?---I may have been shown it but I didn't - yes. Alan has made some notes here. "Staff ratio and physical" - I can't recall.

So is that your writing on there?---No, that's Alan's writing.

40

That's Alan's writing, okay. Mrs Nelson raised the subject of an inquiry into John Oxley with the cabinet in 1989, in October 1989. Did you know that?---Not really, no. She may have done.

So that would be news to you if I say that to you now?---I 1
wasn't asked to prepare a cabinet submission, if that's
what you're saying.

Well, that's where I was going. You weren't asked to
prepare one?---I can't recall that.

All right. I might just show you a document to see if you
can recall preparing this document. I don't want you to
read it out. I just want you to have a look at it
yourself?---Righto. 10

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Just have a look at that. You would agree with me, wouldn't you, Mr Nix, that that document from the subject matter must have been one done up in 1989?---Yes.

1

Yes, and it must have been done up for the use of Beryce Nelson in cabinet, mustn't it?---I'd say so, yes.

Yes. Did you type it or draft it so that it was then typed in that format?---No. I'd say the DG's typist would've typed it.

Yes, and the information that she would have put into it would have come from whom?---From Alan.

10

Okay, but not from you?---Well, I was aware of it, but I don't think I dictated it.

I know you might be aware of some of what's in it but - - -?---I can't remember dictating it.

All right. I will have that document back, thanks. See, we have gathered up lots of documents. Maybe we have gathered up too many?---It's taxing my brain. I tell you, I'm not getting any younger.

20

I'm sorry for that?---That's all right.

You see, people have claimed that there's something that's gone on in connection with all of this that isn't correct and so it's necessary to have a full and careful inquiry into everything that might be connected with it to see what people can help us with now?---Sure.

So for that reason I'm not going to show you exhibit 77. This is a document that was in government records too and it's headed "Brief for the Honourable the Minister Re Visit to John Oxley Youth Centre Thursday, 26 October 1989". I will get you just to peruse the contents of that?---Yes. Can I just look at my diary a second?

30

Okay. What I wanted to ask you was whether you caused, I suppose you would call it, piece of information to be prepared and provided for the minister?---I don't recall doing that, but I would have thought that's the sort of thing Ian Peers would've prepared. If I agreed with it all, I'd take it into the DG and gone on, but I - - -

Do you have a note in your diary of her going to John Oxley on 26 October 1989?---No.

40

Okay?---No, I haven't. All I've got is I had a 9 am meeting with Alan Pettigrew and Ian Peers, a detention centre meeting.

Sorry, what did you say?---A detention centre meeting.

Is that different from the meeting with Alan Pettigrew and Ian Peers?---No, that was the same thing. 1

Okay?---That was the subject.

Right?---9.30 I had a ministerial deputation. Now, that might have been this. This is - that's the 26th and 2 pm going to the David Lyons centre at Wacol.

Yes?---So the next day, the 27th, at 10 am I had a meeting with Alan Pettigrew and Noel Heiner. 10

We'll come to that in a second?---That's - - -

Yes, can we come to that in a second, that meeting?---Yes.

On page 3 of exhibit 77 the author of this document says that unions had raised concerns with the minister regarding quite a range of subjects but the name "Coyne" doesn't appear in that list, does it?---No.

And then Coyne may be referred to obliquely in the second-last paragraph when it talks about staff complaining and having been discriminated against and then the last paragraph says, "The director-general is initiating a process for independent investigation of these concerns"? ---Mm. 20

So you were integral. You were involved in the process of implementing an investigation to look into all of those matters there, weren't you?---Yes.

Yes, and so you met with Noel Heiner the next day, 27 October 1989?---Yes.

Was that the first occasion that you had met with Noel Heiner?---I'll just double-check. I think it may have been - wait on. 30

There's no other notation there between September 14 and October 27 to suggest you had had any contact with him prior to October 27?---That's the first date I've got Noel Heiner mentioned.

Now, how did Noel Heiner get - why was it that Noel Heiner was identified as the person to do this investigation?---I understand that Alan Pettigrew had contacted - I think Stan Deer was the chief stipendiary magistrate at the time. 40

Yes?---I'm not sure - and suggested - I'm not sure - another person do it and whoever he contact suggested Noel Heiner had been recently retired and he may be interested and he had had dealings with Children's Court matters.

Okay?---The next meeting - that was Friday the 27th. We had another meeting with him at 2 o'clock on Tuesday the 31st and I think between that first meeting and the second meeting is when we drew up terms of reference, I think.

1

Did you play an active role in drawing up the terms of reference? Did you draft them at all?---I participated in the drafting in conjunction with the director-general.

Before we come to the terms of reference I just want you to look at exhibit 78 to tell me if it is your writing that appears on the bottom right-hand side of the first page? ---Yes, it's got my name on it too.

10

Yes. What does it say?---"Info passed on to Mr Noel Heiner on 31/10." That's the second meeting we had with him, yes.

Yes, so this document which was relevant headed - this memo was done up on 30 October directed to Alan Pettigrew identifying documents considered relevant to the work of the magistrate doing the investigation at John Oxley? ---Yes.

And you actually gave Mr Heiner this document at that meeting on 31 October?---Passed on the information, yes.

20

Well, I'm asking you if what I'm saying is correct there. I'm putting that proposition to you based on the face of the document simply the things that appear on it on its face?---Yes, it's a briefing note for him.

Yes, okay. Would you look at exhibit 80, please? You'll see that it comprises a memorandum to the Honourable the Minister dated 1 November 1989?---Yes.

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But attached to that is a document headed Draft Terms of Reference for the Investigation of Complaints by Staff at John Oxley?---Yes. 1

Now, this document says - this draft term of reference says that, "The investigator is to investigate and report to the Honourable the Minister and the director-general about the following matters." Right?---Yes.

Was that your understanding, that the investigator, Mr Heiner, was to report to the minister and Alan Pettigrew and not to cabinet?---Yes. 10

We've heard evidence that - well, there's material in the documents tendered to suggest that Mr Heiner thought that he was undertaking an inquiry for cabinet or on behalf of cabinet and that when he discovered that he was apparently shocked or taken aback that he wasn't. Now, did you and Mr Pettigrew - or were you present when Mr Pettigrew had any discussions with Mr Heiner that might have conveyed to him that impression, that he was in conducting an investigation for the cabinet?---Not that I'm aware of, no. I've only got notes of two meetings we had with him, one on 27 October, I think it is, and one on the 31st. 20

Yes?---And on 31 October, that's when we showed him the terms of reference, okay, and he had a copy of the terms of reference.

Yes?---And as far as I'm aware Mr Heiner knew that the information would be conveyed to the minister; whether she chose to take you to cabinet or not was her prerogative.

Right. So as far as you were concerned he was reporting to Alan Pettigrew?---Yes. 30

And then Alan Pettigrew would - - -?---Pass it on to the minister.

On to the minister?---Yes.

If one looks through those draft terms of reference there one can't see any reference to the word sex or sexual abuse?---No.

Or child abuse or child sexual abuse?---No.

Or sexual assault or anything of that nature?---No. 40

Was it your intention - your subjective - your own intention for Mr Heiner to be out there investigating matters to do with sexual abuse?---No. Mainly investigating the validity or otherwise of the complaints that had come in.

Right?---Because he was handling those.

Is that why it's the number one item on the list of eight? 1
---Could be, yes.

Well, I'm just asking you, where these - you helped draft of this document. When things drafted in any particular order? The terms of reference, was there a hierarchy of importance in this list?---I think there would have been. We wanted to cover all bases. We provided an office for Mr Heiner and a staff member to take notes - - -

Yes, but that's getting off the point of it?---Yes, I realise that. Yes, I'd say would be - that would be in a hierarchy. 10

Okay.

COMMISSIONER: When you say "mainly for management issues", was there any other purpose other than that? You were asked by Mr Copley whether - - -?---Yes, not that I'm aware of. Complaints - - -

MR COPLEY: What was - sorry, had you finished?

COMMISSIONER: I had. Had you finished, Mr Nix?---Yes. 20

MR COPLEY: What was your view at this time when Mr Heiner was about to be appointed, your opinion about the type of manager Mr Coyne was proving to be at John Oxley; or did you even have a view about him?---I always found him very cooperative when you asked for stuff. I think he could have - he was sort of go go go. He wanted instant answers to things. I think he could be a bit - wasn't sort of involving staff in decision-making. Once he's made his decision he instructed the staff what to do.

Yes?---But overall he sort of conveyed the impression that the centre was running very well. I don't know. 30

Okay. One thing that we haven't touched upon so far today is an incident that occurred where there was an outing to the Lower Portals at Mount Barney. Do you remember that one?---Yes, do I.

Yes. Well, we'll probably have to go back to that later on today, but what investigation, if any, did you anticipate Mr Heiner would be conducting, if any, into the incident at the Lower Portals?---The police had decided all that. It was reported immediately to police that the four boys had escaped. 40

Yes?---There was allegations at the time of rape at that was proven not to be so. Some consensual sex had been involved, but the main concern was that the officers in charge of that outing hadn't kept a close eye on what the children were doing.

Yes?---That was our impression.

1

Right. So that happened in May of 1988, all right. You can take that from me?---Yes.

Was it a topic that you and/or Alan Pettigrew discussed with Noel Heiner as a matter you wanted him to look into? ---Not that I can recall. We may have done, I don't know.

Right?---But that wasn't in the terms of reference that I can recall, was it?

10

No?---No.

Did you regard these terms of reference as being ones that were done to attempt to respond to the masses the union had been raising?---In the main, yes.

Was there any - - -?---Plus resolving some staff issues at John Oxley.

Right. Well, just looking at the terms of reference and the way they're phrased, is there any term of reference there that you can identify as being one that you wanted Heiner to look into that had been worrying you concerning you and you thought: well, this is a good opportunity, I can get Heiner to look into this and this, for example? ---No, I can't remember those thought processes at all.

20

Okay. Did Alan Pettigrew ever say anything to you of that nature, that: look, the union wants an inquiry into this and that, this is a really good opportunity, George, to have a look into some other issues as well so we'll put them in the term of reference or the terms of reference. Do you recall a conversation like that?---I can't recall a conversation like that.

30

Okay?---I'm not saying it didn't occur but I just can't recall it.

Right. So would you characterise the terms of reference document as being attempting to respond to the matters raised by the State Service Union?---Yes.

Okay?---And plus trying to address some management issues at John Oxley.

And so management issues obviously at least involves the manager to some extent, don't they?---Yes. Well, that was the complaints from the union.

40

Yes, okay. Now, on the front of exhibit 80 it says, "Approved by minister, ACP"?---Yes.

(indistinct) 89?---Yes.

And that's Alan Pettigrew's writing, isn't it?---Yes. **1**

Were you present when he discussed the content of this memo with the minister?---I don't think so.

Yes, your diary might help?---No, I wasn't present then.

Okay. Now, the next exhibit to look at is exhibit 83. There's some handwriting down the bottom right-hand corner, isn't there?---Yes.

And it's addressed to Mr Nix, you?---Yes. **10**

What does it say?---"I made a few changes to your draft as you will see."

And signed by?---ACP.

And the date?---13 November.

Okay. What was Mr Pettigrew referring to there, the letter to Mr Heiner or the terms of reference?---I think it's referring to the letter. **20**

Okay?---I'd drafted the letter to start with.

Right?---The payment to Mr Heiner was coming out of my budget allocation.

30

40

Then attached to that letter of appointment of Mr Heiner are the terms of reference, aren't there?---Yes. 1

Was it your responsibility to find staff to assist Mr Heiner, do you remember?---I can't remember that. We made arrangements for a stenographer to assist him. I think she may have been employed - I don't know whether she was employed at John Oxley or not.

Would that be - - -?---The room where they did the interviews was out at John Oxley. 10

We have heard evidence from some people, actually, that they were interviewed by Mr Heiner in town. Some nominate the Children's Court building. Do you have any knowledge, direct knowledge, of that one way or the other?---No, I don't.

Was it your understanding that he was doing the interviews out at John Oxley?---John Oxley, yes.

Why did you have that understanding?---Because he'd requested accommodation out at John Oxley. 20

COMMISSIONER: And I suppose that's where the people he wanted to talk to were?---Yes, they were on - - -

They were readily available?--- - - - different shifts and that sort of thing.

MR COPLEY: So you didn't actually go and select the staff to work with Mr Heiner?---No.

Did you know Jan Cosgrove?---Jan Cosgrove. I know the name but I can't remember where she worked. 30

What about Barbara Flynn?---Yes. She was a social worker. I remember her name.

I want you to look at exhibit 86, please, and 86A. You'll see that exhibit 86 is a letter apparently signed by Alan Pettigrew. If it's not his signature speak up and tell me? ---Yes, that's his signature.

Good, to Mr L.M.J. Gillespie from the State Service Union? ---Yes.

Advising that Mr Heiner had been appointed to investigate and attached to that were the terms of reference?---Yes. 40

Did you draft that letter for Mr Pettigrew?---No.

Okay, put that one down to one side. You'll see exhibit 86A is a typewritten document that says "Dear F2" and then

attached to the back of it are the names and addresses of Gillespie, Lindeberg, Rose and Mills who were all connected with different unions?---Yes.

1

What inference can we draw from the fact that we've got exhibit 86 which appears to be in the same terms as exhibit 86A in terms of the content which is addressed to Mr Gillespie and signed by Alan Pettigrew? What can we draw from that when we look at exhibit 86A and that attachment with the list of names?---That I prepared the letter.

10

Sorry?---That I prepared the letter.

Okay. I should have just asked you that in the first place?---You've got an advantage on me. I'm relying on memory and you've got all this stuff. Yes, just looking at that I couldn't recall it, but obviously I did.

So are you meaning to convey that exhibit 86A, the first page, represents a copy of what was sent to all of the people that are listed on the second page of exhibit 86A?---Yes.

20

So therefore Lindeberg, the organiser of the Professional Officers Association, was provided with a copy of the terms of reference for the inquiry?---Yes.

There was no caveat, was there, in that letter to any of the people to whom it was addressed that they had to keep these terms of reference a secret or anything like that, did they?---No.

No, so as far as you and the government were concerned, the union people could show them to whichever number of members of their union that they cared to show them to?---Yes. We had no control over that.

30

No, okay. Thank you. I'd like you to look at exhibit 88 which is a typewritten document which has no signature on it. Did you have that document or cause that document to be prepared?---I've never seen anything like this before. No, I didn't.

Okay?---Not that I'm aware of.

To help you, what it is is a summary of the contents of each of exhibits 72B to 72J that I showed you this morning. See there's nine - - -?---There's nine - I remember there were nine letters came in.

40

Yes?---Mainly handwritten, yes.

You didn't prepare that summary document, anyway?---Not that I'm aware of.

Would you look at exhibit 91? Are you the person who whom that is addressed?---Yes. 1

It's signed by Alan Pettigrew?---Yes.

Do you remember receiving that inter-office memo from him? ---I don't remember. I remember - but I must have.

Why do you say you must have? Are you a person who accepts that if a - - -?---It's directed to me.

Are you - - -?---It's directed to me. 10

So you don't look - - -?---You're talking about 1989. I can't remember what I've done in 1989.

So you don't struggle to find your signature on the document before you will concede to me that you probably saw it, or your initials and dates and all this sort of thing?---No.

Okay, that's fair enough?---As far as I'm concerned, it's addressed to me, I must have seen the darn thing. 20

All right, fair enough. That would be common sense, really, wouldn't it, that if this comes off a government file and it's addressed to you and you were the officeholder at the time and you weren't on holidays, more likely than not you saw it. Agreed?---Yes.

Okay. Now - - -?---What's the next curve ball?

Well, not for you, but do you remember that being an issue that was worrying Alan Pettigrew, that - or was concerning Alan Pettigrew, that Noel Heiner wasn't prepared to provide these letters of complaint to Peter Coyne, or was it an issue that Peter Coyne had raised with you or Ian Peers or anyone of that nature, that he couldn't get these letters? Do you remember it being an issue?---I think it was a bit of an issue, but I wasn't involved in any discussions as such. 30

So you didn't talk with Mr Heiner about it?---I only spoke with Mr Heiner on two or three occasions, I think.

Well, we know that the first was October 27, the second was October 31?---31st, yes. 40

Was there definitely a third occasion?---I'll have to double - - -

Sorry?---I'll have to double-check.

As you go through, because you'll probably look at your diary again from time to time, if you see another occasion noted would you just interrupt and let me know?---Yes.

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Because, for example, it's one of the great mysteries about what Mr Heiner found or discovered when he was out there, and if you had a conversation with Mr Heiner at any point where he ever told you what he discovered or found you'd remember that, wouldn't you?---I would have thought so, but I can't remember having a discussion like that with anyone.

1

I'm not suggesting you did?---No.

I'm just saying that if you did you would remember it, wouldn't you?---I would have thought so. I had another meeting with him on 15 November.

10

Yes. Do you know what that was about?---No, I don't.

That was only two days after he'd got his letter of appointment, though, wasn't it?---I think so.

If you accept a document I showed you earlier, his letter of appointment was dated November 13?---Yes. I think that was mainly to discuss how he was going to submit his claims, because I had to pay it.

Right, okay?---I didn't make that note on here.

20

I'm interested to know whether or not you're the author of exhibit 93.

30

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Is that your signature at the bottom of it?---Yes, it is. 1

Good. Do you remember having that typed up and signing it?
---Vaguely.

It appears as though from that document that you had discussions with some workers from John Oxley on Friday, 8 December 1989. Do you agree?---Yes.

Does your diary record a meeting of that nature?---No.

Friday, 8 December 1989?---No. 10

So the diary doesn't record it?---No, it doesn't show me being out there.

Thinking back on it now, could this meeting have occurred in town at your office or could it have occurred with you speaking with people in a telephone hook-up or something of that nature?---I've got a note on 15 December which is the date I've got on there, "9 am Ruth re JOYC."

Sorry, read that out again, "9 am" what?---"9 am Ruth re JOYC." 20

Right?---So I'd say, as a result of the meeting with Ruth Matchett, I've done this memo.

Now, do you say that because it bears your signature and date for 15 December 1989?---Yes, I'd say so.

Okay; and it seems to be a report by you of what the workers were - the workers might have been complaining about Coyne in the past but by 8 December they're complaining about the person meant to investigate the Coyne complaints, aren't they, according to this?---Yes, it seems this - I think the way the - must've been the way the interviews were being conducted or something. 30

Yes. You say in the second-last paragraph - well, sorry, in the fourth paragraph down you express some views of your own. You say, "In my view the situation is polarising the staff"?---Yes.

You say in the third dot point it is "my" opinion that the magistrate should give you a briefing of where he is at with the inquiry?---Yes. 40

And you put forward some solutions for consideration, then you express another view in the second-last paragraph and then in the last paragraph you express the view, "The department should be seen to support management." So can I suggest to you that when you are writing a document that says, "In my view this should occur" or "In my view that should occur," it's a document that you were writing for

the benefit of somebody else to read. It wasn't just a file note you were making for yourself?---No, this is to the DG, the acting DG.

1

Well, you assert to me it's the acting DG?---Yes.

I can't read that or see that obviously on the face of the document, can I?---No.

So upon what basis do you assert that this was intended for the acting DG?---Well, I'd say it's because of my meeting at 9 am with her about John Oxley.

10

Right?---That's when I would have given in to her.

Okay. So if that's the case that you gave this to Ruth Matchett on 15 December 1989, then, if she read it, she would have been very well aware from that date that there were some problems out there in terms of how the inquiry or investigation by Mr Heiner was being conducted?---I suppose so, yes.

Going back a little bit in time, the state election was December 2?---Yes.

20

The new minister Ms Warner came on board on December 7. Do you remember that?---Yes.

And we may hear some evidence at some point as to when Ms Matchett started. Does your diary record that, started at acting director-general?---Well, on 14 December at 5 pm we had a farewell function for Alan Pettigrew.

Right?---So I would assume she either started that day or the day after, the 15th, and that's the date of that memo.

30

Okay?---I haven't got any other date in here.

Do you remember whether you went to her to discuss this issue or whether she had asked for a report from you about it?---She could've asked me for a report. I can't remember that detail.

So it's equally possible you took this to her of your own initiative or she solicited it from you?---Yes.

Where did Alan Pettigrew go? When he was farewellled, where was your understanding that he was going to go next?---I thought it was another department. I can't remember which one.

40

Right, but that would have been something you would have known in December or January of 1990. If someone had said to you, "Oh, where does Alan Pettigrew work now?" you would have known that, wouldn't you?---I would've, yes.

Yes, and there would have been - - -?---I just can't remember it now, that's all.

1

Okay; and there would have been a means of being able to contact him if he worked in another government department, wouldn't there, like the telephone?---Yes.

Do you recall in December of 1989 before you went on holidays - perhaps you can clarify. When did you go on leave in 1989? When did you start holidays?---20 December.

The 20th?---Wednesday, 20 December.

10

Between 15 December when you gave this document to Ms Matchett and the 20th when you went on leave, did Ms Matchett raise with you any questions about how or why the inquiry at John Oxley had been established?---Not that I can recall.

Okay?---See, up to when she was appointed as deputy director-general she was working on community programs. Ian Peers is the block who was involved with the detention centres.

20

Yes?---So whether she - when she was appointed as deputy director-general, I assume - and I say I only assume - she wanted to get a report from everyone as to what was happening in areas of the department that she hadn't been advised of. I might be wrong on that.

Is that the sort of thing you would have done if you had been made the acting director-general?---I would've thought so.

All right?---Otherwise how can you get your - if you've got to go and give reports to the minister on various sections of the department, if you haven't been briefed on those sections of the department, you'd be behind the eight ball, wouldn't you?

30

So you went away on the 20th?---Yes.

And did you leave the state straightaway with your caravan - - -?---Yes.

- - - or did you wait around until after Christmas?---No, on Tuesday - that night I've got on here "Packed the truck".

40

Right?---So we left that morning, the 20th.

Prior to going on holiday, had you seen any memoranda come in from Mr Coyne at John Oxley about Mr Heiner's investigations or expressing any concern, dissatisfaction, upset about it?---I can't recall that sort of detail.

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Okay. I will get you to look at exhibit 99. You will see that this is a memorandum dated 18 December 1989 and it's signed by you, isn't it?---Yes.

1

And it's addressed to the acting director-general?---Yes.

That would have been Ms Matchett?---Yes.

And it discusses a number of issues and the second-last paragraph on page 1 refers to the John Oxley magistrate's inquiry?---Yes.

10

And it says, "This matter has been the subject of a separate memo concerning the concerns I have with the present state of this inquiry"?---Yes.

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Okay?---"As set out in this - - -

1

So that is a reference to, for the record, exhibit 93. What was the nature of this document? How would you characterise this document now, number 99, which covers a broad range of topics?---I'd say that's a briefing document of my responsibilities in the department, to bring her up to speed on what's happening in various areas.

Right. Would you have been asked to provide that document, or would you have just thought: well, before I go on leave I'll whip her up a briefing note so that I don't have to hear from them when I'm on holidays?---I think she would have asked all the senior officers to give her a report.

10

Okay?---I can't remember.

All right. Okay. Now, you didn't return to work until 22 January, did you?---That's right.

Beg your pardon?---That's right.

That's right, okay. But on 23 January you wrote a memorandum to Ms Matchett, didn't you?---I don't know.

20

Diary doesn't record anything?---No.

Okay?---I don't write - had meetings and that in here, I didn't write whatever I wrote.

Okay. I'll just get you to look at exhibit 130. That bears your signature, doesn't it?---Yes.

And it starts off as a memorandum to RL Matchett, headed Issues for Consideration at John Oxley?---Yes.

30

And it says, "I refer to our discussion concerning issues to be addressed at John Oxley"?---Yes.

Do you remember now, looking at the date of the memo and knowing when you were on holidays or not on holidays, when that discussion might have occurred?---Probably the day I got back.

Do you remember what passed - or what was said between you and Ms Matchett in that discussion?---No.

You seem to be providing advice to her in that memo, don't you?---Yes.

40

Presumably that's because you were asked to provide it? ---I think so.

Do you remember any occasion when anyone at all asked you - this is in the period in January of 1990, whether you were on holidays or back at work - do you remember anyone at all

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ever asking you a question along the lines of, "Upon what basis was Noel Heiner appointed?" Or, "What power did Alan Pettigrew exercise to appoint Noel Heiner"?---I don't recall it at all. 1

Just as a matter of interest - and it might be hypothetical and someone can object if they want - but if someone had said to you in January of 1990, "Upon what basis did Alan Pettigrew appoint Mr Heiner?" "What legal basis or what power was Mr Pettigrew exercising to appoint him?" What would you have said to that issue?---I was under the impression that Alan Pettigrew had sought legal advice about the whole question, but I can't give you a hypothetical answer, I'm sorry. 10

Okay. We've heard evidence from Beryce Nelson that Mr Pettigrew obtained legal advice from a firm of solicitors, either Flower and Hart or Feez - Ms Nelson claims that Mr Pettigrew go advice from either Flower and Hart or a firm that is now known as Allens, perhaps Feez Ruthning. Do you know anything about that?---No, I don't.

So Mr Pettigrew never said to you that he was obtaining advice from private solicitors?---No, I can't recall that at all. 20

Do you ever recall an occasion when the director general Pettigrew or any deputy director general in the Family Services department obtained legal advice from anyone other than the Crown solicitor's office?---No.

Do you know if it was permissible to obtain legal advice from anyone other than the crown solicitor in those days? ---No, I don't know.

If you - - -?---I'd always - he'd always - as far as I'm concerned, always contact the crown law office. I didn't know anything about private solicitors. 30

Okay.

COMMISSIONER: When you're ready, Mr Copley.

MR COPLEY: That's probably a good enough time.

COMMISSIONER: Excellent. Quarter past 2.

THE COMMISSION ADJOURNED AT 12.14 PM UNTIL 2.15 PM 40

COMMISSION RESUMED AT 2.21 PM

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COMMISSIONER: Mr Woodford?

MR WOODFORD: Good afternoon, Mr Commissioner.

COMMISSIONER: No, it's all right. I've got something just to talk to Mr Hanger about anyway.

MR WOODFORD: Terrific.

10

COMMISSIONER: Mr Hanger, yesterday - I'm going to swap terms of reference right now. I'm moving from 3E to everything other than 3E.

MR HANGER: Yes.

COMMISSIONER: I spoke to Mr Selfridge yesterday and I said I proposed to publish the submissions.

MR HANGER: Yes.

20

COMMISSIONER: That if the department objected to that to let me know.

MR HANGER: Yes. Can I respond to that?

COMMISSIONER: Yes.

MR HANGER: I had instructions this morning. The state has got no objection to the commission publishing the submission of the department so long as it's not regarded as government policy but the submission of one department, because other departments may or may not agree with it.

30

COMMISSIONER: Yes, quite right.

MR HANGER: I said I felt sure that you would - - -

COMMISSIONER: No. Actually, I took - I didn't take it to be anything different.

MR HANGER: No.

COMMISSIONER: Also, to give you the heads up, I have a discussion paper in the throes of being published and I will be referring to the submission in that, but again, only as the position of the department.

40

MR HANGER: Yes.

COMMISSIONER: Or what the department might accept or what its position is on something rather than suggesting that it even binds the department. It's the view of the department as at the close of business on Christmas Eve 2012 and things have moved on since then in some respects, no doubt. So I bear all that in mind. 1

MR HANGER: Yes, I thank you for that. I think that's the light in which it's intended.

COMMISSIONER: Yes, and it's the light in which it's taken and will be published. All right, thanks very much, Mr Hanger. 10

MR HANGER: There are other matters that are being attended to.

COMMISSIONER: Yes.

MR HANGER: I do envisage within the next day or so having a fairly detailed statement from the crown solicitor saying that Mr O'Shea was not involved in the formation of the Heiner inquiry and that a thorough, thorough, thorough search has been made, even with misspellings of names, and nothing can be turned up. But as I say, I'm just warning you of that. We'll actually put it in writing in an affidavit from the crown solicitor himself. 20

COMMISSIONER: Okay.

MR HANGER: The other matter you raised relates to shifting money from one area to another within - - -

COMMISSIONER: Yes.

MR HANGER: I'm seeking legal opinion on that. In terms of the terms of reference, there's no reason why you can't made recommendations along those lines. I'll just find out if there's any legal objection if your terms of reference were adopted - sorry, I'll rephrase that. If your recommendations of a shunt from A to B were adopted, whether there are legal obstacles to that. 30

COMMISSIONER: Yes. I think it's just a matter of emphasis and balance.

MR HANGER: Yes. 40

COMMISSIONER: Which I don't think comes as any surprise to anybody, but I have the director-general to hear from yet and probably the under treasurer.

MR HANGER: Yes.

COMMISSIONER: They will both be dealt with in the last week of the sittings.

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MR HANGER: Yes, thank you.

1

COMMISSIONER: Thank you. Yes, Mr Copley?

MR COPLEY: Thank you, Mr Commissioner.

Mr Nix, can I suggest this to you, that on or about 8 February 1990 you had a telephone - you had a conversation with Peter Coyne and you told Mr Coyne that he had to arrange for a meeting of staff to be held at John Oxley Youth Centre and that Mr Coyne wanted to know what the meeting was about and that you, George Nix, told him that you did not know what it was about. Now, does that - can you comment on that suggestion?--On 8 February?

10

Well, on or about 8 February 1990?---I've got one here on 13 February from 10.30 to 12.30 at JOYC. I don't know what it was about, though. I can't recall that.

I'll get you to have a look, first of all - we'll come to what that 13th might be about?---All right.

I'll just get you to have a look at exhibit 146. Now, this isn't your document. You didn't write this, Mr Ian Peers wrote it?---Right.

20

It's a memorandum to the director-general and it's dated 9 February 1990. Could you have a look at the second paragraph, please? The reference to "he" is a reference to Peter Coyne. Having read that paragraph does that assist you in recalling whether you made a call or had conversations with Peter Coyne directing him to organise a meeting of staff for Tuesday?---Could have done.

Could have done?---I can't really recall.

30

Were you involved to any extent in the decision to end the Heiner inquiry?---Not that I can remember.

Were you consulted about ending the inquiry?---No, not really. I don't think so.

What about the fate of the material that Mr Heiner had gathered? Did anyone discuss with you what should become of the material Mr Heiner had gathered?---No, I'm sorry, I can't recall that either.

All right. Exhibit 146 can be returned and I'll get you to have a look at exhibit 151. The first page isn't relevant so you can just turn to the second page. This is, we've heard evidence, a cabinet submission. If you go to the last page of it you'll see that it's signed Anne Warner, 5 February 1990?---Yes.

40

It concerns two issues, the obtaining of an indemnity for Mr Heiner for his conduct of the inquiry and it also

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concerns what might be done with the material that Mr Heiner gathered. If you look on the third page the recommendation is that the government indemnify Mr Heiner, in paragraph (i) and then in paragraph (ii) that all the material collected by Mr Heiner, with the exception of material that came from official files, should be destroyed. Pages 4 to 7 are really an amplification or a longer statement of the situation leading up to those two recommendations. Did you play any part in the compilation of that submission to the cabinet?---No. I don't recall any of this at all.

1

All right. Could you look at exhibit number 151A? You may have noticed that the submission I just showed you in 151 was submission number 100 and this document I've just shown you is addressed "Honourable the minister, submission number 100". Do you see that at the top on the first page?---Yes.

10

Then it seems to set out a timeline of events leading up to what's described as a plan on the last page. The question I want to ask you is did you play any part in the compilation of that document?---No. I'm pretty certain I didn't.

20

Beg your pardon?---I'm pretty certain I didn't.

Were you involved in any discussions with anyone in the department about the wisdom or otherwise of destroying the documents Mr Heiner gathered?---No, I wasn't.

You mentioned that in your diary you attended at the John Oxley Centre on 13 February 1990?---Yes.

You were there - what times do you say you were there from, according to the diary?---10.30 till 12.30. I've got 9 am and then 10.30 to 12.30, that I was at JOYC the whole time.

30

Does the diary indicate whether you went with anyone else? ---No, it doesn't.

Does the diary indicate why you might have gone there? ---No, it doesn't.

Do you have a memory of why you might have gone there? ---No, sorry.

40

Okay. I'll get you to have a look at exhibit 154. Now, that document 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)"?---Mm.

1

Could you just have a look through the various paragraphs over those two pages?---These are both the same.

Are they?---One's 391 and one's document 16.

Yes, they are actually?---Yes.

10

Yes, sorry, it might have just been that the top of the second one wasn't photocopied properly so it was photocopied again, but having read that one page because we don't need to read both, does that help you in remembering back to that particular day because the document would tend to suggest that you were present - - -?---Yes.

- - - when Ms Matchett spoke with Mr Peter Coyne?---Yes.

Do you remember being present for such a meeting?---Vaguely I remember that, yes.

20

And there's a coincidence between the date at the top of that document and your diary, isn't there?---Yes, 13 February.

Yes. Now, do you recall on that on that date later that day, Mr Nix, being present when Ms Matchett addressed the staff, the youth workers and other staff, at the centre? ---I can't recall that.

All right. Well, I'll get you to look at exhibit 156. I'm not suggesting you were present but I'm going to ask you if you were and whether or not exhibit 156 and the contents of it revives or prompts any memories?---I haven't seen this document before but it looks to me to be a prompt sheet for the DG to address the staff and I do recall Peter Coyne coming into work in the office on a project and to report to Ian Peers and I do recall Anne Dutney being selected to be in charge of the centre whilst he was in there for that.

30

Yes, but those events might all have occurred as the weeks and months unfolded?---Could've done.

What I'm wanting to know is: having read exhibit 156, does it assist you - looking at the content of it, does it ring any bells with you that you were present for those sorts of things being said? Do you have any recollection of it? ---Not really, but I know Peter Coyne arrived into the department.

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Yes, but your diary says that you were out at John Oxley until what time?---12.30.

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12.30, okay. Now, we will have those returned, please. Would you look at exhibit 168? The first page of that has got nothing to do with you. That's a cabinet minute apparently, but if you look at the attachment, it's a cabinet memorandum and it's again concerned with indemnity or Mr Heiner and the fate of the material that Mr Heiner had gathered. You will see on page 2 it sets out various options about what might be done with the material?---Mm.

1

And then down the bottom it says in typing "Ruth Matchett" with her title and the date of "13 February 1990". We have heard evidence from Myolene Carrick that that's her signature on the document?---Yes, it is.

10

In February of 1990, did Mrs Carrick have any responsibility for youth detention centres in her role as the deputy director-general?---Not that I'm aware of. It wasn't a very pleasant place to work in February 1990, I can assure you.

What do you mean by that?---Well, it was a new regime and Ruth was giving different people different tasks to do and it quite easily cut across some of the director-general - deputy director-general's responsibilities.

20

Yes?---So, no, I don't know - I don't know the circumstances of why Myolene Carrick signed that.

No, okay, but, as far as you were aware at the time you were at the John Oxley Centre on 13 February 1990, were you still the deputy director-general who was supposed to be in charge of the youth detention centre part of Family Services?---I was.

And that's, you would say, wouldn't you, while you were out there that day?---I would think so.

30

Right. Have you seen that document before?---No, I haven't.

So you didn't play any part in its compilation?---No.

And it was never proffered to you for you to sign?---No.

40

I will just get you now to look at exhibit 180. Have you ever seen that document before?---No, I haven't. 1

So you didn't draft it?---No.

When you were working under Alan Pettigrew was there any mechanism in place to ensure that when a minister or the minister of charge of the department got briefed about some information there was a way of knowing who the provider of the information was?---Well, generally if I did the memo to Alan Pettigrew about something in my area and he wanted a cabinet submission prepared that remained with the - part of the preparation of the documents. It mightn't be the same wording but Alan used to prepare cabinet submissions for the minister, or Col Thatcher would prepare them and if I sent something up and they'd come back for me to note, that's what would happen to it. 10

See, there's nothing on exhibit 180 to indicate who prepared it, is there?---No.

Was there, when Mr Pettigrew was running the department, any mechanism in place to ascertain who prepared a document simply by looking at it without having to go say back to a file to see if there was a history of creation in the file?---I don't know. I always signed everything. If I prepared something it had my signature or initials on it somewhere. That was the done thing, as far as I knew. That was the administration followed, you know. 20

Beg your pardon?---That was the type of administration we followed.

Right?---Don't leave anyone in the dark.

Can I get you to look at exhibit 181? Again, the first page of it needn't concern you. It's a noting of a cabinet decision, but the second, third and fourth pages of the document are a cabinet submission?---Yes. 30

It can be summarised this way, that this is letting cabinet know that the state archivist had consented to the destruction of various documents that Mr Heiner had gathered and you will see that it bears the signature of Anne Warner dated 27 February 1990?---Yes.

Have you ever seen that document before?---No, I haven't. 40

Did you ever - - -?---I didn't even know stuff was to be destroyed.

But you were the deputy director-general with responsibility for youth detention centres?---That's as may be, but I was frozen out of a lot of discussions and things.

Who froze you out of discussion and things?---Ruth Matchett. 1

Do you know why that was?--Well, history speaks for itself. I didn't get my own job back, did I?

You see, we have to act on evidence and so you need to enlighten me by what you mean by that, "History speaks for itself. I didn't get my own job that"?--Well, the department was reorganised and I had responsibility for two major programs, detention centres and community programs. 10

Yes?---When the reorganisation occurred early on in the year - I can give you the date that started.

What date did that start then?---The departmental restructure commenced on 9 March 1990.

Right, yes?---That started then and then positions were later advertised and my role as deputy director-general was titled entirely different. It only had one component that I was responsible for, not the other one. The other one was put onto Myolene Carrick's area and one of hers was put onto my areas, so in actual fact we didn't have sufficient knowledge to cover both areas. Both of us were in the same boat. So when I was interviewed for the job on the - I think it was the 2nd of - yes, 2 May, a fait accompli, that I - from February to May there wasn't much - I was never involved in discussions on any of the reorganisation or what was going to happen. So literally we were frozen out by the DG on any discussions in that matter. 20

So who replaced you then as deputy director-general?---I can give you that too. Hang on. I handed over one half of my responsibilities to Lee Carpenter on 4 July. 30

Yes?---I handed over the community programs component to Jan Williams on 1 August.

COMMISSIONER: Mr Copley, who was the witness who said that he was the confidante of the director-general?

MR COPLEY: Mr Walsh.

COMMISSIONER: Mr Walsh. What was your relationship with Trevor Walsh? Was it Trevor Walsh?---Trevor Walsh. 40

Is that correct?

MR COPLEY: Trevor Walsh.

COMMISSIONER: Trevor Walsh, yes. What was your working relationship with him like?---Well, he used to come with stuff, information from the DG, wanting to - say she wanted something or anything like that. 1

Yes?---It was just a normal working relationship.

So he didn't shut you out or - - -?---No, not - no, well, he wouldn't have any control over that anyway.

Right, okay?---He was only acting on instructions. 10

Yes, fair enough.

MR COPLEY: What would your response be to a suggestion that after you left the department somebody went into your office and found the handwritten original statements that had been provided by the union people to the union to assist in the creation of the Heiner inquiry and that they were still in your office and that you had never handed them over to anybody?---I don't know. I can't give you - I can't recall that. I was asked for stuff and Trevor Walsh took it. I assume he had the lot. Whereabouts in my office was it found? 20

Well, I can't - I'll just see if I can assist you there. I'll just put the proposition as fully as it could possibly be put, so just listen?---Yes.

That you left in April 1990 and that when you left the handwritten things were found when your office was cleared out, after you left the department?---I didn't leave in April 1990. I finished work at family services on Thursday, 13 September 1990.

Was that your last day in the public service or just in that department?---Yes. No, that was the last day. 5 pm, I finished work at Family Services - not that I had any work. 30

What do you mean by that?---Well, when I was down on the first floor I've got a whole diary full of stuff here, "No work," "No work," "No work," and then I got sick of writing "No work" so I was just down there filling in time.

How old are you now?---I'm 73 on Sunday.

How old were you then in 1990 when you left?---50. 40

50. Remember we talked before about an incident at the Lower Portals?---Yes.

In May 1990 - May 1988, I said it was?---Yes.

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I'm just going to ask you some questions about that now, because back at that time you were functioning as the deputy director-general in charge of youth detention centres, weren't you, in May of 1988?---88.

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Yes?---I would've only been there about a month, I think, yes.

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All right. Well, I'll show you exhibit 242. This is a document addressed to you by name, isn't it, up the top?
---Yes.

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And it's signed by Peter Coyne at the end, isn't it?---I can't see it at the end but up the top here it's got "Peter Coyne".

Yes, just on the last page it bears Peter Coyne's signature?---I'm sorry, I've got it here now, yes.

And there is some writing below that and handwriting, isn't there?---Yes.

10

Is that your writing?---That's my writing.

Could you read it out, please?---"Submitted for your" - it's to the director-general, "Submitted for your information. I will keep you informed of the outcome of the police investigations."

Okay; and it's signed by you?---27 May 88.

So this was a report that Mr Coyne provided to you concerning the escapade and the goings on that had occurred down at Mount Barney, wasn't it?---Yes.

20

And on the front of it at the top there's the word "George" in running writing, isn't there?---Yes, it's from Alan Pettigrew.

What does it say?---"George, noted by minister and discussed. Please keep me advised of further developments."

All right. That can be returned and I will just get you to look at exhibit 246. That's a memorandum that you composed and signed to Mr Pettigrew, isn't it?---Yes.

30

And it again concerns Annette Harding?---Yes.

And down the bottom, has Alan Pettigrew written something there?---"Seen by minister ACP, 31 May 88."

Okay. I'll get you to look at exhibit 247. That's got Mr Pettigrew's signature on it, hasn't it?---Yes.

It's a memo to "the Honourable the Minister" regarding an outing where apparently four boys interfered with one of the girls?---Yes.

40

That's what it says, doesn't it?---Yes, it says that.

What does the handwriting down on the right-hand corner say?---"Full report given to minister ACP, 31/5/88," and I have noted it on the 31st.

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So you have written under Mr Pettigrew's signature "Noted G. Nix"?---Yes. 1

Right. So what would you say to the proposition that the department covered up the incident at the Mount Barney outing?---I've got full reports. I don't know what - what did we cover it up from?

I'll just positing for your suggestion this: that there are people out there who fervently believe that it was covered up. That's the word they deployed, "covered up", and I'm simply asking you in fairness to you because you were a decision-maker who wrote some memos about it at the time, how do you respond to that allegation?---I don't think it was covered up at all because the police investigated it and the girl didn't want to proceed with anything else. Full reports came in. They were sent up to the DG and onto the minister. Everything was noted during the course of everything. I just don't know who would be involved in the cover up, for want of a better term. 10

I can't assist you on that?---No.

Can you have a look at exhibit 251, please? Now, this speaks for itself. It's a media release by the Honourable Craig Sherrin MLA and even though the year isn't apparent there - it just says "March 17" - if you look further up the top, you'll see "17 '89"?---Yes. 20

So we have all proceeded on the assumption happily here that this was a media released dated March 17, 1989. Now, Mr Nix, was it part of your responsibility or Alan Pettigrew's responsibility to draft media releases for ministers in 1989?
---No. 30

At the end of this document it says "Further information Frank Jackson" with a phone number?---Yes.

Does that name mean anything to you?---He was the minister's press secretary.

For a press secretary to draft a media release dealing with issues that are occurring in a detention centre which refers to, for example, details about where children went or how old they were, is that something the press secretary would have to obtain from people in the department?---I would've thought so, but I don't know who he would've contacted for all of this. 40

Yes. Now, we only have the first page, the third page and the fourth page. The second page is missing if you look at the numbers up the top?---Yes.

But if you turn to the page numbered three, you will see about two-thirds of the way down a sentence beginning, "Mr Sherrin said the most serious charge in the article was one of rape." Do you see that?---I see that, yes. 1

Yes, "It was alleged that a 15-year-old female inmate was raped during a" - something - "RT excursion by three 14-year-old fellow inmates"?---Yes.

"The reality is" - it says - "that there was a sexual incident involving two boys and a girl during an excursion when for a matter of minutes only they were not under the immediate supervision of staff"?---Mm. 10

"As a result of our concern, all staff and all the children on the excursion were questioned. The girl did not allege rape. The girl's mother was spoken to and encouraged to talk to her daughter and to consider wasn't charges were appropriate. Neither the mother nor the girl believed charges were appropriate," and he goes on to say that the appropriate charge, if anything, would have been what he called "statutory rape". Now, reading all of that, what do you say to the proposition that that was a reference back to the incident involving Annette Harding?---It certainly would appear to be. 20

Do you have any recollection of any other girl going on an outing and being interfered with in 1988 or 1989 from a youth detention centre?---No, I don't; no.

So the inference to draw from this is that if it's a media release, this was made public to the community generally on March 17, 1989?---It would appear to, yes.

Yes. No further questions. 30

COMMISSIONER: Mr Hanger?

MR HANGER: I just have one question.

In your original statement in referring to this outing that my learned friend was asking you about you said - I haven't got it in front of me - in fact, yes, I have, "The way the staff had handled it had been abominable"?---Yes.

I take it that you're referring there not to the way the staff handled the allegations of rape but to the fact that the kids had got out of sight of the staff who took them on the picnic?---That's right. 40

That's what you're referring to?---Four boys took off and - - -

They took off?---They took off and they were located by the police.

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And that shouldn't have happened?---Should never have happened. **1**

No, no. Thank you. I have nothing further.

COMMISSIONER: Mr Keim?

MR KEIM: Yes, please, commissioner.

Mr Nix, my name is Stephen Keim. I appear for Ms Matchett in this hearing, this inquiry. I wanted to ask you, firstly, with regard to Mr Pettigrew's destination after he left Family Services. Is it your recollection that he became director-general of the department that included tourism? Do you have any recollection of that?---I know he went to another department. I can't remember which one it was. **10**

COMMISSIONER: As director-general?---As director-general, yes.

MR KEIM: Now, I wanted to ask you a question with regard to paragraph 29 of your statement which is exhibit 322? ---Yes. **20**

Have you got that in front of you?---Yes.

30

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Yes. It's a little bit difficult. You make a suggestion there that you believe that a particular letter was drafted by others and not by Mr Heiner. It's a little bit difficult from the references because they don't refer to exhibit numbers, what document you're referring to. But I'd ask, Commissioner, that the witness see exhibit 123.

1

COMMISSIONER: Certainly.

MR KEIM: Do you have exhibit 123 with you?---Yes.

That's a letter from the acting director general to Mr O'Shea. And then attached to that is a letter dated 19 January 1990 signed by N.O. Heiner and it's addressed to Ms Matchett as the acting director of the Department of Family Services and Aboriginal and Islander Affairs?---Yes.

10

Is that the document that you're referring to as not having been written by Mr Heiner?---I think it could be. That's the first time I've ever seen it, was when I was interviewed on 18 December.

Sorry?---That's the first time I saw it, was on 18 December.

20

Okay?---2012.

And in paragraph 29 you refer to - an earlier statement of yours refers to attachments and you say that in the earlier statement:

Before and in my role as a deputy director general in charge it would have been protocol for me to get an opportunity to provide to any reply, input to a reply.

30

And it's from that that you draw a conclusion that this letter was drafted by others and not by Noel Heiner. I don't quite understand what you're saying about protocol being the basis for your suggestion that Mr Heiner hadn't written his own letter. Are you able to elucidate?---The letter, as I read the letter, was slightly at variance to what the discussions with Mr Heiner were and the terms of reference, and he knew exactly what they were. I think this is - I just don't - it doesn't seem like Noel Heiner speak to me.

Okay. So if I can just paraphrase your answer - and correct me if I'm wrong - you're saying that your recollection about the discussions that led to the setting up of Mr Heiner's review is different to Mr Heiner's recording of that in the letter by Mr Heiner. Is that what you're saying? And therefore you draw from that the conclusion that somebody else must have written it?---Yes. I'm probably incorrect, but that was my opinion.

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NIX, G.E. XXN

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Yes, and you say that you also draw the conclusion from that basis - from that foundation - that it was Ms Matchett who wrote Mr Heiner's letter?---I assume it would be the only one that had the information in Mr Heiner's letter.

1

And that's the only basis - that's the whole of the basis on which you make that suggestion. Is that correct?---Part of the basis, I wouldn't say it was the whole of the basis.

What other basis are you making that suggestion?---It just didn't read to me - when I read it the first time back in December - that he'd been the author of that letter. There's so much detail there that he wouldn't have been aware of.

10

So you thought it was different from Mr Heiner's style and that he may not have been aware of some of the content? ---Yes.

Okay. Just excuse me for a moment, Commissioner, I've been handed a document.

Mr Nix, can I formally put a couple of propositions to you for you to comment on. The first is that Ms Matchett didn't write the Heiner letter of 19 January 1990. Would you like to comment on that in any way?---You could be quite correct.

20

Okay. Secondly, that - - -

COMMISSIONER: Sorry, how would you know either way? ---I wouldn't.

MR KEIM: And secondly, can I put to you that as Ms Matchett says in the letter to Mr O'Shea - can you just go up to the top of the exhibit that you were just looking at, exhibit 123, the letter to Mr O'Shea. Can you see that there?---Yes.

30

And in that letter Ms Matchett says:

I wish to advise that this morning I had discussions with Mr N.O. Heiner in relation to the investigation into certain staff complaints at the John Oxley Youth Centre. As the result of these discussions at 11.30 am today Mr Heiner hand-delivered to me the attached letter.

40

So the proposition I want to put to you is that Mr Heiner hand-delivered that letter signed by him to Ms Matchett at the time described in that letter?---It could well be the case.

They're the only questions I have, Commissioner.

COMMISSIONER: Is that a controversial issue? Is that controversial now? 1

MR COPLEY: Well, I'm going to tender in a minute - because it's my fault, I forgot to tender it - the statement that Mr Nix gave to somebody in 1988. It was really in his new statement a picking up of that old statement that this got addressed. My understanding of what Mr Nix is attempting to convey is because Mr Heiner's assertions in that letter differ so greatly from mine about how the inquiry came to be set up, in terms of whether it was a cabinet inquiry or not, one theory I have for that is that he didn't in fact draft the letter, that maybe Ms Matchett drafted it for him and he just signed it. 10

COMMISSIONER: I see.

MR COPLEY: That's as I understand it, it's just a speculative opinion that Mr Nix has offered.

COMMISSIONER: Okay. No, that's fine, thank you.

MR COPLEY: That's all I understand it to be. 20

You've heard what I've said to the Commissioner?---Yes.

You're not asserting as a fact that Noel Heiner did not type out that letter, are you?---No.

If Ms Matchett swears that she did not type it, but that he handed it to her signed, you wouldn't dispute that, would you?---No.

But what you do dispute is Mr Heiner's understanding of how he had come to be appointed. Is that the point?---Yes. He seems to go for a bit of explanation there of what he had to do and what he didn't have to do. 30

40

As far as I was aware he was following the terms of reference and his inquiry, as far as I knew, was undertaken out at John Oxley in a separate room and he received information from staff and then I wasn't involved in any of this stuff at all. Just the wording of it just pricked up my eyes, that's all.

1

Okay?---It could well have been. I don't think Mr Heiner physically typed it.

No, well, I mean, he probably didn't. Probably some girl did?---Yes.

10

But he gave her the information, is the point?---Yes.

That's the position that my learned friend is putting to you, that Ms Matchett didn't compose it or dictate it? ---Yes. I wouldn't know.

No, all right.

COMMISSIONER: Okay, thanks. Mr Bosscher, I skipped you - Mr Harris, I skipped you too.

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MR HARRIS: Thank you, your Honour. I won't be - commissioner.

Mr Nix, I just want to ask you a couple of quick questions with respect to paragraph 8 of your affidavit. You say there towards the bottom of paragraph 8, "The focus of our level of memory was the fact that the outing had to result in failure because the kids had not been under staff supervision at all times." Was it a policy within the department that children had to be under supervision at all times?---It was my understanding that if a child was in a detention centre and was taken out on a picnic or whatever sort of occurred, under supervision of three or four staff members, then, yes, the child had to be under - to my understanding, they had to be under supervision at all times, just so - - -

30

Do you recall if there were any policies, any manuals, any written documentation that outlined this to the staff? ---No, I don't.

Can I just move on - - -?---From my point of view it's just commonsense. I might be a bit old-fashioned.

40

Can I just move on to the - as I read your paragraph there, you were very disappointed, and they're my words, with the staff in respect of that for allowing the children to abscond. Is that correct?---Yes. They should never have - came to that. No-one should have escaped, no-one should have been out of sight of staff, but obviously were if they could get away so, yes.

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The staff contacted I believe it was the Rathdowney police, and they attended shortly after?---Yes. 1

The children were collected, as the - or the four abscondees were collected. That was on the 25th of - sorry, yes, 24 May when that happened. That was in 1988? ---Right.

So the abscondees - the matter was reported to the police, basically immediately, wasn't it?---Yes.

As you understand it?---They were quickly recovered. 10

Were you aware that with respect to the allegations made by Annette that the police did not attend until 28 May 1988? ---Did not attend who?

Did not attend to the John Oxley Youth Centre?---I see. What, to interview staff or something?

No, to interview Annette?---No, I'm not aware of that.

I have no further questions, commissioner. 20

COMMISSIONER: Thank you. Mr Bosscher?

MR BOSSCHER: Thank you, commissioner.

Mr Nix, when it was decided to have the inquiry which later became known as the Heiner inquiry, as I understand your evidence a meeting took place with Mr Heiner, yourself and Mr Pettigrew?---That's right.

Is that the first time - I believe it was October 89 - that you'd met Mr Heiner?---Yes. 30

The purpose of that meeting, as I understand your evidence, was to discuss the inquiry that was to occur and the terms of reference of that inquiry?---Yes.

At that time the terms of reference themselves hadn't been finalised?---No.

Part of the discussion between Mr Pettigrew and Mr Heiner was to put some meat on those bones, to understand what it is he was going to be doing?---Yes.

You were present for the course of that meeting?---Yes. 40

According to your statement you took notes?---Yes.

I also note from your statement that early in your career you were at the State Reporting Bureau?---Yes.

And were proficient in shorthand?---I can still write it, yes.

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NIX, G.E. XXN

So at the time that you were taking these types of notes were you taking them verbatim in shorthand?---Not really, just headings. I may have put, "Heiner suggested so and so," "Pettigrew suggested so and so," and then any decision that was made on a term of reference.

1

So far as this very first meeting was concerned discussing the establishment of this inquiry and the role that Mr Heiner was to play, the Annette Harding incident came up?---I believe so.

Things discussed at that meeting were the terms of reference, the fact that it was going to be billed to your department?---My program, yes.

10

Your program. So you were going to have the fiscal burden and/or responsibility for it?---Yes.

According to your statement, as I read it, "During this conversation I remember the Harding incident was mentioned because four kids had escaped and the staff had done the wrong thing"?---Yes.

So that's your recollection now, that at this very first meeting Harding was a topic of conversation?---It was part of the conversation. It wasn't the sole topic.

20

No, a topic?---A topic, yes.

You also go on to say in that same paragraph, "This incident was often raised as it was an example of a major breach of staff responsibility and trust, taking kids out on a picnic and four of them absconding"?---Yes.

In what type of circumstances would it have been raised otherwise, in what other type of meetings, given it was often raised?---Raised in senior executive management team meetings held on a Monday morning where we discussed our various programs and what has happened in the recent past, how we could go about things not recurring, things like that.

30

So it was a little bit of - - -?---I'm not saying often raised - it wouldn't be often - wouldn't be raised on a weekly basis or a monthly basis. It was raised two or three times, yes.

It was a little bit of a case study of how badly things could go wrong if the supervision wasn't provided to inmates when they were on an excursion, for example?---I suppose you could term it as that, yes.

40

It's the only incident that you recall involving any suggestion of sexual abuse or sexual activity amongst inmates. Is that correct?---That's the only one I've ever heard of.

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NIX, G.E. REXN

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So it's one that's obviously stuck in your mind because it's a little bit unique?---Yes, partly that. We had escapes from Westbrook as well but there was no sexual activity involved. 1

No, but there are two issues with the lack of supervision that occurred on that day. One is the fact that four people absconded, which is obviously a serious matter, and the second being that there was a suggestion or an allegation of at least sexual activity and possibly a sexual offence?---There were allegations of that, yes. 10

It was used, I take it, as an example, or given to Mr Heiner as an example of the management problems that were occurring at John Oxley?---I suppose you could go - draw the long bow on that, yes, you could.

For other purpose would it have been raised with Mr Heiner at that first meeting?---Well, it was just to apprise him of some of the things that had occurred in the recent past that may need clarification.

So something that he might want to have a look at?---Yes. Well, question the staff, I guess. 20

Do you recall any other specific incidents being raised with Mr Heiner similar to the Harding matter or similar to staff issues at that first meeting?---No.

So it was, to your recollection, only the Harding matter that was raised?---There were other matters raised but it wasn't - nothing of a sexual nature.

Your notes from that original meeting with Mr Heiner and subsequent meetings, were they contained in that file that you referred to that was locked in your office?---Yes. The notes were in shorthand notebooks. 30

Sorry?---The notes were in shorthand notebooks.

So your notes of that conversation with Mr Heiner and subsequent notes of conversations relevant to his inquiry were kept in that folder?---Yes, I believe so.

They wouldn't have been kept anywhere else?---No. I was instructed to keep them isolated and they weren't for general distribution. 40

What other documents are in that particular folder other than the letters of complaint that Mr Copley showed you earlier that you recall?---I can't recall any other documents. I can't recall any specific documents. 1

There may have been other documents but with the passing of time you don't remember?---No, I don't remember.

So at least we know your notebooks were in there or your notes were in there and the original complaint documents? ---Yes, I believe so. 10

And Mr Pettigrew tasked you specifically to keep them secure?---Yes.

To keep the contents of them confidential?---Yes.

And to ensure that the information in there wasn't spread around the department?---Yes.

Did he give you a reason as to why that information was so confidential?---I'd worked in public service departments for many years and water-cooler conversations and things like that - if someone lets something slip, suddenly it's blown out of all proportion. He didn't want anything like that happening in the department - in the chief office of the department anything like that happening. 20

As I understand your evidence, once you handed that folder to Mr Walsh, it was never seen again from - - -?---I've never seen it again.

When the Harding incident occurred, you received a report in relation to it?---Yes.

And then you took that to the director-general?---Yes, I gave it to him. 30

And presumably it went to the minister at least for his information?---Yes.

Were any of the staff who attended on that inquiry disciplined in any way?---The Heiner inquiry?

No, who attended upon the outing.

MR COPLEY: You said "inquiry". 40

MR BOSSCHER: Apologies, I did say "inquiry", who attended at the outing where the Harding incident occurred. Were any of them disciplined in any way?---I do not know that.

You're not aware of that ever occurring?---No.

Was that one of the issues that Heiner was to look into?
---I don't know about that. If they had been disciplined
in any way by Coyne or someone, I should have received a
memo on it and I can't recall any memo coming through to
that effect.

1

Mr Coyne reported to you, didn't he?---Yes, through
Mr Peers.

You described the staff behaviour on that particular day as
abominable?---Yes, that's my word.

10

Allowing inmates to be unsupervised for the incident to
occur, the sexual incident, be it an offence or otherwise?
---Yes.

And obviously allowing four inmates to escape?---Yes.

You didn't direct that any disciplinary measures be taken
against any of those staff members?---No.

Would that be your role to do that?---Not really.

Thank you, commissioner.

20

COMMISSIONER: Thank you. Mr Copley?

MR COPLEY: Would you just have a look at this document,
please? Is that a photocopy of a statement that you
provided apparently on 28 May 1998?---Yes.

I think you will see the date at the end?---Yes.

And you will see that it was taken and the signature
witnessed by someone called G.L.W. Moss?---Yes.

30

Who did you understand him to be at that time?---He was a
fellow that interviewed me in relation to a senate inquiry
concerning a grievance, I think it was. Just excuse me.

Sure?---It's the select committee on the Lindeberg
grievance.

Right?---He was - I had to report to an office in George
Street somewhere and gave that statement and he was - at
that time he was the executive director of the Enterprise
Council in Sydney, Mr G. Moss.

40

Right?---I've just got a letter here from - - -

Do you know what that organisation did?---No, I don't.

And was your understanding when you gave that statement
that it was going to be used in a senate - - -?---Senate
inquiry, yes.

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NIX, G.E. XXN
REXN

50

All right?---The Lindeberg grievance inquiry. 1

Yes. Mr Commissioner, in the light of that evidence I won't tender that document.

COMMISSIONER: All right.

MR COPLEY: May Mr Nix be excused?

COMMISSIONER: Yes.

Mr Nix, thanks very much for your time. We appreciate it? 10
---Thank you very much, commissioner.

You are formally excused from your obligations under the summons.

WITNESS WITHDREW

COMMISSIONER: Yes, Mr Copley?

MR COPLEY: I call Ruth Matchett.

MATCHETT, RUTH sworn: 20

ASSOCIATE: For recording purposes please state your full name and your occupation?---My full name is Ruth Matchett and my occupation is retired.

Please be seated.

COMMISSIONER: Good afternoon, Ms Matchett?---Good afternoon, commissioner.

Welcome?---Thank you. 30

Yes, Mr Copley?

MR COPLEY: Thank you.

Ms Matchett, prior to the state election in 1989 you were an officer of the Department Family Services?---Yes.

And in what capacity in the period, say, October-November 1989 were you employed?---In October of 1989 I was the executive directory, community support. From, I think it was, 31 October 1989 I was offline assisting the then minister Beryce Nelson in the establishment of a women's policy unit and I worked on that task until 1 December 1989. 40

Right?---After the election on 2 December I resumed my position as executive director, community support.

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NIX, G.E. REXN
MATCHETT, R. XN

All right; and did you have to report up to a deputy director-general in that role?---In the period I was offline I reported to the chief executive. In my usual position of executive director, community support I reported to the deputy director-general, community and youth support.

1

Right; and that was?---George Nix.

Okay. Now, you became the acting director-general of the department, didn't you?---I did.

10

All right. Now, what were the circumstances in which that occurred and when did that occur?---That occurred on 11 December 1989 and the circumstances were that there had been a state election and a new government had come into office and I received a telephone call from Erik Finger who was the director-general of the Department of Premier's who asked me would I be prepared to act in the position of director-general of what was to be a newly formed department.

And you consented to do so?---I agreed.

20

Now, had this man Erik Finger - had he been the director-general in Premier's before the election?---Yes, he was.

So he carried on?---He did.

Okay; and Mr Pettigrew had been the director-general before the election in your department, hadn't he?---In the former Department Family Services.

All right. We might, if it's all the same to you, always just call it Family Services because we probably all know which department it is but - - -?-----Well, there's a slight distinction because prior to the election it was the Department of Family Services and after the election it amalgamated two departments and it amalgamated the Department of Aboriginal and Islanders Advancement and the Bureau of Ethnic Affairs with the former Department of Family Services. So it wasn't like for like.

30

40

50

No, but at least at this much, when Pettigrew left did you go into the room he occupied?---When he left, yes. 1

Okay?---And the other chief executive, Leo Pit from the Department of Aboriginal and Islander Affairs, he was in another building and then he reported to me too.

All right. So you began work, then, on what, Monday, 11 December 1989?---Yes, I did, yes.

Okay. And then you continued in the role of acting director general for some period of time?---I did. 10

And eventually did you become the director general?---I did.

Okay. And when was that?---I think that that was in June 1990.

Approximately will do. Okay, June 1990. Now, before you became the acting director general had you ever met a fellow called Peter Coyne?---Yes.

What about a lady called Barbara Flynn?---Yes. 20

Had you been her superior at some point?---I was her supervisor. We worked together in court services.

Okay?---And I knew Peter Coyne because he was the area manager of the Ipswich office, I think.

Right. Have you had anything to do with him before he became acting director general, in his next job as the general manager or manager, rather, of the John Oxley Youth Centre?---No. 30

Okay. So prior to becoming the acting director general did you know anything of an investigation that had been commenced into D John Oxley Youth Centre?---Yes.

What did you know of it?---I attended a senior executive management team meeting where it was mentioned that there was going to be an investigation of issues at the detention centre, and that was basically the extent of my knowledge, because at that time I was off doing the women's policy unit.

So you weren't consulted on how the inquiry or investigation was to be set up or how was to be conducted or anything of that nature?---No. 40

See, I'm going to suggest to you that very soon after you became acting director general you would have become much more aware of the investigation because of some memoranda that was sent to you by Mr Coyne and Mr Nix. Does that ring any bells?---I'd have to be shown something.

13/2/13

MATCHETT, R. XN

Okay. All right. Well, I'll show you exhibit 99 first?
---Thank you.

1

George Nix said this morning that he indeed signed that document which is addressed to you and it was part of, as he seemed to recall, a briefing that you would have required so that you understood what was going on all across the department. You'll see on page one of it, the second paragraph from the bottom, he refers to a magisterial inquiry at John Oxley and he said:

This matter has been the subject of a separate memo concerning the concerns I have with the present state of this inquiry.

10

And he's given evidence that that is a reference to another document which we call exhibit 93, so I'll get you to look at that as well?---Thank you.

So if you just want to take a moment to have a read through that?---Yes.

Now, do you have a recollection now, having seen both of those documents, of being made aware of the fact that there was an inquiry going on and that there were concerns about how was being conducted as early as 15 December 1989?---No.

20

See, George Nix said this morning that even though the meeting that he's referring to in exhibit 93 occurred on 8 December 1989, he made it the subject of a memo to you which - - -?---Yes, but this isn't a memo to me, this is notes of a discussion with principal youth workers and senior youth workers at John Oxley Youth Centre on Friday, 8 December. There's no evidence that that's been given to me.

30

Well, there's no evidence on the face of the document, but see, I didn't say that; I said the evidence of George Nix was that he'd made it the subject of a memo to you?---I can't comment on that.

And that that's the memo that he gave you. And he opened at his diary from 1989 and said that he had in there a meeting with you but at JOYC?---I haven't seen this memo. If that's his memo, I haven't seen it. That one page thing, I haven't seen it.

Never seen that before?---No.

40

But what about exhibit 99, have you seen that before?---I have no independent recollection of that document. Usually when I'd note a document I'll initial it and the majority of documents that come to me had a stamp on them that's received in the office of the director-general.

Right?---And that this document doesn't have that. I see at the bottom of page 2 it says, "This list is in accordance with the request made by you at SEMT," which is the senior management team.

1

Yes?---So, you know, he may well have prepared for that purpose; whether or not I received it, I can't tell you. I've got no recollection of it.

Okay, because if you had have received it you would have been interested to know, wouldn't you, what he was referring to in the second last paragraph on page 1? ---Well, I was aware that there was an inquiry going on out there.

10

Yes?---I would have been interested in the terminology "magisterial inquiry".

But you would have been interested to see the separate memo concerning - - -?---Yes.

- - - setting out his concerns, wouldn't you?---Yes. And that's why I didn't - I have no recollection of seeing this. I wasn't in a position of chasing down the other material.

20

Okay. Now, I'll get you to have a look at exhibit 18 because this is the memo that I had in mind before when I was suggesting to you would have been aware there were concerns about this coming from John Oxley itself. This is the memo that that suggestion is based on. And whilst it's been fetched I can tell you that it is addressed to R. Matchett, acting director general, and it is signed by - whilst we are looking for it here - it is signed by P. Coyne.

30

MR: I think you said 18. You meant 98?

MR COPLEY: Did I say 18? I'm sorry; 98; wrong number. It's dated 18 December. Now, just have a flick through that?---Yes.

Did you see that before Christmas time in 1989?---Not that I recollect. I can't recollect having seen that at that particular time. Again, I haven't got my initials on it; again, it's not date stamped received in the office of the director general.

40

I see. Do you recognise the handwriting on page 4 of it on the right-hand side?---Not particularly, no.

So it's not your handwriting?---No, it's not mine.

1

Is it Trevor Walsh's?---No, I don't think so.

Now, prior to Christmas of 1989, assuming the public service shut down on Christmas Eve, you were there from 11 December to 24 December, right?---Mm'hm.

So who was in the office of the director-general in that period of time besides you in that time frame?---I was there.

10

Yes?---There were one or two stenographers. For a period of time Col Thatcher was there. We're talking on the seventh floor, are we?

No, I'm talking about something called the "office of the director-general"?---Well, in the office of the director-general there was me and then outside - at that time outside my office there would've been a couple of stenographers and that probably would've been about it because - there was reason. It was because when Alan Pettigrew left, he had to set up a department from scratch. They had, you know, nothing and so at least two of the executive officers and one of the stenographers went with Alan.

20

All right?---So there weren't very many people around at that time.

I would like you to look at exhibit 101. Now, this is a memo dated 2 January 1990 by the acting deputy director-general Ian Peers to the acting director-general of the department. Now, if we look at the terms of the actual memorandum addressed to you, do you recall seeing that on or about 2 January 1990?---No, I don't recall seeing it at that time.

30

But do you dispute that you must have seen it or that you would have seen it?---I didn't see it at that time.

When did you see it?---I saw this document, I think, years later when a submission, I think, was being prepared to one of the senate inquiries.

Right?---That was the first time I'd ever seen this document.

40

But the way this document is composed it reads as if the writer is telling you something that you had asked or wanted to know. Would you agree with that?---Not particularly, no. It says, "Attached please find the following."

That's right, and he itemises out five things and then he says his understanding of the sequence of events is this and then he says, "Mr Coyne has been given an interview time for the 12 January. This will then be the end of the interview process and a report will have to be made to the director-general." So what I'm suggesting to you is that this is a document that you must have solicited from Ian Peers?---No, I didn't solicit it from him at all and, as I said to you before, I didn't see it at the time.

1

So you can't assist at all as to how or why he came to write it?---No.

10

Well, by 4 January 1990 or 5 January 1990, did you know that there was something wrong with that inquiry out at John Oxley?---I would've started probably around - from my recollection, I was clearer around the middle of January because I know - I very clearly remember meeting with Peter Coyne and I think that was around 10 January and it was at that time that I became very concerned about how the inquiry was operating.

Can I get you to have a look at exhibit 102, please?
---Thank you.

20

That's a memo addressed to you?---Yes.

From Lyn Draper?---Yes.

Dated 4 January 1990?---Mm.

Now, you have seen that?---Yes; yes, and I can remember back. She was wanting to cancel the appointment that she'd already made.

All right, and you saw that, would you agree, on or about 4 January?---Yes.

30

And how do you know that?---Because I've signed it at the top there.

So is that your signature with the words "5/1/90" underneath?---It is, yes, and it's also been stamped received. In that instance it looks as though it's stamped and received in the records.

So she's telling you here that she's got this appointment with the magistrate on 10 January?---Mm.

40

And she wants to cancel it?---Yes.

Well, as a result of receiving this, did you cause any inquiries to be made as to what exactly she was referring to and why she wanted to cancel it?---I can't recall what

next happened but I think that Mr Heiner asked, "Why was she not wanting to attend the meeting?" something like that. 1

Yes?---Something else happened there. I can remember that.

Had you ever met Mr Heiner at this point in time?---I think I might have met Mr Heiner at the farewell drinks for Viv Gillingwater who was the Children's Court magistrate which would've been - I don't know. I would've thought it was a couple of years before. 10

Okay. I'll get you to have a look at exhibit 106?
---Thank you.

Now, that's addressed to "Ruth". Can we assume that's you?
---Yes.

And it's from "Wendy"?---Yes.

Can you help us with a surname?---Whose surname, Wendy's?

Yes?---I can't remember her surname. 20

Okay, but do you remember - - -?---I'm sorry, it's 23 years ago.

That's all right?---I can't remember it, but I know who she is.

That's all right. So there was a Wendy?---Yes.

You did know a Wendy working in Family Services close to you then?---Yes, yes, yes.

Okay?---I can't remember her surname. 30

It seems to be sort of a note, doesn't it, that at 9.10 am on that date 11 January 1990 Peter Coyne phoned to say he had sent you some correspondence but you hadn't replied and that he had to go to the inquiry "today" without being provided with information and he would like his letters responded to. So you would have seen that, wouldn't you, on 11 January?---Yes, yes, but I think - correct me, you'll know the dates better than me, but I thought that I met with him on the 11th, or did I meet with him on the 12th? I can't remember. 40

I can't answer your questions; I can only ask them.
All right?---Would you like me to look at my diary?

If you brought a diary and you can help us, yes, you can do that?---I met with him at 5.30 on that day, January 11.

On January 11, all right. Well, this is on the morning of January 11 that this file note is made by Wendy?---Mm.

13/2/13

MATCHETT, R. XN

You would have seen that, wouldn't you?---She would've told me. 1

All right?---I mightn't have seen the file note. She would've told me.

So did you then take some steps to find out what on earth he was talking about in terms of written correspondence that had gone unanswered?---I may have, but I also knew that I was going to be meeting with him that afternoon so I thought I would've talked to him about it then. 10

Well, in preparation for that meeting that afternoon, did you cause some inquiries to be made about where this correspondence had gone that he sent?---Not that I can recall.

All right. Now, where did the meeting with Mr Coyne take place?---It took place in my office.

How was that arranged?---Somebody would've rung him up. One of the secretaries would've rung him up and said, you know, "This is the time. Do you want to come?" 20

Yes?---I know he had been ringing up a lot at that time so, yes, they would've rung him back and said, "Here's the time."

See, on this morning all he wants is his correspondence answered. Did he make some other call later that day saying he actually wanted to have a meeting?---No, I thought he'd rung prior to that wanting a meeting.

Right?---I thought that meeting had been set up for quite some time. 30

Does your diary assist on anything like that?---No.

No, okay. Now, does the diary tell you what happened at the meeting?---No.

Could you have a look at this document here?---Thank you. 1

Is that your handwriting?---Yes, that's my handwriting.

Does it have your initials at the bottom?---Yes.

It's dated - can you help me with the date down the bottom?
---Well, I think it's dated 11/2/1990.

Right, but it's not referring to an incident that occurred that day, is it?---No, it's referring to the meeting I had with him on the 12th of the 1st, yes, so I must have made that note later. 10

Could you have made it on or about 11 February 1990?
---Probably.

So it's not a contemporaneous - - -?---No, no attempt to be contemporaneous. The interview went for quite some time.

Right?---The discussion went for quite some time.

If this note is accurate, the meeting with Mr Coyne actually occurred on 12 January 1990?---Well, that's - - - 20

Just check your diary?---That's weird. The diary's got it as the 11th.

Yes?---Because on the 12th I was meeting with somebody else at that time.

Okay?---Perhaps it might be that just the dates were wrong.

All right. Well, there's no doubt in your mind at least that you had a meeting with Peter Coyne one evening?---One afternoon. 30

Or afternoon then, and it was at your office in town?---It was, yes.

Who attended the meeting besides you and him?---Well, I can see from these notes here that Trevor Walsh did, but when I was interviewed by the police officers last week I couldn't remember there being anybody else there. But if I've got that note there that Trevor was there, Trevor probably was there.

Are you able to read out to us what you've written down here about the meeting?---Yes. "Met with Peter Coyne (in the presence of Trevor Walsh) re his concerns that when he appeared before Mr Heiner it was put to him that he had had a sexual relationship with [REDACTED] which he denied. Discussed matter with Coyne and gave him personal advice." 40

Now, what personal advice did you give him, because this was now after his meeting with Mr Heiner. What personal advice did you give him?---Well, one of the things I said to him was that it wasn't any concern to me about people having sexual relationships with other people in the workplace provided that they weren't having sexual relationships with the children.

1

Right?---I can remember saying that to him.

COMMISSIONER: Was it an uninvestigated, unsubstantiated allegation?---Well, he told me - - -

10

Well, no, it doesn't matter - - -?--- - - - that Mr Heiner had - - -

No, doesn't matter?---He told me that - - -

It doesn't matter.

MR COPLEY: So you allayed his concerns about that sort of issue being a matter that you'd hold against him or anything?---No.

20

Fair enough. What other advice did you give him?---I could see that he was very distressed and he was very emotional and I told him that I would have a look at how the inquiry was established and what was happening and what the processes were going to be.

Yes?---I was concerned myself about what was happening if what he told me was in fact correct.

Okay, and so what step or steps did you take to look into this inquiry?---I asked to be given the papers establishing the inquiry and appointing Mr Heiner.

30

All right?---I was given certain documents, I remember.

Could I get you just to go back to exhibit 101? If you turn past the first two pages you'll agree there that the first document is headed attachment number 1?---Yes.

Amongst other things, it itemises out the concerns the State Service Union had and in the last paragraph it records that the director-general had decided there would be an investigation?---Yes.

40

So that document, if you'd seen that, would have given you some idea as to what the genesis of the inquiry was?---Yes, that's right. I think I saw that document but not attached to this memo.

Then in the letters that are attached following there seem to be letters supportive of Mr Coyne's management, don't they?---Yes. I can't remember them, no.

13/2/13

MATCHETT, R. XN

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Could I just get you to look at exhibit 72B to 72J? Have you seen these documents before?---No. No, I've never seen them. No, I haven't seen them. No. No, I haven't seen that one either. No. No, I haven't seen them.

1

I'll just show you the last one?---No, I haven't seen anything like that.

Okay. Well, you see, we've heard evidence that they are the letters of complaint that members of the State Service Union provided - - -?---The original letters?

10

Yes, that the members of the State Service Union provided through Ms Walker to Mr Pettigrew to justify and to bolster their argument that there needed to be an investigation. Have you never, ever seen those before?---No.

So they weren't shown to you when you started making investigations into what was going on about this?---No.

Did you ask for those documents at any point?---I was under the impression that Mr Heiner had those documents at that time.

20

I see?---The only time I ever became aware of them being anywhere other than with Mr Heiner was when they were located, you know, some time down the track, and then that led to another series of events.

Didn't you see them when they were located some time down the track?---No.

Sorry?---No, I didn't.

You didn't look at them, want to view them?---No, I didn't.

30

Why wouldn't you have wanted to have a look at them? ---Because I didn't want to be biasing myself given the differing opinions amongst staff within the department.

In that letter, exhibit 101, which we'll give back to you, in the paragraph numbered 5 on the first page, it says, "A file compiled by Mr Nix, including the original letters of complaint." Do you see that?---Yes, I do.

There's an asterisk beside that, and if you turn over the page there's a handwritten note, "The folder has come to light after the preparation of the memo. Mr Nix phoned from Adelaide and was able to locate it"?---Yes.

40

So what I'm suggesting to you is that somebody who had something to do with this memorandum was able to locate the original letters of complaint in January of 1990 when Mr Nix was in South Australia. Do you understand?---Yes.

I'm suggesting to you that those letters of complaint and this memorandum simply must have been provided to you in January 1990?---Well, I'm telling you that they weren't and I have absolutely no recollection of ever seeing those letters. I have no recollection at all of ever having received this document at this time.

1

Did you have a good relationship with Ian Peers?---Yes. He and I had offices opposite each other.

Did you find him to be a dependable and trustworthy man? ---I thought so.

10

At that time?---At that time.

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Nothing has happened since to change your impression, has it?---Well, I haven't had a lot of contact with him in recent years. 1

So you've got no reason therefore to assume that your character assessment of him back then should be any different now?---No. Nor do I have any doubt in my own mind that I did not see this letter, nor did I see those original letters of complaint at that time.

Right?---I'm very clear in my mind. 10

Okay. Now, I'll just get you to keep turning through that exhibit because you'll get to, eventually, a letter from Alan Pettigrew to Mr Heiner. It's got Mr Heiner's home address blocked out and it's dated 13 November 1989. Do you have that one there?---I do. I have in front of me.

All right. Now, did you see that letter after meeting with Peter Coyne or in early January 1990?---I don't know whether I saw that then but I certainly saw at around that time.

Okay. What about attachment number 2 behind it, the terms of reference for the inquiry?---Yes, I did around that time. 20

Right. And then if you turn over again we have another copy of that exhibit 98, which was the memo dated 18 December 1989 from Mr Coyne to you, which is stamped is having been received in Family Services on 21 December 1989?---Yes.

And then under that it says "received 22 December 1989"?
---Yes. 30

Whose signature is that there, do you know?---I can't be sure.

Could you have a stab at and take an educated guess?---The writing looks as though it would have been Trevor Walsh's but I'm not sure.

Right. Now, Trevor Walsh has testified that he didn't start working for you in the office of the director-general until January of 1990?---That's probably right.

Where was he working in December 1989?---I don't know. Was he on holidays? I don't know. 40

How did he come to start working for you in the office of the director general in January 1990?---I would have sought him out, I think.

Yes?---I would have asked him to do that because John Hogan and Laurie Longmans, the other two executive officer, had gone with Alan Pettigrew. 1

Right?---So I was searching somebody.

Okay. So if we work on the assumption that that's Trevor Walsh's signature, did Trevor Walsh ever bring this memo, which was addressed to you, to your attention in January 1990 after he started in your office?---I can't remember.

Now, I'll get you to have a look at exhibit 107? 10
---Thank you.

Now, that's a letter or a memo Coyne wrote to you, isn't it?---Yes.

Dated 15 January 1990?---Yes.

And you've seen that before, haven't you?---I think I probably have seen that one.

You would have seen that the day after, maybe?---Or a couple of days after. 20

Because it is stamped as having been received in the office of the director-general?---Yes, but I wouldn't have necessarily seen it on that day but, you know, I think I would have seen it.

But you could have seen it on that day?---I could have, yes.

Yes?---And I could have not seen it on that day.

Because Trevor Walsh would bring correspondence addressed to you to your attention, wouldn't he?---Yes. 30

Because that just would be commonsense for him to do that, wouldn't it?---Yes, but it may be that on a particular day I might have a block on block appointment and I wouldn't be looking at correspondence immediately that day. You know, I was - - -

Yes?---So I was, you know, moving around a fair bit.

But you can't be in any doubt that you saw that letter on or after - - -?---Yes. I'm not, I'm not in any doubt. 40

- - - the 16th?---No, not at all.

Okay. And in this letter Mr Coyne says that he's previously requested advice about the basis of the inquiry?---Mm.

And he refers you to that request on 18 December 1989 and he complains that nullifies has been forthcoming?--Mm. 1

So as a result of that did you cause somebody to go to search for the correspondence that Coyne had written on 18 December 1989?---Not particularly. Somebody would have been looking for it, I suppose. I actually did something different, I got them to bring me that material about how the inquiry was established - - -

Right?--- - - - and I started looking at it from that point of view, not looking at it solely from the issues that Peter was raising with me. 10

So when you got them to bring you the material about how the inquiry was established, who brought that material to you?---I can't recall. I mean, it possibly was Trevor but it might have been somebody else, I don't know.

And if the person who brought it to you say where he had obtained it from?---No, not - I've got no recollection of that kind of conversation, I'm sorry.

And what was in the material that was brought to you? ---Well, I think what was brought to me was the original letter from the Queensland State Service Union. 20

Yes?---And which Alan had written nine letters attached to it. I think it included the terms of reference that you showed me before. I'm stretching my mind back. It had - there would have been a few other papers there. That's the best I can do without being refreshed by you showing me something.

Okay?---And then I did something as a result of looking at those papers. 30

Yes. Well, I'll just get you to have a look at exhibit 72. Is that the letter from the state service union - - - ? ---Yes.

- - - referring to nine letters that you saw? --- - - - that was one of the ones that I saw.

Right. So amongst other things that letter would have alerted you to the fact that Walker had sent in statements that contained serious allegations?---That's right. 40

And they were sent to Pettigrew on the basis that they wouldn't be widely circulated?---That's right.

So you would have been anxious to see those statements, wouldn't you?---No. As I said to you before, I wasn't anxious to see them because I thought that they were the very things that Mr Heiner had in his possession that he was using for his investigation.

Right. Well, did you ask Mr Heiner whether he had those documents in his position when you met with him?---No, I didn't.

1

Why not?---Because I was talking to him about how he believed he was constituted and what he believed he was doing.

But wouldn't it have been sensible to have said, "Well, what material did the department give you, Mr Heiner"? ---Well, he told me that he had the complaints.

10

Yes?---He told me that he had the complaints that he was investigating and I assumed that they were one of the same thing and I thought that he had the original letters of complaint.

And you weren't in any way interested to see what they contained?---No.

Could you just look at exhibit 88. At any time prior to or even actual meeting with Mr Heiner had you seen that document before?---I think I saw that prior to the meeting. I think it was another one of the pieces of paper that was in the collection that I had before I saw him.

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Yes. If one was to undertake the exercise of comparing exhibit 72B through to J with what's on exhibit 88, one would conclude that exhibit 88 is a summation of what's included in exhibits 72B through to J?---Exactly, and that's what I was led to believe, that it was a summary of the original letters of complaint. That was always my understanding.

Okay. So you had some idea of the nature of the complaints - - -?---Yes.

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- - - from this exhibit 88?---Yes.

Okay. And that was something - was this something that was brought to you when you asked for the material about how the inquiry was constituted?---To the best of my recollection, yes.

Okay. Did you get Mr Heiner's letter of appointment? ---Yes.

So you've got his letter of appointment, the terms of reference?---Yes.

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And this summary document, exhibit 88?---Yes.

Okay?---I can't recall if I got anything else.

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All right. And what light did those documents throw on how Mr Heiner's inquiry had been constituted?---Well, it showed me that he had been appointed by way of a simple letter.

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Yes?---And that he had terms of reference that were very short, in my opinion.

Yes?---And when I had that material, that was when I decided that I needed to take some further steps to see for myself how was he constituted.

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Right, and so one step you could have taken would have been to contact Alan Pettigrew?---Yes, I could have contacted Alan Pettigrew but I didn't because I knew that Alan was absolutely flat out trying to establish the new department and I didn't actually really think it was particularly good form to ring a colleague and say, "Look, we can't work out how you've appointed this guy," and I assumed, and I believe correctly so, that it was my responsibility to work through the issue.

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Another way of finding out would have been to have asked one of your subordinates like George Nix how it had been constituted?---Well, I had the papers given to me as to how they believed it was constituted and I think there was another paper that somewhere said on it - where it said, you know, "Spoke to the minister and it's approved by the minister." I think it was on 2 November "Minister's approved the appointment".

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Yes?---I'd seen those things and that was as far as I'd been able to gather and so I felt that it was my responsibility then to follow this thing through and see how it was established and I think what I did then - I can't recall the sequence, but I think I had this view that somehow the minister had been involved in the appointment. I don't know whether somebody else suggested to me or whether Mr Heiner was the one that suggested to me that the appointment had been made by cabinet.

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If Heiner suggested his appointment had been made by cabinet, one way of finding that out would be to just ask Alan Pettigrew, wouldn't it?---Well, in the circumstances and given that there'd been a change of government, the course that I adopted was to actually ask the cabinet office if they had any documentation because we were unable to locate a cabinet submission in the department and I certainly did ask within the department whether anyone could locate a cabinet submission that established this inquiry. That drew a blank and so I thought, "Well, I'll ring up the cabinet secretariat and find out if there's anything there," and it was at that point then that I went - as I recall it, I went to the cabinet secretariat and I viewed the collective minutes of cabinet of the previous government.

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That's a pretty serious step, isn't it, to be wanting to be look in the cabinet records of the previous government to find something out?---Well, no, not particularly. People - - -

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An easier way to do it - - -

MR KEIM: Could the witness be allowed to answer the question?

MR COPLEY: An easier way to do it really, wouldn't it be just to ring up Alan Pettigrew and ask him?---As I've said to you before, Alan Pettigrew was flat out doing what he was doing. I saw it as my responsibility to try and understand and sort out this issue in the department. I didn't think it was my responsibility to go running around to people in other agencies asking questions. I took what I thought was a perfectly reasonable step and a step that I thought was the appropriate step. I contacted the cabinet secretariat to ascertain whether there had been a cabinet submission. No, there had not been a cabinet submission. I then wondered whether there was anything in the collective minutes of cabinet that might throw any light on the subject and that's what I did and I think it was quite appropriate.

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But Alan Pettigrew was one of your co-equals in the government, wasn't he, by this time?---Yes, he was but - - -

You were both directors-general?--- - - - if Alan had a problem in his department, he didn't come running over to me to ask me if I could sort it out for him.

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No, because you didn't work in the department he was then running, did you?---No.

You had never worked - - -?---No, and he didn't work in the department that I was running.

Well, the analogy breaks down though, doesn't it, for that very reason?---I don't think it's about analogies. It's about when you've got an issue that you need to work through and get to the bottom of because there was definitely an issue, I went and made some inquiries. I also went and sought legal advice as well. I did a number of things simultaneously. I don't think there is anything inappropriate or untoward in the steps that I took to ascertain whether or not cabinet had appointed Mr Heiner.

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I haven't suggested to you that there's anything inappropriate in it. All I'm suggesting to you is that an easier way to ascertain these types of things might have been to have asked George Nix of Alan Pettigrew?---The way I approached it was I got a very clear and decisive answer. I got the correct answer. I didn't get a "Maybe", "All right", "Perhaps" or whatever.

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From whom?---From the cabinet secretariat. I was very clear - after speaking with them I was very clear that there was no cabinet submission and that the matter was raised in the collective minutes of cabinet so I knew exactly where it stood.

You didn't know where it stood at all because you didn't how the legislative basis for the inquiry, did you, because the cabinet man said it wasn't done by cabinet?---I knew exactly where to look next. 1

And where did you look next, George Nix?---I went to Crown Law.

But wouldn't you have just contacted George Nix or Alan Pettigrew - - -?---Well, I had the material there. There was - and, as you know from - no doubt you've looked at the advice that was provided. There was a lot of doubt about how in fact Mr Heiner was appointed. 10

But a simple way, even after you got the legal advice, of clearing that up would be to contact George Nix or Alan Pettigrew and just say, "Listen, fellas, pursuant to what power did you blokes think you were acting when you gave that letter of appointment to Noel Heiner"?---Well, actually I think George was away at the time and I decided that the way to approach it was to actually look at the originating documents to find out exactly legally where this thing might be standing because at the same time I had people who were very concerned about how they - whether they were being treated fairly or unfairly before the inquiry. 20

Right. Well, Lyn Draper was one of those, wasn't she? ---She was.

And Peter Coyne was another?---Peter Coyne was another one.

Yes?---Peter Coyne was another one who was concerned. I was another one who was concerned.

Yes, all right. Now, I'll get you to look at exhibits 109 and 109A. You will see that they're pretty much in the same terms if you read the content of them. One's from Peter Coyne and one's from Anne Dutney, you'd agree?---Yes. 30

And they're both dated 15 - his is dated 15 January and hers is dated 16 January 1990, but they're both stamped as having been received in your office on 16 January 1990? ---Mm'hm.

And here these people are making requests for copies of records held against them pursuant to - held on them pursuant to regulation 65, aren't they?---They are. 40

All right; and so you would have taken some steps to ascertain what was on those departmental files they were wanting to see?---No, I didn't.

Didn't you?---No, I didn't do that.

Okay?---Somebody else may well have done that but I don't recall taking any of that action and I haven't - again this is correspondence that I haven't actually initialled.

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Could you have a look at exhibits 111 and 112, please? Do these documents each bear your signature?---They do.

Dated 17 January 1990?---They do, yes.

And do they both refer to in each Coyne and Dutney's requests for access to records - - -?---Yes, they do.

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- - - pursuant to regulation 65?---Yes.

And they state that a perusal of your file indicates no such records are attached?---Yes.

And that you're not aware of any other departmental file containing records of an investigation in relation to either of them?---That's right.

So you must have taken some steps - - -?---Well, somebody took some steps. I wouldn't have gone and actually perused their files personally. I wouldn't have gone and perused their files.

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But you must have seen those letters that I showed you before dated 16 January if you - - -?---Not necessarily, no.

Well, when someone presents you these letters, exhibits 111 and 112, for signature - - -?---Somebody would have said to me, "We've received these memos from Coyne and Dutney. We've had a look at the regulation. We've had a look at the files. We're submitting this to you for your signature."

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COMMISSIONER: And you only knew about those things what they told you?---Yes. Often I'd ask questions and often I would say that I didn't like the format or the words or the conclusion that was reached in a memo and people would go away and they would be reprepared and things like that and the same thing applied with letters and correspondence going outside the department, but, no, I didn't go - when something came into my office, go and personally handle every piece of correspondence. There were vast volumes of correspondence, as I'm sure you could appreciate, and so other people would prepare things. So I would've signed that on the basis that somebody prepared it for me and that they had perused the file and that would have been the basis.

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MR COPLEY: Did you ask - would you have asked this person who gave you this to sign, would you have said, "Why am I signing this"?---No, I would have said - I would have read it, and as I said, "I refer to your request" - I'm signing it in response to a request that these people have made.

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Would you have asked to have seen the man's request, or the lady's request?---Probably not, no.

There's nothing up the top where it says "Telephone reference" - refer to sections or your reference, is there? ---No.

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Was that normal?---That was at that time, yes.

So are you able to remember who prepared these documents 111 and 112 for your signature?---I don't know the person. I suspect they would have been prepared in personnel.

Does your diary assist you in terms of when you first spoke with Mr Ken O'Shea?---I know I telephoned him. I haven't got a note in my diary that I telephoned him. I do think that some of the correspondence that I sent to him I refer to "a telephone discussion yesterday", but I don't recall - I can't see if I've got anything in my diary that says a phone call - I didn't normally write phone calls down in my diary.

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I'll get you to look at exhibit 110. It looks like this. We've heard evidence that that is Mr O'Shea's handwriting and it says, "On 16/1/1990 I rang Ruth Matchett back. In November 1989 inquiry, John Oxley Youth Centre. Staff complaints, QSSU complaints. Noel Heiner, retired SM. 13/11/89. Broad terms of reference. Appointed by DG at the time by letter. Question put to him whether he was having a sexual relationship with a member of the staff. POA up in arms. I advised her to write to Mr Heiner saying not clear on what basis he was appointed, would he please advise." Now, do you remember having a phone conversation with Ken O'Shea in which you told him those things?---I can't recall that I told him exactly all those things, but I can remember I had a telephone conversation with him.

30

Do you remember it to be on 16 January 1990?---I can't remember that it was the 16th but it probably was. Can I leave it like that?

Do you remember him advising you to write to Mr Heiner asking him to clarify on what basis he'd been appointed? ---Yes.

40

So are you happy to proceed on the basis that that would have been the first contact that you'd ever had with Mr O'Shea about the Heiner matter?---When I rang him, yes.

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MATCHETT, R. XN

Yes, because he wouldn't have known obviously to ring you, would he?---No. 1

No?---I rang him.

Could you look at exhibit 113? You'd be familiar with this document, wouldn't you?---Yes. This is the first letter that we received, or the department received.

Yes, well, your office received it, didn't it?---Yes.

Because it was - - -?---It's just addressed to the director-general. 10

Yes?---So really it's not - it's not personalised to me, but that's neither here nor there.

Someone must have assumed it was personalised to you, though, because it was received in the office of the director-general the next day, wasn't it?---It is. It's just it's an unusual format of it, yes.

Well, it might betray that the man that wrote it wasn't familiar with the public service ways, if he addressed it like that. For example, he didn't know you were only the acting director-general?---No. 20

He perhaps didn't even know your name if he didn't put a name?---I'm sure Peter Coyne and Anne Dutney did, though.

Well, that could well be so, but in any event, you saw that letter, didn't you, on 18 January?---18 January. Yes, I probably did see it on the 18th.

You're happy enough to actually concede that even though your initials and a date don't appear anywhere on the document?---Yes, that's right. I was just trying to think where I was on the 18th. 30

Does the diary help? Have a look?---It might. I know I saw it at some stage early on in the piece.

Does it disclose whether you were in town that day?---I was in town.

Okay?---Yes, I was in town. Yes.

MR COPLEY: When do you wish to adjourn, Mr Commissioner? 40

COMMISSIONER: Half past.

MR COPLEY: All right.

COMMISSIONER: I'm assuming you'll be continuing tomorrow with the witness.

MR COPLEY: Yes, I won't finish this afternoon.

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COMMISSIONER: Okay.

MR COPLEY: As a result of getting that letter you fairly promptly sent it off to Mr O'Shea, didn't you?---I did.

I'll just get you to look at exhibit 115. Now, that's got your signature on it, hasn't it?---That's right.

Who drafted that letter?---I couldn't tell you who drafted it.

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Well, perhaps you did, because in the third paragraph it says, "On 17 January 1990 at 5.18 pm I received a facsimile of a letter from Rose Berry Jensen"?---Somebody could have drafted it and said, you know, "I" because I was - they knew that I was going to sign it.

Right?---I don't think much turns on that.

Not much turns on what?---Well, somebody who is drafting a letter for my signature will use, you know, the first person - - -

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The personal pronoun?---Yes.

Yes, but this document asserts that you received the fax from that firm on 17 January at 5.18. It rather suggests that that fax was actually received in your office and you were aware of it from that time?---Well, I was doing something else at that time but I might have found it later on. I don't know. I mean, I don't really know who signed - I don't know who drafted this letter. This is definitely a letter that I signed and it went to Ken O'Shea.

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If it wasn't you it could only have been Trevor Walsh, couldn't it?---It could have been somebody in HR, you know, in personnel.

Right?---It could have been, but I also sent another letter that day, I thought, didn't I, as well?

We'll come to it, because at the end of this letter, exhibit 115, you say, "If you want any further information or assistance please contact Trevor Walsh"?---Yes.

You sent off the ministerial approval for the appointment of Mr Heiner and the terms of reference?---Yes.

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And the letter appointing Mr Heiner and you also enclosed - - -?---The terms of reference.

Yes. Is that not there?---It is.

Sorry?---It is there, yes.

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Okay, and you also enclosed to Mr O'Shea Peter Coyne's letter of 15 January regarding regulation 65 which your office received on the 16th?---Yes. 1

You enclosed a signed but not dated copy of your reply to Mr Coyne?---I have one here signed.

No, I said signed but not dated, I think?---Did you?

Yes?---Right, yes, okay.

Yes, it's not dated like the other one I showed you?---Yes, sorry. I misheard you, I'm sorry. 10

That's all right. You enclosed also a copy of the memo Anne Dutney had sent on the 16th and your reply?---Yes.

So by the time you were writing this letter to Mr O'Shea you must have had possession of those letters from Dutney and Coyne that caused you to sign the documents on the 17th?---Yes.

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MATCHETT, R. XN

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Yes. So does that assist with helping you now go back or remember back to the questions and answers I asked you earlier about when on the 17th you signed those replies to Coyne and Dutney, whether you actually had seen their letters?---No. It depends what order I did it in, I think. It doesn't help me. All I know is that on that day those things were sent to Ken O'Shea so I must have signed the replies to Dutney at a similar time, I don't know.

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But you must have thought it was important for Mr O'Shea to have their letters?---Yes. You mean their letters from their solicitors?

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No, no, no?---No, the other thing. I wanted him to have as much information as he could about the context of the whole situation.

Yes. And see, that's what I was suggesting to you before, really, that in making those replies to those people on 17 January you would have wanted to have understood the context in which you were replying, hence you would have had those letters that they'd written actually available to you?---Yes. I'm not sure that I actually happened there in front of me, that's all.

20

All right. Now, the other letter that you sent on 18 January, I'll get you to look at exhibit 116. Now, is this the other letter that you thought you'd said that day?---Yes. I think this is the first I said.

Okay?---I think this is - I sent this one first. I wrote that one first. And I think I wrote that one.

Which one do you think you wrote?---I think I wrote 116.

Exhibit 116?---Yes. I think it went first.

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Okay. Why do you think - - -?---I don't know why, though. I don't know why I think that, but that's what I think.

Leaving aside sequence, why do you think you actually wrote 116?---Because it says, "Thank you for the opportunity to discuss with you yesterday some of the concerns," and that sort of personal theme would have been what I would have written.

And so you - - -?---And I'm just trying to say to him, you know, we sent you some other things and I anticipate a number of other matters in relation - I was just trying to say to him it is not going to be a one-day wonder.

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No. And you attached to this letter a copy of the letter that you'd sent to Mr Heiner?---Yes.

Asking him if he'd come in and see you?---Yes, because that's what Ken have suggested the day before, and I did.

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Yes. And the terms of reference again?---Yes.

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Okay. Now, did you have a view yourself about the reasonableness or otherwise of the time limit that the solicitor Berry had purported to impose on you? He faxes in a letter at 5.17 and expects a reply by 2 pm the next day?---Yes. Well, in the context of the department it was pretty impossible to have a reply in that timeframe.

Did you regard personally as an unreasonable time within which you had to comply?---I suppose the word I would have used more was naive.

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Okay, but nevertheless it seems as though Mr O'Shea was able to comply with that time limit, wasn't it?---Mm.

Because he sent you this next document which I'll show you, which is exhibit 117.

COMMISSIONER: We might make that the last document, Mr Copley.

MR COPLEY: Okay. So we leave it at that now or shall we - - -

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COMMISSIONER: No, once you've finished with it.

MR COPLEY: Okay, thank you.

Ms Matchett, according to the fax document this was received at 12.45 or sent at 12.45 by the crown solicitor to your office. Do you agree with that?---Yes.

And in this letter Mr O'Shea posits a number of possible ways in which Mr Heiner might have been appointed to conduct this inquiry, didn't you?---He did.

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And he said as long as there was some instrument in writing authorising Mr Heiner to act then Mr Heiner could, but that Mr Heiner didn't have powers to force people to speak to him or to force people to surrender documents to him, didn't he?---He did.

And on page 3 of the document he said - and I'm paraphrasing - leaving aside the ability to subpoena in the third paragraph, the possibility of defamation proceedings arising out of any information given to him would also have to be borne in mind. You've seen that paragraph?---Yes.

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When you read that did that have any significance to you at all?---Well, it raised for me the concern about what would happen if all these allegations that have supposedly been made before Mr Heiner, you know, were to be pursued by people, you know, taking action against the members of staff.

You didn't, for example, particularly think it linked back to the allegation of sexual relationships between adults, did you?---I didn't think it would because I didn't - - -

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COMMISSIONER: Sorry - - -?---It wouldn't be the way my mind would have gone.

Are you saying you thought about it but excluded that as being included in that reference, or you didn't think about it?---I suppose I was thinking this is a situation where there are at least two, if not three groups of staff who are in conflict and now we don't know on what basis is information is being, you know, adduced from them. I knew that they believed - the staff believed that the information they gave the Mr Heiner, they were giving confidentially, so I thought, gee, this all could get, you know, very unpleasant.

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And it wasn't solely Mr Coyne's grievance that you were - - -?---No. No, I was concerned about his concerns. In fact, he alerted me to them. But I was actually concerned about other stuff as well and what they may or may not have said, and I suppose the other person that I was concerned about was Mr Heiner because I thought that he could have been in a difficult situation.

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MR COPLEY: And in the end of the letter in the last paragraph Mr O'Shea said he thought you should proceed with the letter that you had drafted to send to Mr Heiner?---Mm.

Well, we might leave it there until tomorrow morning.

WITNESS WITHDREW

COMMISSIONER: 10 o'clock tomorrow morning? Okay.

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THE COMMISSION ADJOURNED AT 4.38 PM UNTIL THURSDAY, 14 FEBRUARY 2013

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