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17 May 2013

The Hon Tim Carmody SC
Commissioner
Queensland Child Protection Commission of Inquiry
BRISBANE, QLD. 4000

By email only: info@childprotectioninquiry.qld.gov.au

Dear Commissioner

RE: ANNE WARNER

I am instructed by Callaghan Lawyers to make submissions in response to the invitation contained in your letter of 8 April 2013.

The two issues raised may be stated as follows:

- A. "A risk of a finding that the decision to enable destruction of the Heiner documents offended against ss129, 132 and/or 140 of the Criminal Code."
- B. "A realistic possibility that I will come to the view that Cabinet's decision was inappropriate in the sense of being contrary to then existing standards reasonably expected of executive government in making public administration related decisions."

Re A above:

This, in my submission, is a matter which may be quickly dismissed.

The relevant matters in this regard include:

1. The documents were, at the time, owned by the Crown;
2. Ms Warner, through her then Department, acted fastidiously in obtaining the advice of the Crown Solicitor on this very point;

3. Such advice carefully distinguished between the "Heiner" documents and other documents removed from official files (see p6 of Exhibit 151);
4. The advice also confirmed that as public records the consent of the archivist was needed; and such consent was, accordingly, obtained;
5. That Ms Warner (and Cabinet) acted on that advice;
6. Then, given that any offence contemplated contains an element of intention eg s129 with intent to prevent a document being used in a legal proceeding;
 - here, as was observed by you¹ there is simply no evidence that Ms Warner or Cabinet were told anything outside of the documents;
 - such documents were prepared by Departmental officers and were "...a gross oversimplification of the advice of the Crown Solicitor. It was reduced down and concepts were melded together and then given to Cabinet"²; and
7. The clear and uncontradicted position is that Ms Warner (and Cabinet) acted, in good faith, upon what was perceived to be the advice of the Crown Solicitor that "there (was) no legal impediment to (the destruction of the documents)"³.

RE B above

In relation to this area, the matters set out above remain relevant.

In addition –

1. "appropriate" is a word of very broad latitude⁴.
 - indeed, the Shorter Oxford dictionary states:
"Make or select as appropriate or suitable (to)".

¹ T28-27 ll 35-45

² T 28-36 ll 15-45

³ Exhibit 151 – Cabinet Submission p2, "Objective of Submission"

⁴ See, by way of illustration, *Mills v The Queen* [1986] 1 SCR 863 at 965

2. As pointed out by counsel assisting, Ms Warner (and Cabinet) were acting on Crown legal advice as interpreted by “people who are attempting to deal with the fallout from an inquiry that those people did not constitute”⁵.

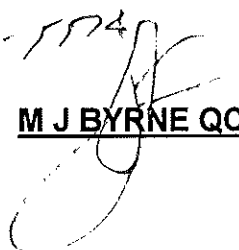
It could not be said that where the advice was:

- that the documents contained information that was potentially defamatory⁶;
- that the “destruction of the material gathered by Mr Heiner in the course of his investigation would reduce risk of legal action and provide protection for all involved”⁷;
- that “speedy resolution of the matter will benefit all concerned and avert possible industrial unrest”⁸;
- that “no specific objections have been raised to the proposed course of action”⁹; and
- that consultation had taken place with the Crown Solicitor and the two relevant unions¹⁰

the decision made was outside the realm of appropriate decisions in the then prevailing circumstances.

CONCLUSION

It is submitted that you would conclude that, on all of the material, no adverse finding or view as to Ms Warner’s conduct is reasonably open.


M J BYRNE QC

⁵ T 28-22 II 1-5

⁶ Exhibit 151, Cabinet Submissions; Purpose / Issues

⁷ Exhibit 151, Cabinet Submissions; Objective

⁸ Exhibit 151, Cabinet Submissions; Urgency

⁹ Exhibit 151, Cabinet Submissions; Results of Consultation

¹⁰ Exhibit 151, Cabinet Submissions; Consultation