



SPARK AND CANNON

TRANSCRIPT OF PROCEEDINGS

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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 14/02/2013

Continued from 13/02/13

DAY 23

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

COMMISSIONER: Good morning, everyone.

MATCHETT, RUTH:

COMMISSIONER: Good morning, Ms Matchett?---Good morning.

MR COPLEY: Ms Matchett, yesterday afternoon you said - in answer to a question you said, "When I was interviewed by the police officers last week I couldn't remember there being anybody else there," and you provided that piece of information in connection with who was in attendance when you spoke with Peter Coyne, didn't you?---Yes.

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See, I suggest to you that this is what you actually said to the police when they interviewed you, they said to you in connection with your interview with Mr Heiner on 19 January - one of the officers said, "I think you said maybe Sue Crook was there," and you said:

No, I don't think she was present. I don't think she was present when I met Mr Heiner. I think I met with him privately because - because I thought he would be embarrassed, and he was. He was shocked. He was, you know, he was embarrassed at the situation that he was in. I think he thought he'd been established by cabinet under the Commissions of Inquiry Act.

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And the detective said, "So basically it was just a private meeting between yourself and Mr Heiner?" And you said, "Yeah, I wasn't going to humiliate" - and the officer interrupted and said, "And no-one else in the room," and you said, "In front of everyone." He said, "Okay, that's fine." And then you said, "That's the same reason why I didn't have anyone present when I met Peter Coyne"? ---That's right.

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So last week it wasn't the situation that you didn't remember that there was anybody else there, positively assert to the police that there wasn't anyone else there when you met with Peter Coyne and the reason was because you didn't want to humiliate him, as you put it?---That's right. But having had the benefit of looking in my diary I realised that Sue Crook was present when I spoke with Mr Heiner. When I spoke with him my focus was on the gentleman in the room and my conversation with him. I just simply did not recall that she was present.

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My point to you is that when you said yesterday that, "I couldn't remember anyone being there," in connection with your interview with Mr Coyne, when you said, "When I was interviewed by the police officers last week I could not

remember there being anyone else there." My point to do is that when interviewed last week by the police you didn't say you couldn't remember anybody else being there when you spoke with Peter Coyne, you positively asserted there was nobody else there and the reason was because you didn't want to humiliate Peter Coyne by having anybody else there?---That's right. My recollection failed me.

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COMMISSIONER: No, I think what you're being asked is this: it's not a matter of recollection unless - there are two types of things, you either don't remember that something happened or you do remember that something didn't happen. What Mr Copley is putting to you is that in the police interview you were saying that "there was no one else there because I remember there being no one else there" as opposed to "I don't think anyone else was there but I can't remember". Do you see what I mean?---Yes, I do see what you mean.

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Okay?---But for me the interview with Mr Coyne was an interview that I described to the police and to my recollection as being a very emotional interview. When I spoke to the police last week I didn't recall that there was anybody else there. I have now had my memory refreshed, and I guess one of the benefits of having - the interview in fact has refreshed my memory and I am now quite happy with the notion that yes, Trevor was present.

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So what I should take away from that is although how you expressed it in the interview was as if you had a positive recollection that there was nobody else there, the truth of the matter is that you didn't remember anyone else there and you converted that into your memory and your language as if it was a positive recollection - - -?---Yes.

- - - of there being no one else there?---That's right.

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Is that right?---That's right.

Okay. So your memory played a trick on you into thinking that you knew for sure that there wasn't anyone there when in fact there was somebody else there and you'd just forgotten?---That's right. And by focus in both those interviews was on the gentleman that I was having the interview with rather than the other people who were in the room present with me.

Just going back to that gentleman, how could anyone have thought that he had been appointed under the Commissions of Inquiry Act when there was no paperwork, there was no cabinet appointment, there was no gazettal of his appointment? None of the things that normally be associated with setting up a commission of inquiry under the act were present and everybody knew that none of those things were present; none of the hallmarks of a commission

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of inquiry were present. How could anyone think that he was commissioned under the act?---Well, he thought he had been appointed by cabinet.

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How? How did he think that?---I don't know.

But you knew he hadn't?---I had found that out.

Yes?---But whether I'd found that out before I spoke to him or after, I'm not quite sure.

MR COPLEY: Now, I showed you a photocopy of a file note yesterday. I'll just show it to you again. It's the file note dated 11/2/1990 regarding a meeting with Peter Coyne, isn't it?---Yes, it is.

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Yes. And it's your writing, you said yesterday?---Yes.

Okay. Now, I'll get you to have a look at this document, please. Now, is that your writing there?---Yes.

Okay.

COMMISSIONER: Should I be taking these and giving them and exhibit number so that we don't get confused between one document and the next, or are you content?

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MR COPLEY: We might be able to do that in a minute or two.

COMMISSIONER: All right.

MR COPLEY: Okay. Now, that document there, when did you make that document?---I would assume at the top where I've got "Heiner 19/1/90" - - -

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Right?--- - - - that that was some notes or some points I might have written at the time I met with him, because I think I met with him on 19 January, didn't I?

Okay, so - - -

COMMISSIONER: No, sorry, I want to get that straight. When you say you assume, what is your basis of the assumption, can you tell me?---Well, because I've written at the top there, "Heiner - - - "

And what does that indicate to you?---That I would have written that on that day and it was about Heiner.

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Why does that indicate that to you?---Well, that's what I would have done.

Because that was your habit?---Yes.

MR COPLEY: Okay. So "Heiner 19/1/1990" and then so that we don't ever have an argument about what is written here, because it's in running writing, what we have done is ask everyone who makes a note in writing, if they made it, to read it out?---Okay.

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Or if they claim to profess some familiarity with someone else's writing we get them to read it out. So I could suggest to you what it says, but the faster way at the moment would be for you to read it out exactly as it is written and if I want to raise anything with you as you go I might just interrupt and ask you to look at another word or reconsider something. Okay?---Yes.

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Okay?---"Point 1, concerns raised with me number of staff" - I think it's probably by a number of staff - "staff at centre, staff here, POA" - meaning plus the POA - "plus police, plus" - I can't read my own writing - "cross legislation to - - -"

Does it say something - just pause there. What if I suggest it says "legal action"?---Yes, yes, that's right, "Police and - - -"

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Something "legal action"?---"Across legal action" or something.

Could it be - okay?---I don't know.

Or could it be, "Possible legal" - "p-o-s-s- legal action"? ---No.

No?---I don't think so.

Okay?---Anyway, it says something like that - "2 concerns, surrounds people, alleges the process is contrary to natural justice."

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Yes?---"How does he see the process?"

Right?---"No part of role to make recommendations. Management and staff, style and interaction of workers, fact-finding."

Yes?---"Cabinet 23/11/89 oral submission that she will be appointing an inquiry. Remandees at John Oxley Centre wrong." And then I think that must be his phone number.

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Just going back to where it says, "Cabinet 23/11/89," is it "oral submission" or "oral statement"?---Statement. 1

"Oral statement that she will be appointing - - -"?
---"Appointing an inquiry."

Okay. So does this document purport to contain things he said and things you said?---Yes.

Certainly the detail about cabinet and the date and an oral statement must have come from you, mustn't it?---That's right, and the fact-finding, management and staff, style and interaction of work, or workers. 10

Yes?---No part of the role to make recommendations. That would be what he said to me. So it gets down to - see, it goes 1, 2, 3, 4 and then there's those big lines across there.

Yes. Do they mean anything to you?---To me, that would mean that those - the point below that are the things that, you know, I elicited from him, and then down at the bottom are these other issues about remandees at John Oxley and I've got in brackets there "Wrong", because I thought that only children who had been found guilty of an offence were at John Oxley at that time. I thought the remandees were at Sir Leslie Youth Centre. 20

We've actually heard evidence from a number of people that not only were children who'd been sentenced, so in ordinary language, sentenced offenders, at John Oxley, but that there were children who were there because they had been ordered into the care and control of the director for their own - for protective reasons?---That's correct.

So if you wanted to be blunt about it, there was the criminal child and the child there for their own protection?---That's right. 30

Do you agree with that?---I think that that could have been the case at that time, but the point that I made down there about remandees relates to remandees being held at the other centre.

I'll get you to have a look at this document, please. Is that that your writing?---It is.

That says up the top, doesn't it, "Kevin Lindeberg. 19/1/90"?---Yes. 40

So what do we draw from that heading and that date?
---That's either a meeting I had with Kevin or a phone call I had with Kevin. I can't remember whether I met with him or spoke to him on the phone on that day.

Why would you have met him? He wasn't a government worker, was he?---No, he was an organiser for the POA. 1

Did you know him before this date?---Yes.

What does it say? What does your note say?---It says, "Concern John Oxley Youth Centre. Interviewing technique, Peter Coyne, Anne Dutney," something, "Need for tapes of interviews."

Does it say "express"? Is that word "express need"?
---"Express" - "Expresses need for tapes and interviews secured. Allegations against Peter Coyne. Deprivation of natural justice. That to ACP concern. Process next Wednesday. Likely to be hearing more, and then I think the thing at the bottom, I think that at the conclusion of that discussion is - I don't know what it means. I think it might be something to do with Kevin wanting to write an article for the journal or something. 10

It's not of any importance, it would seem?---No.

Now, the word - see, there appears to be three asterisks down the page here, doesn't there, or what's left of them? Do you see that?---Yes. 20

"Express need for tapes and interviews secured," with the word "secured" underlined?---Yes.

What does all that mean?---Well, I suppose Kevin is saying to me he thinks that there needs to be some action taken to ensure that the tapes of interviewers are secured.

Right, and do you remember if he said why he thought that needed to be done?---Not that I can recall. 30

Were you receiving this man or talking to this man in his capacity as an organiser for the POA?---I can't answer that. I don't know.

Or as an advocate? Were you understanding him to be some sort of a personal advocate for Peter Coyne, or an agent for Peter Coyne?---I thought he would have been representing the interests of the POA.

Who did you understand was in the POA at John Oxley? ---Well, I knew Peter Coyne was. 40

I'll just get you to have a look at this document, please. Does that contain your handwriting?---It does.

What does that say?---"George Nix, 15/12/89. Written complaints by QSSU. He - - -"

Hold on a sec, just pause there. What significance do we attach to, "George Nix, 15/12/89"?---It was a discussion with George Nix on that date.

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Right, okay, go on?---"Written complaints by QSSU. Peter doesn't know what the complaints are. Peter doesn't know what the process is. Peter to POA to magistrate, satisfied it's," something, "be okay. Go to magistrate. He will be," something, "later called."

Does it say "Last one called"?---"Last one called. Peter wants to know what the complaints are. Conflict between QSSU and POA. Peter is seeking legal advice."

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So with the benefit of having seen that you now agree with me - or you agree with me that you must have had a meeting with George Nix on 15 December 1989?---Yes.

I'll get you to look at exhibit 93 again and I'll suggest to you that on 15 December 1989 Mr Nix gave you this memorandum?---Well, I have no recollection of being given that memorandum. That's what I said to you yesterday.

No, yesterday you said, "There's no evidence that's been given to me. 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." Question, "Never seen that before?" Answer, "No"? ---Well, the answer to it is no, because I haven't seen that before.

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But you just said to me a second ago you had no recollection of having seen it?---I have not seen this before.

So you now say, as you did yesterday, that you have not seen it before?---Well, I saw it yesterday.

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COMMISSIONER: Was that the first time you've ever seen it?---Yesterday was the first time I've ever seen it.

That's not a - just to clear up - - -?---It's not a memorandum to me.

No, just - - -?---It's a discussion with principal youth workers and senior workers - - -

MR COPLEY: We know what it is.

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COMMISSIONER: No, I'm just wanting to make sure what you're saying so I don't misunderstand if it becomes important later?---Okay.

What I'm understanding from you, and please correct me if I'm wrong, is that you have a definite recollection of not having seen that document before. It's not that you're not sure, you're sure that you haven't?---Yes.

14/2/13

MATCHETT, R. XN

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As opposed to not being sure that you ever have?---Yes. 1
I'm sure that I haven't.

MR COPLEY: See, I suggest to you that you - or put to you
that you had a meeting with George Nix on 15 December 1989.
You agree with that?---I agree with that.

Because you've got a file note in your own writing that
records it?---I think it's in the diary.

Sorry?---I think it's in the diary. 10

Is it? Can you look?---I haven't got that diary.

Okay, well, you've got a file note that suggests that you
met George Nix?---Yes.

See, George Nix has said that he did meet with you that day
and that he gave you that memo, exhibit 93, and I'd suggest
to you that if you met with George Nix, as you did, that
day, and you made those notes that you made, that it simply
follows that you must have received that memo from George
Nix on 15 December 1989?---Why? It's not addressed to me. 20
He may well have come into the meeting with it and taken it
out. What I've got here are the notes that I made of that
meeting.

COMMISSIONER: But what he also took out then is a
recollection, which you say is a faulty one, that he gave
it to you?---I can just - all I can say is that I have a
firm recollection of not having received that document.

MR COPLEY: Well, as at 15 December 1989 you knew that
there had been written complaints made by the QSSU?---Yes. 30

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Well, as at 15 December 1989 you knew that there had been written complaints made by the QSSU?---Yes. 1

And Peter didn't know what the complaints were?---I beg your pardon?

Peter Coyne didn't know what the complaints were?---On 15 December I don't know whether he did or he didn't.

George Nix told you on 15 December that he didn't?---Right.

That's what's in your handwriting?---Yes; yes. 10

And Peter didn't know what the process was and Peter wanted to know what the complaints were?---But I think at that time, hadn't he already been given the summary?

I'm not really talking about what else he had done? ---Right.

I'm talking about what you had been told. See, on 15 December 1989 you had been told by George Nix that written complaints had come in via the QSSU, that Peter didn't know what the complaints were and that Peter didn't know what the process was and that Peter wanted to know what the complaints were and that there was some level of conflict between the State Service Union and the POA and that Peter was going to seek or was seeking legal advice. You knew all those things on 15 December 1989?---Yes. 20

So you were on notice as early as 15 December 1989 that there was trouble brewing potentially at John Oxley between Peter Coyne and the investigator?---Yes.

And so you would have been extremely keen to know what was going on out there, wouldn't you?---I wouldn't use the words "extremely keen". 30

You would have wanted to know was going on out there, wouldn't you?---I had some interest. It wasn't - I wouldn't say I was extremely keen. It wasn't probably the issue that was dominating.

And then Mr Nix sent you exhibit 99, if you could have a look at that again?---Thank you.

Mr Nix sent you that document on 18 December 1989, I'd suggest, in which on the second-last paragraph of page 1 he referred to the inquiry only to note that it had been the subject of a separate memo "concerning the concerns I have with the present state of the inquiry"?---Yes. 40

You must have received that document?---Why do you say that?

You must have received that document because it's addressed to you, the acting director-general, and it's coming from your number 2 man?---It was one of - it was a response to a request for all of the senior people to put in their lists of things that were current. I can't - I don't have a recollection of seeing this particular one. It hasn't got a stamp as coming into my office. I haven't signed it. I don't have a recollection of seeing that particular document.

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But you have a recollection of seeing the letter from Rose Berry Jensen dated 17 January 1990 even though it didn't have a stamp or a signature of you and a date on it, don't you?---Yes, because somebody probably would have brought that to me and put it in front of me.

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This document here would have been one you would have solicited from Nix?---I would've had a pile of the ones that I'd solicited from all sorts of different areas of the department.

How many deputy - - -?---Whether I'd gone through and - gone through all of them I don't know.

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There would be no point in asking for these memos from these fellows unless you were going to read them, would they?---Yes, it gave me somewhere I could go to if I check to find what were the current outstanding issues.

Right; and how many deputy directors-general were there? ---There was a deputy director-general - I can't get the names right - children and family support, there was a deputy director-general community and youth support, there was a deputy director-general disability services and there was a deputy director-general corporate services.

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So at the moment if you wanted reports for deputy directors-general, there would only be four reports, wouldn't there?---No, because I would've also got - would've been asking - there are other people that were members of the SEMT and they would have been asked for reports too.

COMMISSIONER: When you say "would have been", is that again an assumption on your part based on an expectation or does it really mean that you definitely remember getting others?---No, it doesn't. It's an assumption. It's just because - - -

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It's an assumption based on what?---The reason is because in the last line here, "This is a list in accordance with the request made by you at SEMT."

Okay?---I can't remember exactly who was attended that SEMT.

14/2/13

MATCHETT, R. XN

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Right. So you have not seen that one before though?---No. 1

But because it refers to "SEMT", you're assuming based on your normal practice in SEMT - - -?---Yes.

- - - that you would have had how many responses to your request?---Well, there would've been the deputy directors-general.

Four of them?---I think that there were people from - I think there possibly was the personnel manager or somebody like that were also members of SEMT, but I can't - we're talking the composition of a committee 23 years ago so I don't - - - 10

Sure; I don't need to know their names and ages; just the numbers will be fine?---Well, I can't even tell you whether that's correct. I mean, I can't tell you whether that's correct.

So you think it might have been as many as five?---It could have been but I can't - you know, I can't - really, I'm sorry, I cannot recollect. 20

In any event, clearly Mr Nix is responding to that SEMT request of yours?---Yes, he is.

And it was a request from you to him and other members of SEMT?---Yes.

And the purpose of you asking them to give a response was what?---So that I had a list of outstanding issues.

And why did you need a list of outstanding issues?--- Because we were trying to - I was trying to ascertain what were kind of current issues in all the areas of the department. 30

So is the answer because you wanted to know what they were? ---Yes.

How would you find out what they were if you didn't read the document?---Well, when something came up and said something to me, I'd be able to look at that document and give me some of the background to it.

But if nobody ever asked you, you would never know?---Well, I would. Somebody would say something about an issue; you know, I didn't sit down and read - as I said, I don't have a recollection of seeing that. I can't help any further than that, I'm afraid. 40

MR COPLEY: Mr Nix says, "This list is in accordance with the request made by you SEMT today," so he got it in fairly promptly, didn't he?---I don't know what date the SEMT was. Does he say "today"?

14/2/13

MATCHETT, R. XN

Well, just read the final paragraph of the document, "This list is in accordance with the request made by you at SEMT today," so the very same day that you make a request for information he types up a document and signs it?---Yes. 1

So if you didn't get it that day for some reason, you would have got it the next day, wouldn't you?---Well, depending on where he lodged it.

Okay. Well, he says he worked on the same floor as you? ---On 15 December he probably did. 10

And on 18 December he did?---Yes.

So where would he lodge it? If he's writing it for you because you have requested it, where would he go and lodge it?---Well, he would've lodged it in - either in the executive officer's room or he would've lodged it with the executive secretaries outside my office.

Right. So he could have given it to the women that worked outside your office?---He might have.

And he could have also left it in the executive officer's room?---He might have. 20

But there was no executive officer at that time because Trevor Walsh has testified that he got a phone call from you when he was on holidays in January?---Yes, but there was somebody there.

There was somebody there?---Yes; yes, there would've been somebody there.

Could it have been Derman Roughead?---It more likely - was more likely could've been Derm. It's very hard for me to recall because that was the changeover time. I don't know who it would be, but I'd very surprised if there wasn't an executive officer there. I don't think I was just there in that office - just myself and the stenographers. 30

You would have given instructions though to whoever worked outside your office that if correspondence came to you, it was to be brought to your attention, wouldn't you?---Well, there were elaborate procedures about dealing with all the correspondence.

But this was correspondence, this memo from Nix, that you had requested?---Yes. 40

It wasn't an unsolicited memo?---No; no; no, I know and that's the complexity of the offices, a lot of material coming in, and that's why usually if material goes into the executive officers and they sort it out as to what's - you know, what's required and what needs to go where.

But if an executive office was there and he read this, he would have said, "Oh, Mr Nix, the deputy director-general, has done this up pursuant to a request my boss Ms Matchett made today. This must be something she would want to see? ---He'd probably put it in a pile with things, yes.

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Where would that pile of things be?---In the executive officer's office. 1

Well, if he put it in a pile of things in the executive officer's office then it's got to get in from there to you? ---That's right. The executive officer brings the material into my office.

That's right, and the executive officer, if he was there, knowing that this had been solicited by you, would have brought it in, wouldn't he?---I assume they would at some time, but as I've said to you, I don't have a recollection of seeing this. You're asking me what I recall. I have not got a recollection of seeing this. 10

But you therefore must now concede that you may have seen it?---Well, all I can tell you is I haven't. I have no recollection of seeing it at that time. I might have seen it at a subsequent time. I've got no recollection of seeing it at that time.

But if you had have seen it at the time and had read, "This matter," meaning the magisterial inquiry, "has been the subject of a separate memo concerning the concerns I have with the present state of this inquiry," you would have said to your executive officer, "What's George on about here? Go and get me a copy of that memo he's referring to"?---Yes, I probably would have if I'd seen it. 20

Because you would naturally want to know what memo he's talking about when he doesn't give you a copy of the memo with this memo?---That's right, and I don't know whether he ever did - whether another memo, the first, has surfaced. I don't know.

Well, if we assume the other memo to be exhibit 93, because he's given evidence that's the other memo he was referring to, you wouldn't have needed to ask for exhibit 93 on 18 December if you had received it on 15 December, would you?---Well, I don't know what exhibit 93 is. 30

Sorry?---I don't know what exhibit 93 is.

Okay, I'll just get the assistant to show it to you again. I think it should still be over there. It's a typewritten document with the signature of Nix on the bottom, 15/12/89? ---Yes. Could you ask me what the question is? 40

You wouldn't need to go seeking the memo that Nix is referring to in the 18 December memo if you had already received the 15 December memo, would you?---Well, maybe because this document that you keep referring to as a memo is actually notes of a discussion with principal youth workers and senior youth workers at the John Oxley Youth

Centre on Friday, 8 December 1989. It's not what I would have thought was a memo from George Nix to me about the magisterial inquiry at John Oxley Youth Centre. 1

Does that memo, exhibit 93, express any concerns George Nix had about the present state of the inquiry?---He's suggesting - it says to me that he, after having that meeting, is suggesting some other processes to handle complaints.

In his view, he says, the situation is polarising the staff and that there will be no winners at the end of the day. You'd regard that as a concern of his, wouldn't you, if you read that?---Had I read that I would assume that that was what his concern was. As I've said to you, I have not seen that document. 10

So if we were to go back to exhibit 18 and substitute for the words "separate memo concerning the concerns I have" and put in the word "report concerning the concerns I have", you'd have been readily able to link the two, wouldn't you?---Not particularly.

See, I'm suggesting to you that you must have received Mr Nix's report, because you met with him on 15 December and he outlined to you issues about Peter Coyne and Peter Coyne's difficulties with the inquiry?---When he met with me on 15 December the notes that I've got here are about - are those notes there. They are not referring to suggestions about how grievance procedures should be handled in the future. 20

No, probably because that's in the report from Nix?---Well, I'm sorry - I'm sorry, but I did not see that document, that report that George Nix had written, on the discussions between the youth workers on 8 December. I had not seen that at the time or at any time and certainly not when I met with him on 15 December. 30

So you say that the first time you've ever seen that document was yesterday?---Yes.

Right, and the memo that he addresses to you on 18 December which he puts in because he's asked to put it in to you, you have no recollection of having seen it?---No, I've got no recollection of seeing it.

Could the witness see exhibit 101, please? 40

COMMISSIONER: Yes?---Thank you.

MR COPLEY: That, I'd suggest to you, is a memorandum that the acting director-general Ian Peers did up at your request?---I don't believe it was at my request, and this is a document that, as I have said before, I did not see on 2 January, nor did I see it until much, much later.

14/2/13

MATCHETT, R. XN

When did you see it?---I think I saw it at a time when they were preparing one of the submissions to the whistle-blowers, senate whistle-blowers - - - 1

That's years later?---Yes.

There must have been something grievously wrong with the systems of communication in that place in early January 1990, was there?---There were some problems. There were some problems.

There must have been absolutely massive problems, because a deputy director-general is writing to you on December 18, you've got no recollection of seeing that memo, and then an acting deputy director-general is writing on 7 January about the subject that you spoke with George Nix about on 15 December 1989 and you don't see this memo until years later?---No, I didn't. 10

Did Ian Peers come to you in early January and say, "Hey, Ruth, what did you think about the material I sent to you"? ---No, not that I recall.

So nobody followed up to say, "Did you get my memo"?---No, and - - - 20

You must have been outraged when you discovered years later that these documents weren't getting to you?---I was very annoyed. I was very annoyed.

COMMISSIONER: Do you remember being very annoyed about that?---I remember being very annoyed about a number of issues to do with the documents on the seventh floor in the early part of January and in the later part of December 1989. 30

Were these particular documents among those ones that you were very annoyed about?---No, because I didn't know about them then.

But when you - - -?---It was other material.

Right, but when you did - - -?---Which alerted me to a problem.

Right, and when you discovered that - when you did finally discover that these documents hadn't made their way to you, do you remember specifically being annoyed about not getting those particular documents?---I was annoyed about not getting those documents and I was perplexed as to why if people had, as this one here tends to indicate on an undated addendum to it, that they had possession of the original letters of complaint, I couldn't for the life of me understand, if they had the original letters of complaint, why they didn't tell me that they had them. 40

Did you make inquiries of them to satisfy - to quell your anger and satisfy your curiosity?---Some changes were made to the security systems within the seventh floor.

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MR COPLEY: Did Trevor Walsh's head roll?---I beg your pardon?

Did you get rid of Trevor Walsh?---No, I didn't.

Well, he was the executive officer in January 1990?---I didn't believe for one minute that Trevor Walsh was interfering with correspondence, removing correspondence from people's trays, or anything like that.

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Because if he'd have seen a document addressed to you dated 7 January 1990 he would have given it to you, wouldn't he? ---Of course he would.

Because he was your man, you picked him?---That's right, he certainly would have.

Yes.

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COMMISSIONER: Especially in relation to Heiner because he as intimately involved in that, wasn't he?---He was involved, yes. I've got no explanation as to why Ian would go to the trouble of creating this and then appears to me to have taken no steps to ensure that I actually received that documentation.

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MR COPLEY: It just wouldn't make sense, would it, for a man who's acting deputy director general to create a document like that and then take no steps to ensure you got it?---I don't know what was in his mind.

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Well, as from 15 December 1989 you knew there were written letters of complaint by the QSSU, didn't you?---Yes.

Because Nix had told you on that day?---Yes.

So you would have wanted to see them?---Well, I can't remember whether I would have wanted to see them. I would have known that he knew that they were there, there were letters of complaint. I wasn't going through every single item of material on this topic, myself personally. It's incorrect to think that that was the case.

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Anyone reading exhibit 101, which is a memorandum to you dated 2 January 1990 just looking at the document without knowing anything else, might conclude that the things that were attached were being attached because you'd requested them, mightn't they?---No.

Well, it says - - - ?---These are what I generally call the letters of support for Peter Coyne.

If you look at page 1 of Mr Peers' memorandum to you it simply states, "Attached please find the following documents," doesn't it?---Yes.

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And number 5 was a file compiled by Mr Nix including the original letters of complaint. It doesn't begin by saying, "Dear Ms Matchett, I'm bringing this to your attention for the following reasons," does it?---No, no, but some of the material that's there would have been elsewhere on other files.

The point is that a person reading this document would be entitled to conclude from reading it, wouldn't they, that this man, Peers, was responding to some request from you for information?---I don't think so. I think he prepared that for me. The difficulty is that it didn't every actually get to me, is the problem.

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So if it had got to you you would have summoned Peers up and said, "Why are you sending me all this stuff? I didn't ask for it"?---No, I would have said, "Good, here's some more information to try and get a better handle on what's happening with the Heiner inquiry."

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MATCHETT, R. XN

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See, I suggest to you that you knew about the difficulties with the Heiner inquiry from 15 December 1989 and it was an issue that was concerning you from then on?---I'd have to say it wasn't an issue concerning me at that time, it was an issue of which there numerous issues in the department. My recollection is that it became an issue that I was particularly concerned about after I had the meeting with Peter Coyne. And I would see from that meeting how distressed he was and I was able to get a very clearer idea about some of the issues that he was concerned about.

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But you would have known that he was pretty upset in December because he was talking about going to get legal action?---Yes. Yes, but not as upset as he was when I saw him in January. He was talking, I think, to a number of people in the agency.

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After having heard what George Nix told you, according to your notes on 15 December 1989, it would be entirely reasonable and natural for you to have asked for a report from someone about what was going on out there at John Oxley, wouldn't it?---I'd just heard from Nix what he thought was happening out there.

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But I'm saying to you having heard from Nix what he believed was happening orally, it would have been entirely a reasonable and rational thing for you to have done to have requested a report from somebody about what was going on?---I wasn't asking people to create reports when I'd already had what I thought was the most up-to-date information from George Nix.

Well, you were asking people at the SEMT to create reports about what was going on in different places?---I asked - and I had a specific meeting with George to talk about what was happening with the inquiry.

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So did he ask you to have that meeting? Was that the meeting he arranged? Did he say something to come and tell you?
---I can't remember. I can't remember.

You see - - -?---How could I possibly remember that?

My suggestion to you is that it would have been an entirely reasonable thing for you to have done to have requested some further information after Nix's oral report to you and that memo of 2 January 1990 is simply that, it's a document generated because you requested it?---That's not my recollection.

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And it was years and years later before you saw the document?---It was.

2 January 1990?---Mm.

Okay. Well, I tender the four handwritten notes,
Mr Commissioner, which the witness has identified as hers.

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COMMISSIONER: Together, Mr Copley?

MR COPLEY: Yes, they could all probably have the same
number.

COMMISSIONER: Are they diary note copies, are they?
Copies from a diary?---No, they're not.

No?

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MR COPLEY: We'll get some evidence. Where are they from?
---They're from a block of paper.

So a pad of foolscap or something like that?---Loose sheet
of paper.

COMMISSIONER: Okay. So the four sheets of paper in
Ms Matchett's handwriting from 15 December 1989 to 12
January 1990 will be exhibit 323.

ADMITTED AND MARKED: EXHIBIT 323"

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MR KEIM: I think the first one is dated the 12th,
Mr Commissioner. You said the 15th.

MR COPLEY: He just means that that's the oldest dated -
the oldest document that's referred to in that.

MR KEIM: Okay.

COMMISSIONER: Didn't I say the 15th - - -

MR KEIM: My mistake, Commissioner. Sorry.

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COMMISSIONER: Thank you.

MR COPLEY: 323, did you say?

COMMISSIONER: Yes.

MR COPLEY: As a result of hearing Mr Heiner say that he
thought he was appointed by cabinet, what did you say to
Mr Heiner?---I think you have it on my notes there.

What did you say?---I haven't got the notes in front of me.

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All right, we'll give you back exhibit 323. What did you
say to him?---I'm just finding them. I said to him that I
hadn't been able to find any documentation that supported
his view that he had been appointed by cabinet.

Well, I suggest to you that you actually didn't know one way or the other at that point whether he'd been appointed by cabinet or not?---We haven't been able to find in our department a cabinet submission recommending his appointment.

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But you would have had no reason to think that he had been appointed by cabinet until he said he thought he'd been appointed by cabinet, would you?---No, but I thought that was a view around that he had been appointed by cabinet.

And where did you derive that you from?---I think I would have derived from the view in the department.

10

But from whom?---Probably from George Nix.

Well, George Nix has given evidence that he wasn't appointed by cabinet, that it was a decision of Alan Pettigrew's to appoint him which the minister simply endorsed.

COMMISSIONER: That's her evidence too, wasn't it? The minister's evidence?

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MR COPLEY: Yes, that's Ms Nelson's evidence as well. So can I suggest to you you wouldn't have derived that understanding from him because he was one of the two men intimately involved in the appointment of Mr Heiner? ---Well, he said to me he thought he had been appointed by cabinet. That is what he said to me.

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Are you serious? Mr Nix said to you - - -?---No, Mr Heiner, I'm sorry. 1

Yes. So Mr Heiner said to you he thought he'd been appointed by cabinet?---Mm.

That's fair enough, but what I'm saying to you is that prior to him telling you that you could not possibly have derived an understanding or a belief that he had been appointed by cabinet from anything George Nix had said? ---I'm sorry, I'm now getting confused. I met with Mr Heiner. He said to me he thought he'd been appointed by cabinet. 10

Yes?---I knew that he hadn't been appointed by cabinet.

How did you know that?---Because I'd already looked to see whether or not there had been any cabinet submissions made.

COMMISSIONER: Why? Why had you looked?---Because I was trying to find out what was the basis of his appointment.

But why would you look in cabinet?---Because people seemed to think it was a commission of inquiry. 20

That's what I mean. That is what you're being asked. Who seemed to think that that made you make the inquiry about whether he had been appointed by cabinet before the man himself had - - -?---Because people - - -

I'm not finished yet - before the man himself had raised it?---Because other staff had been telling me that they were being tape-recorded, that evidence was being taken, and to my mind that sounded like a commission of inquiry.

What, being conducted out at the John Oxley Centre?---Yes. 30

So it was that that put the Commissions of Inquiry Act in your mind, what people were telling you about the process? ---Yes, and I'd already had a discussion with Ken O'Shea at this stage and he was saying to me that I needed to ascertain whether or not it was established under the Commissions of Inquiry Act because he was telling me about the kinds of protections that were afforded had it been established under the Commissions of Inquiry Act.

You would have known and he would have known probably. The quickest way to check is look at the gazette, the Government Gazette. That's what it's there for?---And that's why I made the check to see whether or not there'd been any cabinet submissions because to get into the next stage into the gazette it would - - - 40

Why did you need to do that? You just need to look at the gazette and if it's not there, you can pretty much assume

it hadn't been?---Well, I'm sorry, I didn't look at the gazette. I looked to see whether there were any cabinet submissions.

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It seems a long way to go around it to find a quick answer? ---No, it's quite easy within the department. We've got an idea of what submissions have been put up before cabinet.

MR COPLEY: So you didn't find any submissions in the department to suggest it had gone to cabinet?---No.

So therefore there was no reason to contact the cabinet office about it?---No, I was trying to find out what else had been said.

10

But there was no reason to do that because you couldn't find any submissions in the department, any cabinet submissions in the department?---It was my understanding it was because people were suggesting that it had been set up by cabinet. When I met with - I can't remember whether I spoke to the cabinet secretariat before or after I met with Mr Heiner. All I know is that I ascertained that it had not been established by cabinet and I had that conversation with Mr Heiner; that's it.

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Right. So Mr Heiner is on the wrong horse here as far as you were concerned. A belief that he had been constituted by cabinet was nonsense?---Mm.

So the next step would therefore be to speak with George Nix or Alan Pettigrew and find out how he had been appointed?---No, well, something else interceded there.

What was that?---During that discussion Mr Heiner told me that he was going to proceed no further until the situation had been clarified so at that stage we had to just hold and try and clarify the situation and that's what I did.

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So from when he said he was going to down tools, it no longer was important to you to discover how he had been appointed?---Yes, it was.

And the easiest way to do that would be to contact Nix or Pettigrew and just ask, wouldn't it?---Well, as I said to you yesterday, Mr Pettigrew was busy establishing the new department.

Yes?---I wasn't really going to ring up a colleague and say, "Look, it seems as though there's a bit of a problem here. You might've made a bit of a mistake here," and get them to, you know, try and fix it up for me. I saw it as my responsibility. I was the acting director-general of a department. I needed to follow through and do the work that needed to be done to ascertain the basis on which

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Mr Heiner was conducting his inquiry and in particular the basis on which he was appointed. I sought advice from the crown solicitor in that regard. 1

COMMISSIONER: But why wouldn't you just ask the man who appointed him about the basis on which he was appointed and what to do?---Well, why would I have gone and asked somebody else who's working in another area about a problem that was arising in their previous area when they knew that it was my responsibility to do that - - -

I don't know why you wouldn't?--- - - - and why would you say to someone, you know, "Well, I'm sorry, it looks as though there's a bit of a problem"? 10

You don't have to put it that way. You just wanted to know the answer to a simple question?---Yes, I wanted to know the answer and I thought I took the most simple and direct way of getting it. I'm sorry if other people don't agree with that, but I simply went and got the advice from Crown Law and followed through on that.

MR COPLEY: Was it pride that - - - 20

MR KEIM: I object to - - -

COMMISSIONER: Just a second?---I beg your pardon.

Just a second, please, Ms Matchett. Mr Copley?

MR COPLEY: The question was: was it pride that prevented you from ringing Alan Pettigrew?

COMMISSIONER: No, I don't think that was the objection you were objecting to. 30

MR KEIM: Well, I was objecting to two things, your Honour. I'm objecting on the grounds of repetition. There's a combination of my learned friend's questions and the commissioner's own questions and I do object to the question with regard to pride. I can't see any way which a question like that can relate to the terms of reference and what's being investigated here so I object on both of those grounds, your Honour, to the specific question - - -

COMMISSIONER: But the term of reference requires an investigation into whether or not there was any criminal conduct in responding to allegations of historical child sexual abuse at the John Oxley Centre. That's what the term of reference is. 40

MR KEIM: Yes.

COMMISSIONER: In conducting that inquiry Mr Copley - one of the things he has got to do is ask everybody whose fingerprints are on any document or had anything to do with

Heiner what their involvement was and the allegation is that there was criminal conduct involved. When there is criminal conduct involved, usually not everybody who has been connected with the event is happy or willing or able to tell the whole truth and nothing but it which is why you have the ability in inquiries to examine and cross-examine. So as to repetition, look, that's a question of degree. I don't think Mr Copley has crossed that line. My own questioning - what's the objection to that?

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MR KEIM: Well, the combination of our learned friend's questioning and the commission's questioning - - -

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COMMISSIONER: What, the tag team?

MR KEIM: - - - on the same subject, your Honour, is the substance of the repetition.

COMMISSIONER: Mr Keim, this is an inquiry and the inquiry is into a matter that your client had a very close association. Admittedly it was a long time ago and that's one of the problems. Not everyone is going to remember everything as clearly now as they might have once and memories need to be refreshed and I'm not going to accept the first answer that a witness gives me just because they don't want to be subjected to the trouble and inconvenience of having to think back over 20 years. Mr Copley is here to test the recollection and the evidence of witnesses for their honesty and their completeness and I don't see he has crossed any line on that.

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MR KEIM: If I can just rejoin you, commissioner, with regard to my objection to the question, "Was it pride?" in our submission, it has no relevance to the issues being investigated as to whether in ascertaining a question this witness chose a particular method or another particular method.

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COMMISSIONER: He could have asked less elaborately and less interestingly, "What was your motive for doing it?" He suggested a motive in his question. She can accept it or reject it. I don't see it as being scandalous or inappropriate.

MR KEIM: Thank you, commissioner.

MR COPLEY: So was it pride that prevented you from ringing Alan Pettigrew?---Not at all.

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George Nix wasn't off running another department though, was he? He was working for you?---Yes.

So you could have asked George Nix, couldn't you?---Yes, I could have.

You didn't?---I didn't.

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MATCHETT, R. XN

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Why not?---I didn't believe that George Nix would be able to provide the detailed information that I required. 1

But asking him wouldn't have hurt anything because it either would have confirmed your view that he couldn't help or it might have turned out that he could have helped? ---Well, it might've, but I didn't go down that course. I went down a different course. I chose to go directly to the source and find out myself.

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COMMISSIONER: I know, Ms Matchett. I'm sorry to interrupt you, but you're not being asked about the course. You've made that clear. Talk about repetition. You've made it clear what the course was. Mr Copley is interested in why you took that course?---Well, the reason why I took that course was because I thought I'd get the correct answer.

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MR COPLEY: Okay, so you went to the cabinet and what did they tell you? The cabinet secretariat, what did they tell you?---They showed me the collective minutes of a cabinet meeting.

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Did they forward you a copy of it?---I don't recall.

Could you have a look at exhibit 293? Have you seen that document before?---No.

Well, it's addressed to Trevor Walsh, isn't it?---It is.

It says it's forwarded to him and the date at the top is 19/1/1990, 11.59?---Yes.

Trevor Walsh must surely have shown you that?---I don't think so, because I think I already knew that. I think I went up to the cabinet office and I would have told him what I had seen at the cabinet office. If he then subsequently got that I don't think he'd necessarily bring it in and show it to me.

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Did you actually go up to the cabinet office?---I believe I did.

No, I'm trying to find out whether you actually really did? ---To the best of my recollection I did.

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So you physically attended the cabinet office?---To the best of my recollection I did.

Who did you speak with there?---I spoke to Stuart Tait.

Okay, and what did he do?---He went and looked at some documents that they had there.

Yes?---He brought a document to me at his desk, I think, or it might have even been in a separate room, and he showed me that document and he pointed out the paragraph for me to read and I read that and I didn't make any notes because it just then confirmed in my mind what I needed, the information that I required.

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Did the paragraph that he pointed out to you bear any similarity to the extract contained in exhibit 293?---Yes.

It was the same, wasn't it?---Yes.

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MATCHETT, R. XN

The minister had simply advised that - indicated there was going to be an investigation conducted?---That's right. 1

So the course of going to the cabinet secretariat had simply confirmed your belief that Mr Heiner wasn't appointed by cabinet?---That's right.

It didn't assist with how he was appointed?---No, and that was a matter that was being considered by the crown solicitor.

One way for the crown solicitor to work that out would be presumably to contact the gentleman who had made him - or appointed him, wouldn't it?---Well, the usual approach would have been to look at the departmental documents, and the departmental documents that I had available to me were provided to the crown solicitor. 10

They didn't throw any light on the matter?---No.

Did they, because you'd looked at them?---I'd looked at them.

You couldn't see in those documents what legislative basis there was for the inquiry?---No, that's right. 20

So did Trevor Walsh get exhibit 293, or what is now exhibit 293, at your request?---No.

He just did that off his own bat as far as you can work out?---I don't think - I have no recollection of asking him to get that.

You have no recollection of him showing you that document? ---No. 30

You had a meeting with Barry Thomas, didn't you?---On what date?

Well, have you ever had a meeting with Barry Thomas? ---Well, I have, I've had a couple of meetings with Barry Thomas. Which meeting are you referring to?

The first one?---Is that in January?

I'd suggest to you it occurred on 22 January 1990?---Right, okay, if that's what you say. 40

At 11 am. Does that ring any bells? Is it in your diary? ---22 January, you say?

Yes?---No, it's not in the diary.

Is there anything in there for 23 January that you met Barry Thomas?---No.

I suggest that you met Barry Thomas in the company of Sue Crook. Does that ring a bell?---Yes, it does. 1

I suggest to you that at that meeting Barry Thomas was told the following things, that there were 55 people working at the John Oxley Youth Centre?---What do you want me to say?

Well, what's your answer to that suggestion that that's what he was told at the meeting?---By whom?

You or Crook?---I can't recall. 10

He was told that Mr Heiner was going to find facts but make no recommendation?---I would have told him that.

Because that's what Mr Heiner had told you?---That's right.

Yes, and that that what Mr Heiner was planning to do was not going to satisfy either the union or the management? ---That's right.

Did you tell Mr Thomas that?---Well, at that stage Mr Heiner wasn't going to do anything more. 20

Yes, but did you tell Mr Thomas?---I can't remember if I said that or Sue said that.

Do you dispute that either you or Crook told him that? ---No.

He was told that there had been no cabinet approval for the inquiry?---That's right.

Do you dispute that either you or Crook told him that? ---No, I don't dispute that either of us would have told him that. 30

He also noted that there was conversation or speculation or discussion about the possibility of making the appointment of a new inquisitor or inquirer?---That's right.

Perhaps someone from outside?---That's right.

Or someone seconded?---There was discussion about that.

Do you recall who raised that?---No.

That the subject of an indemnity for Mr Heiner was raised at the meeting?---It was. 40

That the subject of grievances was raised at the meeting? ---I don't - just on the indemnity, I don't know who raised that.

Well, it could only have been you or Ms Crook, couldn't it? ---Or Mr Thomas.

Well, how would he know about it?---Well, he would have raised the issue that that might be something that needed to be covered if he wasn't going to continue.

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The topic of the destruction of the files was discussed, wasn't it?---Yes.

That was a topic that you raised, wasn't it?---No.

See, I suggest to you it was a topic that you raised because you wanted advice from Mr Thomas about whether or not the files could simply be destroyed?---No, that's not correct. I wanted advice about what could we do with the material that had been gathered by Mr Heiner and I think I had some notes of that meeting myself.

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I'll get you to have a look at exhibit 126 so you can see where I'm reading from, partly?---Thank you.

Do you see the second-last line there it says, "Destroy files"?---Yes.

See, the evidence Mr Thomas has given is that that's a matter that you raised, that you wanted advice about that possibility?---No, I raised the - I raised the fact that I wanted advice about what could we do with the documents and the transcripts that had been gathered by Mr Heiner. That's what I asked.

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Okay; and you eventually got your advice the following day, 1
didn't you?---Yes.

I'll get you to look at exhibit 129. Now, you have seen
that document before?---Yes, I have.

Are you sure, because it doesn't have your signature or
initials on it anywhere?---No, I have seen this before.

So it wasn't your invariable practice to signature or
initialise every document, was it?---Well, this document I
have - I can assure you have seen. 10

Now, in the second paragraph of the document the crown
solicitor states, "I am of the opinion that Mr Heiner was
lawfully appointed"?---Yes.

You would have read that when you received this, wouldn't
you?---Mm.

So any concerns about Mr Heiner being unlawfully appointed
would have been over once you read that, wouldn't they?
---Yes, there was previous advice about, you know, concerns
about how in fact he was appointed. 20

Yes, they waxed and waned about that?---That's right. So
this is the third piece of advice from the crown solicitor.

Yes, but by 23 January they had come out firmly and said -
the crown solicitor said that he was of the opinion
Mr Heiner had been lawfully appointed?---Yes.

Right. So that issue was now no longer to be of concern to
you, was it? It was a perfectly lawful inquiry?---No, his
appointment was perfectly lawful. 30

Yes, and then what was unlawful? What do you think was
still unlawful?---Well, I thought some of the issues were
unresolved in the sense of whether or not natural justice
was being applied. There were also some suggestions at the
time that he was using the procedures of regulation 63
which I later received advice from Mr O'Shea that a person
appointed under section 12 couldn't utilise those
provisions. So there was the interplay between the process
that Mr Heiner was conducting and the basis of his
appointment. That's my understanding.

Then two paragraphs down Mr O'Shea said, "The next question
was whether the inquiry which had been begun by Heiner can
or should continue"?---That's right. 40

And he said that there was no legal impediment to the
continuation of the inquiry?---Yes, that's right.

So that was good news, wasn't it?---Yes and no

Yes and no.

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COMMISSIONER: What wasn't good news about it?---Well, the prospect of having to continue the inquiry that had already caused such upset and confusion was something that was needed to be considered, the wisdom of continuing down the same track.

MR COPLEY: In the next paragraph after that you he speculated that the report Mr Heiner could make would be unlikely to satisfy any of the parties affected by it, didn't he?---He did.

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And he said that it seemed to have gone astray from its inception?---Those were his comments.

Did you agree with that?---I agree with the - that it was unlikely to satisfy any of the parties as Mr Heiner had told me that he was not intending to make any recommendations.

Yes, and he believed the better course would be to advise Mr Heiner that although he had been lawfully appointed, no good purpose could be served by him continuing further and that his services be dispensed with. Did you agree with that view?---I noted that view.

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Right; and he said it was quite natural in the next paragraph at the top of page 2 for Mr Heiner to be concerned about his position and so it would appear appropriate for cabinet to be approached for an indemnity for Mr Heiner?---That's right.

Did you agree with that?---That was the advice that I received from Crown Law, that that was the way to approach it.

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Well, you would follow advice from Crown Law, I take it? ---Well, yes.

Yes, because that's why you went to them in the first place?---Yes, exactly.

Mr O'Shea pointed out in the next big paragraph that Mr Heiner's informants had no statutory immunity or protection from legal action for, amongst other things, defamation. That was a concern to you, wasn't it?---Yes, it was a concern to me because it was my understanding that the people had been told by Mr Heiner that everything that they said to him was confidential.

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And you would have understood that Mr Heiner wasn't - you would have regarded that assurance by Mr Heiner as being reasonable, having regard to the letter of 10 October 1989, wouldn't you?---I can't remember the letter of 10 October.

That was the one that Janine Walker sent in saying, "These letters are provided on the basis they won't be widely circulated"?---That's right, yes, and I had - I thought that Mr Heiner would've wanted to honour that confidentiality. 1

Yes, so that was a reasonable position for Heiner to have adopted as far as you were concerned?---Yes.

Yes, and then Mr O'Shea said, "The material is now in your hands"?---That's right. 10

And that was true, wasn't it? You took it. You had it taken from Mr Heiner and brought to the seventh floor of your building?---Yes, I did.

Yes?---Another way of putting it is that I asked Mr Heiner, seeing he was going to no longer continue, to seal the material that he had so that it was there in safekeeping.

And then when you got it, you would have opened it to have a look at what was in there, wouldn't you?---I didn't.

Sorry?---No, I didn't. 20

Why not?---Because I wanted it all to be sealed and nobody looking at it so there could be no bias in any of the material and I wasn't going to be biased by anything I saw in there because we hadn't decided what we were going to do, whether we were going to have another inquiry or what was to happen.

All right; and Mr O'Shea said that he would recommend that, as the material related to an inquiry that had no further purpose, the material be destroyed, didn't he?---Yes; yes. 30

Did you agree with that?---I was very surprised at that.

Were you?---Yes.

Because that wasn't a thing you had wanted advice on in terms - you didn't raise the subject of destruction, did you?---No, that's right, I didn't, and my own professional background - for me it was quite an unusual suggestion. I'm very used to compiling all sorts of records and file notes and case notes and things like that.

Yes?---To me it was a strange suggestion and one that would not have come popping out of the top of my mind. 40

Right; and was it a suggestion that you weren't comfortable with?---I wasn't particularly comfortable with it, no.

Sorry?---I wasn't comfortable with it.

Why weren't you comfortable with it?---I just have a natural hesitance about destroying records, I suppose. 1

Right?---That would be my approach generally.

It just didn't the right thing to you?---I didn't think so.

No. So if that was your attitude about records, when Ian Berry telephoned your office seeking an assurance from you that the records would not be destroyed, why didn't you write back to him and say, "I can give you that assurance, Mr Berry"?---Because that assurance wasn't in my hands. 10

Why didn't you write back and say, "Well, Mr Berry, I'm sorry, I'm not in a position to give you any assurance one way or the other"?---I think we wrote back and said to Mr Berry, "Mr Berry, you ask are subject to legal advice that we're getting from a crown solicitor," or something to that effect and that was the way on which I had to approach it. I couldn't - I certainly wasn't going to just run off course when I'd received legal advice.

It wouldn't be a matter of running off course when a solicitor rings your office seeking an assurance from you that documents won't be destroyed. It wouldn't be improper for you or wrong for you to simply say, "I acknowledge your request. However, I can't give you any assurance one way or the other"?---I think we gave him the reply that we were advised to give via the solicitors. 20

A reply along the lines I have suggested would have alerted the solicitor to the fact, "Oh, well, he can't take anything for granted. If he wants those documents, he better get cracking"?---Well, I think that he did get that alert from a telephone conversation between himself and Trevor Walsh where I think Trevor virtually told him as bluntly as he could, "If you want to do something you'd better get something in writing pretty quick smart." 30

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So the reasons that Mr O'Shea suggested the material be destroyed were twofold, according to this exhibit 129. The first was to remove any doubt in the minds of people concerned that it remains accessible or could possibly affect any future deliberations concerning the management of the centre or the treatment of any staff. Now, those two reasons, they would have found - you would have regarded those as valid reasons for destruction, wouldn't you?---Unless we could find some other way around the whole situation.

1

Because destruction of the material would allay the concerns of Coyne and Dutney that the material might be held against them somewhere down the track, wouldn't it? ---It would have, yes.

10

Destruction of the material would have allayed the apparent concerns of the workers that they might have been subject to reprisal or victimisation or bullying for having spoken with Mr Heiner, wouldn't it?---Yes, and some of them would have felt that their concerns hadn't been taken seriously.

Sorry?---Some of them would have felt that by destroying the material it meant that their concerns hadn't been taken seriously.

20

Yes, so why didn't you act on his advice to destroy the material?---Because I thought it was a very unusual thing to be doing and I just sort of took my time.

He said to terminate Mr Heiner, didn't he?---Yes, he did.

He actually drafted a letter for you to terminate Mr Heiner?---He did.

But you didn't send it?---No.

30

Why not?---Because Mr Heiner had told me that he wasn't going to continue and I didn't see the point of sending him a letter terminating him.

So even though you were desirous of legal advice you were still simply going to regard legal advice as simply advice which you may or may not act on?---Well, while it was - you know, I was going to act on it if it was relevant. It wasn't relevant to send a letter to Mr Heiner saying, you know, "Your services are terminated." He'd terminated himself.

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See, if you had done what Mr O'Shea suggested the next day or that day by sacking Mr Heiner and writing back to the solicitor and saying, "The inquiry is over. The material is destroyed," that act of destruction would have occurred well prior to there being any request for keeping the

material for future legal action, wouldn't it?---Yes, but there were other considerations that had to come into play. We had to tell the other staff at the centre the inquiry was discontinued, we needed to understand what we were going to do, whether we were going to have another inquiry or whether we were going to use other processes to deal with the issues, and we needed to be very clear in our minds what we were going to do with the destruction of the records and the issue of any indemnity for Mr Heiner.

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The indemnity for Mr Heiner was really not a big issue, was it? That would be something that you could just take to cabinet and get?---You'd have to go through that process, yes.

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You could have terminated Mr Heiner straightaway and that wouldn't have affected the indemnity issue, wouldn't it? ---Well, there wasn't - again, there wasn't really a need to terminate him. He'd already said himself that he wasn't going to continue.

COMMISSIONER: Is that how it worked? Is that how you do it, if you'd had enough, say, "I'm not doing it any more"? ---Well, at the time he wasn't an officer of the department, he was just a contractor. I think - - -

20

Yes, I know, but he'd been paid to do a job and here he was quitting before he'd finished?---Yes, that's right.

MR COPLEY: That's what Mr Carruthers did?---He said he was going to discontinue until the issues were resolved, and that's what we set about doing, to resolve the issues.

Now, Mr O'Shea said in the third-last paragraph that his advice was predicated on the fact that no legal action had been commenced which required the production of the files, wasn't it?---That's right.

30

In fact, no legal action had been commenced on that basis, had it?---No.

The only thing that had been threatened was that someone could go to a court and obtain a writ of prohibition? ---Yes.

Which simply meant preventing any further conduct of the inquiry?---That's right.

40

But as time moved on and you didn't act on this advice there were statements made by Coyne and/or Berry along the lines of that they were going to bring legal action to get access to these files, weren't there?---Yes.

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COMMISSIONER: Mr Copley, I might give Ms Matchett a bit of a break, so whenever it's convenient to you. 1

MR COPLEY: It's convenient now.

COMMISSIONER: Okay.

THE COMMISSION ADJOURNED AT 11.35 AM

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THE COMMISSION RESUMED AT 11.51 AM

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MR COPLEY: Could the witness see exhibit 131?
---Thank you.

That is a photocopy of the same file note. It's been photocopied in three different ways because apparently it exists in three different forms of reproduction, but it's all in the same terms. So whichever copy you find easiest to read of those three, settle upon it. It's a memorandum addressed to the director general from Ian Peers dated 24 January 1990. Now, have you had a chance to peruse the contents of it?---I've just read it, yes.

10

Right. Do you recall seeing that memorandum in January 1990?---No.

So Trevor Walsh didn't give you this handwritten memorandum from Ian Peers?---No.

Do you recall Ian Peers ever saying to you, "Ruth, did you get my memo"?---No.

20

At some stage after January 1990, in the months or years that unfolded, did you ever see this document?---Yes.

When did you see it?---I think I saw it when they were compiling some information for one of the subsequent inquiries.

Were you annoyed and angry that yet another document addressed to you didn't make its way to you at the time it was written?---Yes.

30

You must have been appalled?---I was concerned that I hadn't received this at the time, as with the other memo from Ian Peers.

Yes?---From the same person.

I see. Did you think that there was a link?---Well, there were two from Ian Peers that didn't - - -

Two from Ian Peers that you hadn't - - -?--- - - - didn't surface.

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- - - you hadn't seen?---Yes.

Well, you didn't suspect that Ian Peers was writing memos but not giving them to you, did you?---No, I suspected that they'd been mislaid.

Well, if they didn't get to you they must have been lain down somewhere?---That's right. 1

Just not on your table?---That's right.

But the man in charge of your office was Trevor Walsh?
---Yes.

The man that you selected and brought in from holidays to become your chief of staff?---Yes.

COMMISSIONER: What period - - - ?---But they may not be in his office. 10

What period of time separated the two documents that never made it?

MR COPLEY: Well, I - correct with the witness - you're alluding to the other document, being the one of 2 January 1990, aren't you?---That was the one I was referring to.

And then this one here, for the Commissioner's benefit, is dated 24 January 1990. 20

COMMISSIONER: So three weeks separated the two documents that didn't make it.

MR COPLEY: Yes. Well, you'd agree with that, wouldn't you?---There is a three week period, yes.

Yes?---I agree with that.

You would have regarded this as a significant document if you'd received it, wouldn't you?---Yes.

And one piece of significance you would have attached to it would have been the advice that Coyne and Dutney were going to continue their so-called District Court action for access to documents?---Yes. 30

Because you were not comfortable with the advice or the idea of the Crown Solicitor's Office that these things can simply be destroyed?---Yes.

So if you had have seen this document it would have set alarm bells ringing with you that the option of destruction shouldn't be going - you shouldn't be going down the path of destruction?---I have - as I said, I always had concerns about that path. If I'd seen this document the other bell that this would have raised for me was the concern that was being expressed about trying to re-establish stability at the centre. 40

Yes, but you wouldn't have recommended destruction of the documents if you'd have known that this man was intending to continue and action to get access to the documents,

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would you?---No, if a writ had been issued or anything like that I would certainly have not been destroying any of the documents.

1

But even if a writ had been issued, if you knew that Coyne had actually phoned up and said, "Look, we're going to continue an action or commence an action or bring an action to get access to these documents," he wouldn't have recommended destruction, would you?---No, I was sitting, if you like, on that advice of the 23rd. I was just pausing because of the nature of the recommendation that is being made there for the destruction.

10

But if you had known that Peter Coyne had telephoned to say that he was going to bring an action to get access to those documents, you would never have made a recommendation to the minister that she take a submission to cabinet to have them destroyed, would you?---I would have if I'd had advice from the crown solicitor saying that's what should be done, and that is the chain of events that occurred.

Yes, but you didn't act on that advice because you weren't comfortable with it?---No, and then the advice was: this is the advice, this is what needs to be acted on. That's when the cabinet submission was prepared.

20

And you didn't - - -?---It was the advice we had at that time.

You didn't get any further advice from Mr O'Shea beyond that letter of 23 January on the issue of destruction, did you?---No, I didn't, but I subsequently realised that he did and that there was considerable discussion - - -

Sorry, what do you mean by that?---Well, I understand that there was discussion in Crown Law about whether or not the original advice to us that they were not public records, there was discussion about whether that was correct or not.

30

But be that as it may, prior to preparing the first cabinet submission, you didn't get any other advice from Mr O'Shea beyond that which we've looked at dated 23 January 1990?---No, I was relying on the advice of 23 January and even though I now know that they had discussions that day where they were raising the prospects of the Libraries Act, that was never conveyed to me. It was first conveyed to me on 16 February in his letter, which I received on 19 February.

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And what significance would that have had, if you'd known that there was consideration being turned to the Libraries and Archives Act?---Well, I think that was a whole lot of different considerations came into play there.

Well, would you have changed your recommendation?---If I'd known about that at the time I would have - the cabinet submission that would have gone up originally would have

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included all that information about the Libraries and Archives Act. **1**

But would you have changed the recommendation about destruction?---Well, there was a whole different approach had to be taken.

Why?---Because the Libraries and Archives Act doesn't allow me as the director general, as it implied the first piece of advice, to simply destroy the documents.

Okay. So the - - - ?---There's another process that has to be gone through. **10**

Yes. Did you have any discussions with the archivist yourself about destruction?---No, I didn't.

Did you have any written communications with the archivist about destruction?---No, I didn't.

That was all handled by somebody else?---That was.

Right. Now, I'm going to get you to have a look at exhibit 135. This is a document done up by a woman called Sue Ball who is now known as Sue Nielsen, who was an industrial officer with the State Service Union and she asserts that you and Ms Crook had a meeting with her and Mr Mann from the State Service Union on 6 February 1990. The significance of this meeting might come home to you if you see in the first paragraph where you indicated it is asserted that you'd called this meeting with them separately to the POA because the State Service Union people stood on different ground. **20**

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Do you remember that?---Yes, I remember that.

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But do you remember saying something like that or providing - - -?---I don't know whether I would - I don't know whether I personally would've used those words "stood on separate ground". They represented separate groups of staff in the unions.

Right?---In the centre I mean, in the department.

Now, the second paragraph says that the department outlined that, as a result of legal advice, they had abandoned the departmental inquiry headed by Noel Heiner and they were yet to be advised as to whether to destroy all of the evidence provided to the inquiry. Do you see that?---Yes.

10

Well, we have heard evidence from Ms Neilsen that it would have been Sue Crook who said that?---I have got no recollection who would have said what at the meeting.

But if she had in fact have said that, she was there as your junior officer, wasn't she, Ms Crook? She was your subordinate, wasn't she?---Yes.

20

If she had have said that, that wouldn't actually have been correct, would it, because a decision had been made by the department to have the documents destroyed, hadn't it? ---No.

Okay?---The department hadn't made a decision on 6 February to destroy the documents.

All right. Well, I'll get you to have a look at exhibit 151. The first page we needn't be concerned with for the moment, but the second and subsequent pages represent the submission t that Ms Warner took to the cabinet, would you agree?---That's right.

30

And if we go to the third page, there was a recollection in (ii) that all the material collected by Mr Heiner in the course of this investigation with the exception of material from official files be destroyed?---That's right.

So if Ms Crook had told people the department hadn't made a decision to destroy, that wouldn't have been correct, would it, because the department had resolved to seek destruction by 5 February?---No, this is a recommendation to cabinet for them to consider the indemnity issue and the recommendation for the material collected to be destroyed. That was a recommendation to cabinet.

40

As you represent the department, in your mind you had decided that the material should be destroyed - - -?---No.

- - - because no recommendation would go to cabinet that you wouldn't agree with, would it?---No, that's not strictly true. 1

That's what you told the police last week?---Well, it's true in the sense of if it's a submission that we're putting forward, but in many cases where there are submissions going forward that involve other departments or other agencies I personally may not fully agree with that submission.

At page 76 of the transcript last week you said, "It would never get to the stage where I presented something to the minister where I didn't agree with the recommendation"? ---Yes, but this is a recommendation. It's not saying, "This is what we're going to do." 10

No, but you agreed with this recommendation that all the material should be destroyed with the exception of what came from official files?---Yes, reluctantly based on the advice that I'd got from Crown Law. That was the advice that I'd been given and then I was subsequently given advice that it was wrong. 20

Why did destruction of the documents have to be a question for cabinet?---Well, they didn't actually have to be a decision for cabinet. The reason why it was put before cabinet was because it was in my mind a controversial thing to do, as I said to you earlier. That's why it was put there. Certainly I know that the minister was very concerned about the issue and I have some recollection - I don't know at what point - that she was saying, "This is something that I need to discuss with the premier and with the attorney-general." 20

Right?---So it was put there with the purpose of having the government consider what we thought to be a fairly controversial suggestion that had been put to us by Crown Law. 30

So the decision was too hard for you to make. You thought you would move it onto the cabinet, did you?---Not that it was too hard for me to make; that it would be prudent for there to be other minds thinking about this issue because it was, as I say, controversial. It was controversial in my mind anyhow. I thought it was a prudent thing to do, frankly, and, as it turned out, it was very prudent. 40

Sorry?---Well, as it turned out, it was very prudent to put the issue to cabinet because that's what flushed out the appropriate and much more accurate legal advice which we subsequently received.

Okay. Why was the recommendation though that you put forward and the minister put forward that the material be destroyed if you have these misgivings?---Because that was

the only advice that we'd got about what to do with the documents. 1

But you didn't like the advice?---No, and that's why it was good that the decision that came out from cabinet was for there to be a cabinet memorandum to look at some other options; something I fully supported.

Right, but the recommendation wasn't simply for cabinet to note that we have these objects. Crown Law's advice is to destroy?---Yes.

10

"I, the minister, am seeking cabinet direction on what to do." That wasn't the nature of what was being put to cabinet, was it?---No, it was being put to cabinet, "This is what's happened and these are the recommendations."

It's a positive recommendation that Heiner get an indemnity?---Yes.

And that the documents be destroyed?---Yes.

Even though you say you were very uncomfortable with that? ---I was, yes.

20

Very uncomfortable?---Yes, and, as I understand it, there was quite a bit of discussion and fortunately, as I say, you know, it caused the Crown - the more accurate Crown Law advice to surface. Even though, you know, it had obviously been bubbling around for a while, it surfaced to me.

The only material difference in terms of the question of destruction though between the Crown Law advice you received and whatever came later was that the state archivist - her consent needed to be obtained. That was the only material difference, wasn't it?---And that they were public records.

30

Because they were public records, the state archivist needed to be consulted?---Yes, that's right.

That's the only material difference, isn't it?---Yes, but it meant that there was - quite a different process had to be followed.

Well, the only difference was that the state archivist had to be consulted?---That's right, and I couldn't - and the difference was I couldn't, you know, organise their destruction immediately.

40

No; no. In fact you never destroyed them, did you?---No.

And Walsh never destroyed them?---No.

Well, Walsh didn't destroy them on his own, did he?---Well, he assisted whoever it was, the assistant state archivist.

Yes, and the state archivist wasn't told that anyone wanted them for legal purposes, any solicitor was desirous of having access to them for legal purposes, was she?---I'd have to look at the documents, but I believe the letter that Stuart Tait sent to the state archivist advised of that.

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Mr Littleboy on Monday conceded that it didn't and said that it didn't because either Mr Littleboy was incompetent, according to Littleboy, or Tait directed him not to put it in the letter?---Well, I'd have to look - you'd have to show me the letter and I could put out the phrase to you, as I recall, but I can't take it any further than that. I'd have to see the document.

10

Okay. I will just show you the letter. Could you look at exhibit 173? Can you find the phrase that you're thinking of there?---This is to the state archivist:

During the course of the investigation questions were raised concerning the possibility of legal action against Mr Heiner and informants to the investigation because of the potentially defamatory nature of the material gathered.

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What's the significance of that sentence?---Well, that's a sentence to the state archivist, I would have thought, alerting her to the fact that there was a possibility of legal action. 1

During the course of the investigation by Heiner questions were raised concerning the possibility of legal action against Mr Heiner and informants because of the potentially defamatory nature of the material gathered.

You would regard that as sufficient to alert the archivist that a solicitor had been actively seeking these documents?---I would have thought that it would have raised some questions for her, and of course the cabinet submissions refer to - - 10

She didn't those. She didn't get the cabinet submissions? ---I didn't know that she didn't get them.

No, so you did the right thing. You told the cabinet a solicitor was pursuing these documents, didn't you?---I did. 20

The archivist was told - in addition to that paragraph you've read out, on the next page she was told, "The government is of the view that the material is no longer required or pertinent to the public record," you see, so she wasn't told about it, was she?---Well, I wasn't communicating with her, but did she ask?

I see, do you see it that she would have had an obligation to make further inquiries of the cabinet secretary?---I don't know what communications she had with the cabinet secretary, but I thought it was her obligation to satisfy herself about the nature of the documents and whether there were any other - if they were required in any other way. 30

Right?---But anyway, I wasn't involved in that. That was - - -

You had nothing at all to do with the composition of those letters to the archivist?---No.

Now, Sue Crook says that she drafted the cabinet submission, exhibit number 151, at your request. You'd agree with that, wouldn't you?---I think that's highly likely and I may have put in bits and pieces here and there. 40

It was your decision to send the matter up to cabinet, wasn't it?---Well, I sent it to cabinet because Crown Law told me that I needed to go to cabinet to get the indemnity for Mr Heiner.

Yes?---That's why the cabinet submission was being prepared. 1

That's right?---So the background to the issue needed to be put together in that submission.

So it wouldn't be correct to say that you would never have had a suspicion that exhibit 151, the cabinet submission, was prepared in the cabinet office?---Not this one, no. I know in my interview I got a little confused.

Did you?---Yes. I think that I was thinking of the final submission, which was there the information from the state archivist got included in the cabinet submission. I think at the time when I was being interviewed, whenever it was, last week or the week before, I thought that the cabinet office did that bit, but in fact I think what happened was that they sent me the letters that they had from the archivist and that Sue Crook and I or whoever worked on them, we used that material to construct that third cabinet submission which didn't look like the sort of submission that would come from us. 10

So we can proceed, as far as you are concerned, safely on this basis, that what's contained in exhibit 151 was information obtained by you and Sue Crook from departmental records and put together?---And from advice from Crown Law. 20

Yes, and that the cabinet office played no role in the creation of exhibit 151?---No. I agree with that.

Good. So Stuart Tait's hand is not in bringing this thing to the cabinet?---No.

It was all the idea of, and we'll keep it general, not personal, officers of the Department of Family Services? ---That's right. 30

Right, and the matter of Heiner had to go to the cabinet because only cabinet could give him an indemnification for costs. Agreed?---Yes.

The matter of the destruction of the documents it was thought prudent should go to cabinet because it was a matter you were in two minds about?---Yes, and then there's the other issue.

Yes?---I don't know where it fits in, but I have this recollection that we were to identify issues from the previous government that were sort of unresolved that needed to be identified. I don't know whether it was to - we needed to identify them to the cabinet secretariat or to the premier's department, but I certainly have this strong recollection of being asked to identify matters that were sort of unresolved as a result of the previous government. 40

This submission at 151 was the first one that you'd ever done for the new minister Warner, wasn't it?---It was. **1**

Cabinet didn't make a decision, did it?---No.

It didn't rush into anything. It deferred a consideration of the matter, didn't it?---That's right.

So a further document was prepared setting out some options for cabinet, wasn't it?---That's right, the cabinet memorandum. **10**

Yes, which you were supposed to sign?---That's right.

But you didn't?---No, I didn't.

Why was that?---That was because that had to be submitted to the cabinet secretariat on 13 February and on 13 February I was out at the John Oxley Youth Centre telling the staff there what was happening with Mr Heiner's inquiry.

Well, Trevor Crook - what's his name - Trevor Walsh, he would have known you were going out there on the 13th, wouldn't he?---Yes. **20**

Because he knew that the week before?---Yes.

He was setting up the meetings, wasn't he?---Yes.

You had Coyne carrying on like a goat, making phone calls to you all the time, trying to find out why you wanted to have a meeting with him, the week before?---That's right.

So the fact you were going out to John Oxley on the 13th was a matter that was well and truly locked in as a movement you were going to make that week, wasn't it?---It was. **30**

This cabinet submission, the second one was a pretty short one and a half-page document, wasn't it?---That's right.

So it was just bad luck, was it, that you weren't around when time came for signature, or bad timing?---No, well, we didn't get the cabinet decision about having to prepare the further memorandum until the day before, the 12th.

Are you sure?---Yes. Well, the cabinet decision to have a further memorandum was - it was decided on February 12. **40**

It was decided on February 12, okay?---So basically we had that decided, and we would have found out that in the afternoon after the minister came back from cabinet. So we had from then until the next day. I can't remember the times when things had to be logged with it, but we had to have the memorandum in the next day.

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So there's nothing at all sinister, or there's no sinister inference to be drawn from the fact that Myolene Carrick, who had nothing to do with youth detention, was asked to sign the document?---Not at all. She was the most senior person who was in the office, as I recall, as that time, and I think - I don't know whether I asked her personally or I asked Trevor would she mind signing it, simply because I physically was not there to sign it.

1

Well, she says that the first she knew about it was when Trevor Walsh presented it to her and told her to sign it? ---Trevor wouldn't have told her, he would have asked her to sign it.

10

How do you know? You weren't there?---I just know Trevor's manners.

He was a very polite man?---Yes.

But you'd have room for doubting whether his ability to keep track of correspondence was as commendable as his manners?---I don't have a tremendous amount of doubt given the volume of correspondence, but I can assure you, there was absolutely nothing sinister about requesting Myolene to sign this, because I physically was at John Oxley, which is at Wacol, and this needed to be submitted to go into the cabinet process for the next week. There were, you know, tight time-frames.

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So it could have been faxed out to you at John Oxley, couldn't it, for you to sign?---Well, you can't - they don't put in faxed copies of things into the cabinet. It had to be signed and then it's reproduced multiple times to go into the cabinet bags. It's not an unusual thing. It may have been unusual that it happened in the first, you know, week or so that we were putting in cabinet submissions. It's not unusual.

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What's not unusual?---Well, it's not unusual for somebody else to have to sign a cabinet document on behalf of somebody else. 1

So would the cabinet people refuse to accept a faxed copy of a document?---Well, we wouldn't go into a faxed copy if we had a very senior officer there could sign the thing and send it in.

Okay?---We just wouldn't do that.

Just wouldn't do that?---You know, I'd completely trust Marlene to, you know, sign that and, you know, do the right thing, you know. No doubt at all. 10

So there were four options. I'll get you to have a look at exhibit 168. You'll see on the second page of the submission there are four options set out there, isn't there, for cabinet?---Yes.

And commendably, I'd suggest, in the paragraph before, your department again reminded cabinet or drew to cabinet's attention for the first time that there was some urgency about this, "As there's been a number of demands requiring access to the material, including a request from solicitors"?---I think it was included in the first submission, too. 20

Okay. I'll just get you to have a look at that one again and see if you can find it for me?---It's not those exact words, it's just - - -

Have a look, 151?---It's in the body of the submission.

Okay?---Paragraph 7 on page 6. 30

Can you just read it out, I've misplaced mind?---It says:

This advice does not apply to material removed from official files which should be returned, nor would it apply in the event of legal action requiring production of the material been commenced. To date no such action has been initiated.

Right. But by 13 February your department was aware that there were solicitors actively seeking the material and I'm suggesting to you, very commendably, you and your department make sure that the cabinet was aware of that? ---Yes. 40

See, I'm not being critical of view?---No, I know.

I'm saying that that's - - -?---That's what we did.

- - - appropriate to draw it to cabinet's attention. And then if cabinet decides that it would destroy things that solicitors are actively seeking, then that's a matter - that's cabinets problem, isn't it?---That's right. The other thing that was unfortunate about the timing again was that this was prepared and had to be submitted on the 13th and we didn't get the advice - the new advice from the crown solicitor until the 16th - and I certainly didn't get it until the 19th, which was the day this was considered by cabinet. So there would have been different options happening at that legal advice earlier.

1

Well, what other options could there be? There's destruction, retention, release, or doing nothing. Doesn't that sum up the universe?---Well, it does pretty well but it would have had the processes around the destruction through the Libraries and Archives Act, it would have had that material on it.

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Well, this comes back to the point I was making to you earlier, the only thing from your point of view different in any subsequent letter from the crown solicitor was that in subsequent letter he had adverted to the fact, "Now that these records are in the possession of the government they're public, therefore before you destroy you need to take it up with the archivist?---Yes, I know. I realise what it - - -

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I thought we'd been down that and you agree with me?---Yes, I agree with you totally. I'm just saying that these submissions would have been different had that information been available at the time.

Well, these submissions are different - - -

COMMISSIONER: Mr Copley - - -

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MR KEIM: Excuse me a moment, Commissioner. My understanding of the Libraries and Archives Act - and it may be wrong -is that in fact permission of the archivist was required for destruction.

COMMISSIONER: Yes.

MR KEIM: My learned friend keeps putting it in terms of: you have to take it up with the archivist; you have to consult with the archivist; you have to talk to the archivist. He can put his questions but he should put the thrust of the advice and the thrust of the law in correct terms, in our submission.

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COMMISSIONER: Mr Copley.

MR COPLEY: I don't understand the point made against me, so if my learned friend can formulate what a properly put

to reflect the law, I'm happy to embrace what he says I should put and I'll put it. 1

COMMISSIONER: Well, Mr Keim, you want Mr Copley to put a question in terms of the strict requirement, which was not that she had to check it out with the archivist or speak to her, but get her permission to destroy.

MR KEIM: Yes. Because my learned friend is seeking to minimise the difference between the two advisers, and he's entitled to do that if he thinks that is an appropriate way of approaching the matter. But if he is to minimise it he shouldn't minimise falsely because where there is an independent decision required of an independent officer under legislation, that's quite significant to where the decisions with regard to law and fact are available to this witness under the original advice. 10

COMMISSIONER: Okay. So because she had to go to the archivist, the discretionary scope she had available was narrow.

MR KEIM: Yes. It's not simply a process, it's in fact a different decision. 20

COMMISSIONER: I know. I understand, and you're concerned about the fairness to the witness rather than confusing me? Because I understand the difference.

MR KEIM: Yes. To keep on saying, "The only difference is, the only difference is," and to state that difference wrongly is an unfair question in our submission.

COMMISSIONER: Okay. Would you just bear that in mind, please, Mr Copley. 30

MR COPLEY: I'll try to, yes.

COMMISSIONER: And Mr Keim, if Mr Copley transgresses again you may object.

MR KEIM: I'll not seek to interfere lightly, but if I feel it must be done, I will do so.

COMMISSIONER: There's no suggestion that you are interfering too much. Yes, Mr Copley.

MR COPLEY: Thank you. I have no basis to suggest to you that you had any contact with the archivist. Okay? I'm not suggesting you contacted her?---No, I know. 40

I'm not even suggesting you had a duty to?---No.

I'm not suggesting that you incompetently or deliberately failed to tell her salient matter. I'm not suggesting that at all. Do you understand?---Yes.

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MATCHETT, R. XN

But what I am really wanting to get your agreement with is that very prudently in exhibit 168 your department drew to cabinet's attention that solicitors were making requests or demands - a number of them - for these documents. Agreed?
---Yes.

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And when it came to the option of destruction, if there's a deficiency in recommending that as an option, a deficiency there is that the option for destruction doesn't allude to the need to talk to the archivist?---That's right, because - - -

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That's the only - - -?--- - - - that wasn't the advice that we had at that time.

Yes, that's the only matter that I probably want to get across with you. But you say, correctly, that the crown solicitor gave further advice that before you could destroy, he would need to take it up with the archivist? ---That's right.

Right. Okay. So again, from your perspective you had done all you could to make the cabinet aware that: if you're going to destroy these things you need to know there is a solicitor who's been making demands for them?---That's right.

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Yes. Now, what part, if any, did the cabinet secretariat play in compilation of exhibit 168, the submission - not the decision, we know they typed that up - but the submission?---168, I don't think they played any part.

Right, okay. Well, Trevor Walsh has said that he and Sue Crook drafted those options up and Sue Crook has said, "Well, if Trevor Walsh says that, I'm not in a position to dispute it." Do you have any evidence to offer that would contradict what Trevor Walsh has said?---No.

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Okay. So cabinet secretariat had no involvement in that?
See, there's no trick in these questions?---No, I know
there are no tricks.

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See, there have been people out there that have been
alleging that somehow or other this was all engineered by
someone in the cabinet office. That's why I'm trying to
ascertain - - -?---No; no, I have no - I have no qualm with
what you're saying.

Okay, good; we're agreed on that. Now, could you look at
exhibit 175B?---Can I just say one more thing on that one
though? I did read this before it was signed.

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Yes, that's to be expected?---Mm.

It wouldn't have gone forward - - -?---No, that's right.

- - - without you agreeing to it, would it?---It's just
that you didn't ask me that.

Okay. Now, have a look at exhibit 175B. That's a fax from
the cabinet secretariat from Littleboy to Trevor Walsh
dated 26/2/1990?---Mm.

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Now, you saw that, didn't you?---Yes.

And it attaches the archivist's consent or, so that I don't
get into any strife, permission or acquiescence in doing
away with the records. Would you agree with that?---That's
right. She said, "I am satisfied that they are not
required for permanent retention. I hereby give approval."

Right; and although she was satisfied of that, you did not
yourself know what she had been told to assist her in
arriving at that state of satisfaction, did you?---No,
because that was - the cabinet decision was for the cabinet
secretariat to liaise with the state archivist.

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Right; and that had been made known to you somewhere along
the line so you dropped out of it?---Well, I would've got
that when the cabinet decision - the day the cabinet
decision was made.

Right; and then I will show you exhibit 175C. This is a
letter to you from Tait, the cabinet secretary?---Mm'hm.

You have seen that before, haven't you?---I don't have a
distinct recollection of that. I don't have - I can't say,
"Gee, I can remember that," but that would have been a
letter that I would have got, I suppose. Again it's one
that I haven't initialled on it, but I'm sure that would
have come and I think that's what happened then. We had
the information from the state archivist and prepared the
further cabinet submission.

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And so the third cabinet submission was done at the request of the cabinet secretariat, wasn't it?---Yes. 1

Do you agree with this proposition: that was the only time the cabinet secretariat got involved in the drafting of - - -?---Drafting, that's right.

Just let me finish - the substance of these submissions? ---Yes.

You see, we have heard evidence that they - - -?---Yes; yes; yes, that's right. 10

Yes, because we have heard evidence from Walsh and Littleboy that they were very particular about setting out?---They were.

And they might have tinkered around with inconsequential matters but on substance, the substance of the previous cabinet submissions, they all came from the Department of Family Services?---Yes; yes; yes, and there would have been - if I can just say, just make a commentary, there would have been a lot of discussion about the layout and things like that because this was very early days. I think the cabinet handbook had only been out for possibly a few weeks before these submissions were prepared. It was new. 20

Could you look at exhibit 180, please? Now, this doesn't have a date on it. It doesn't have anyone's signature. Have you seen it before?---Yes, I saw it fairly recently.

Okay. Leaving aside fairly recently, like this year or last year, did you see it in 1990?---I think I probably would've.

Did you draft it?---I think I possibly did or somebody else did some of it and I did some of it. 30

But your name isn't on it?---No.

And there are no initials on it to say that you did?---No. At that time - I have this recollection that at that time the notes that we prepared for ministers for briefings for cabinet were all done on plain paper like this. They weren't done on departmental letterhead or anything.

Yes?---And I think initially they weren't signed by anyone; that they were usually discussed in an oral face-to-face meeting with the minister. 40

Right. Well, this document was generated after the archivist had given her consent or permission or acquiescence to destruction, wasn't it, if you look at paragraph 7 of it?---Yes; yes.

And whoever drafted it or contributed to drafting it properly told the minister that correspondence had been received from solicitors representing two staff members at JOYC seeking production of documents, including the material gathered by Mr Heiner?---Yes.

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And you would regard it as a proper and important and indeed a vital thing for the minister to know that the cabinet was about to embark upon the possibility of destroying documents that a solicitor had been actively seeking?---That's right, I knew that and it was very - it was a matter of considerable concern.

10

Yes, and it concerned you. That's why it found its way in the advice to the minister?---It concerned the minister too.

Sorry?---It concerned the minister too.

Did she worry about that too?---Yes.

You didn't think, "Well, maybe we should jus pull these documents back from cabinet. We'll forget about cabinet looking at them. We'll just hang onto them for a bit and see whether this solicitor puts his money where his mouth is and brings an action to get these documents"?---Yes, well, that was one of the options, wasn't it, to sort or - - -

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I can't answer your question?---I thought that that was one of the options in the memorandum that didn't get up in the previous cabinet submission.

So that would have been an option that you would have regarded as plausible and available?---Just see what happens.

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Just take it slowly?---Mm'hm.

COMMISSIONER: He was pretty persistent though, wasn't he, in trying to talk to you, Mr - - -?---Mr?

MR COPLEY: Berry.

COMMISSIONER: No, who was Berry acting for?

MR COPLEY: Coyne and Dutney.

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COMMISSIONER: Mr Coyne didn't give up easily?---No, and I suppose I had a view if people wanted to take action, so be it, take action.

MR COPLEY: Wasn't that Ken O'Shea's initial view about, "Let them sue"? Didn't he say that to you?---Well, I had a similar view.

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Yes, because the reality is that even if a person brought some sort of legal action for access to the documents, because it was legal action, the department would get the opportunity to have its say before the court?---Yes, absolutely; absolutely. I was never - I suppose I was never really concerned inordinately about that. What I was concerned about was trying to get the institution back on an even keel and for the staff to be settled down enough so that they could actually provide the services they were supposed to be being provided. So I suppose I had Coyne and Dutney and their interests. I had Mr Heiner and his interests, but I suppose paramount in my mind were the staff at the facility, some of whom had made complaints, the bulk of whom hadn't, and, of course, the children and in that environment where you have staff, you know, warring - so I was trying to focus on, "What can we do to get this thing settled down?"

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Lastly, for the moment, would you have a look at exhibit 181? Forget the decision. That's not important. You didn't draft that, but the submission to cabinet was one your department prepared, wasn't it?---Yes.

Who prepared it?---I can't remember who exactly prepared it.

20

Well, who are the likely candidates?---The likely candidates are me, Trevor and, I would suspect, Sue Crook from industrial.

Because you weren't involved in George Nix or Myolene Carrick in drafting these, were you?---No.

No, and again on page 2 of the document your draft done by your department says, "Representations have been received from a solicitor representing certain staff at JOYC," paraphrasing here, they have sought production of the material referred to in the submission, "However, to date no formal legal action seeking production has been instigated." Agreed?---Yes.

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So you commendably, I'd suggest, remind the minister and the cabinet that there's a man looking for these documents?---Yes.

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You'd certainly seen - the essence of complaint from the State Service Union people, you did see those, didn't you, in 1990?---No, I didn't. 1

All right. I'll get you to look at exhibit 183. This is a letter to Mr O'Shea dated 19 March 1990 and it's signed by you, isn't it?---Yes.

In the second-last paragraph and the last sentence it says, "I have attached copies of this documentation for your perusal and consideration"?---Yes. 10

If you read the rest of the paragraph before that, you understand that that's a reference to the letters Mr Pettigrew received from the union, isn't it?---Yes.

So you must have seen them, because you attach correspondence - - -?---Yes, but I didn't - I signed that correspondence. I didn't have the letters attached. I didn't look at the letters.

Why did you never, ever seek to look at those letters? ---I'd seen the summary that had been prepared in November 1989. I had no desire to go and read through the letters of complaint. I believed - until that time I believed that those original letters of complaint were with Mr Heiner. It was some surprise to me when they surfaced in March, they were - - - 20

No, they didn't surface in March. Haven't you said they surfaced after George Nix left?---After he left that floor?

No, after he left - after he left his office was vacant? ---After he left - yes, after he's left that office.

Yes?---After he vacated that office on that seventh floor in March. 30

You must have been annoyed?---I beg your pardon?

You must have been annoyed when they turned up in March? ---I was flabbergasted.

Flabbergasted, because you'd been looking for them, hadn't you?---Well, other people had. I hadn't personally been looking for them.

Yes, well, see, George Nix says that when he was in - - - 40

COMMISSIONER: South Australia.

MR: Nurioopta.

MR COPLEY: Nurioopta. Thank you. I need to be particular. When he was in Nurioopta, South Australia, he made a phone call back to Queensland and Derman Roughead - - -

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COMMISSIONER: Roughead.

MR COPLEY: Roughead, sorry, was asking him for copies of Heiner material, and he told Roughead where to find it and he says that when he came back to work in 1990 Trevor Walsh came down one day to him and said, "I want all the material you've got on the Heiner matter." He said, "Why?" and Walsh said, "Because Ruth wants it." Mr Nix says that everything that he ever had about the Heiner matter was given over in either of those two exchanges in January 1990 to people acting on your behalf?---Well, I'm sorry, that's the first I've ever heard that recounting. All I can tell you is what I know. I didn't see those documents. I've never seen those documents until I was here the other day. I did not see them. They were not attached here. They might have been in an envelope or something like that when I signed that correspondence. I have always been under the belief that they were found in his room when we did the renovations, the repartitioning of that floor, which would have been in - you can get the dates presumably from public works or something like that, if they keep them back that long, but I believe it was in March.

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In March?---Of 1990.

You only believe that because of that letter, don't you, because it's dated 19 March?---No, because I know that when they were found action was taken straightaway.

Right?---Well, that was what I was told, anyway.

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Did you ever have the impression there in those early months of 1990 that there was something fundamentally wrong with your department when people can't find documents for you and correspondence isn't getting to you?---I had a fundamental belief in the first couple of weeks that there were some serious security issues.

Yes?---Police were brought to the building.

What do you mean?---Access being gained into the seventh floor of the building. Documents were being moved and removed.

40

Right?---I can clearly remember one senior officer very, very distressed.

Who was that?---Robin Shepherd. There were a number of problems like that. Prior to that time, in 1989 I had several instances myself where I would leave material on my

desk and go home at night and when I arrived in the morning those documents had obviously been rifled through, removed or other documents placed there. So there were some issues about some very unusual behaviour.

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So George Nix's expedient of keeping these Heiner documents under lock and key you'd regard as a wise move in those circumstances?---Yes, I think it would have been a wise move. What I thought would have been a wiser move probably would have been to have put them on a departmental - in a departmental file.

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Yes?---But I do realise that - - -

What would have been a wise move would have been for you to ask George Nix for them too, wouldn't it?---Well, I didn't because I thought that Mr Heiner had them, you see. I thought that they had been given to Mr Heiner because I believed that that's what Mr Heiner was looking into, the complaints that had been made by the nine members of the QSU. That's what I believed.

When you got the box you never looked in it?---No, I didn't.

20

What was it that you thought might have been in that box that caused you to refrain from looking in it?---Well, I guess I wanted to try and remain unbiased in the situation, because I didn't know how this was going to end up having to, you know, pan out, and I didn't want to be sort of tainted by looking at what one person's evidence was or what another person's evidence was. I certainly knew, having spoken to Mr Heiner, that he hadn't got to the stage where he had brought together any of the material and come to any conclusions or any report. I asked him about were there things that he was concerned about, or what was he going to, you know, include in his report, and it was at that time that he told me he didn't intend to make any recommendations. I can also remember him telling me that he didn't feel that he was qualified to make comments about the security and safety issues in the centre.

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No further questions, thank you.

COMMISSIONER: Thank you. Mr Hanger?

MR HANGER: Mr Keim.

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COMMISSIONER: Mr Keim, would you like - which order would you like to go in, next or after Mr Hanger?

MR KEIM: I'd probably like to go last before the re-examination.

COMMISSIONER: Last. Yes, I thought so. Mr Hanger? 1

MR HANGER: Yes, that's all right.

COMMISSIONER: Yes, okay.

MR HANGER: I've got only one question, really. I wanted to ask you about the conversation with Barry Thomas. I'm going to put to you that his memory of the conversation about the issue of destruction of documents is that it was raised by you not so much as, "I want those documents destroyed," but as a topic of discussion. I suggest to you that's the case?---I have notes of that meeting. If I could have the benefit of those notes I could - - - 10

MR KEIM: Excuse me, commissioner?

COMMISSIONER: Yes, Mr Keim?---I might be in a better position to respond.

MR KEIM: My understanding is that those notes are MFI 6. They were removed from an earlier bundle of handwritten notes which included Mr Walsh's notes and made MFI 6. 20

COMMISSIONER: Okay, thanks. Do you want to show Ms Matchett MFI 6, Mr Hanger?

MR HANGER: No, that's - if those are the notes that you want to refer to to give the - - -

COMMISSIONER: Are they the notes you mentioned, Ms Matchett?---Well, I don't know. I can't see them yet.

MR HANGER: Yes, have a look and then - - -

COMMISSIONER: Yes?---Yes, they are. 30

So you want to refer to the notes to answer the question? ---I am, and in reply to your question, Mr Hanger - - -

MR HANGER: Yes, and the question I put to you is the issue of destruction was raised first by you as a topic of discussion?---Well, from my notes, the way they're set out, I've got a number of issues at the top. I've got it that Barry Thomas was present and there's some information as to - do you want me to read them all out - or you've all got them there, haven't you? 40

I don't want you to read them all out, although - - - ?---I think that for me the pertinent point is that there were some suggestions about appointing an officer to look at grievances and stuff like that. And then the next bit, I've got "Crown Law" and I've got a heading. I've got a line across the page, I've got, "Crown Law. Confirm not to start," and that was, you know, confirming that Mr Heiner was not to restart, "Indemnify," and then I've got a line, "Minister proceed to cabinet." That's the Crown Law advice. "No real use. Unbiased, destroy records on legal advice." That's what they said to me that I needed to do.

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Well - - - ?---The third thing I needed to do was we needed to have a reply to Dutney and Coyne. I have very firmly in my mind that Crown Law - that Barry Thomas raised the issue of destruction, and as I've previously said to you, from my professional background the notion of destroying a record would not necessarily pop to my mind first of mind. Most of my professional career has been about making records and writing evaluations and assessments of people and of services and programs.

May I suggest to you that what I see, the reference on that MFI6 to destroy records, it's not clear there who said that. Indeed, I'm sure you wouldn't destroy them without legal advice, but it doesn't say whether you raised it or whether Mr Thomas raised it?---No, it's just that the things that he was going to do are all there together under the heading Crown Law. I don't usually write notes about things I've said myself on a piece of paper. I usually write down what other people have said. I usually have a pretty good memory of what I am saying myself.

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So what does it mean there when it says, "Destroy records" and then an arrow "upon legal advice"?---On legal advice. It's on the legal advice I'm receiving, that they're saying "destroy the records".

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Thank you.

COMMISSIONER: Yes, Mr Harris.

MR HARRIS: I have no questions, Commissioner.

COMMISSIONER: Mr Bosscher, do you have any questions?

MR BOSSCHER: I do have some.

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COMMISSIONER: Right. Mr Keim, do you want to go before or after Mr Bosscher? Do you want to be last?

MR KEIM: Yes, I'll be last.

COMMISSIONER: Okay. How long do you think you'll be?

MR KEIM: I'll be very short.

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COMMISSIONER: Short, okay.

MR KEIM: Unless Mr Bosscher causes me to do otherwise.

COMMISSIONER: How long will you be, Mr Bosscher?

MR BOSSCHER: I would expect I'd be probably 20, 25 minutes.

COMMISSIONER: All right. We'll go for 10 and then we'll break for lunch.

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MR BOSSCHER: Just focusing on that conversation that you had with Mr Hanger in relation to the meeting that you had with Mr Thomas of Crown Law, as you're probably aware, he's given evidence here before us already. Are you aware of that?---I am aware of that.

His recollection of that particular meeting that he had with you was that one of the key outcomes you were seeking was that the documents in your possession or in the possession of the department- the Heiner documents - not be released to Mr Coyne. That was one of your key priorities according to Mr Thomas. Would you agree with that or disagree with that?---It was one of my concerns. Calling it a key priority might give it some higher status than - - -

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And following on from that Mr Hanger asked you earlier, Mr Thomas recalls that meeting or that conversation on the destruction as follows:

She was wanting to know whether they could be destroyed but I think the outcome was more that the documents not go to Mr Coyne.

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Would you agree with that?---I was concerned that if Mr Coyne had those documents it might result in a further breakdown in the relationships between staff at the centre.

So right back even at this point in time when you've met with Mr Thomas, one of your objectives was to ensure that he didn't get possession of them for the reason that it might lead to further breakdown?---That's right. And I suppose I was following the trend that had already been set. Peter Coyne had asked Mr Pettigrew for access to the original letters of complaint and Mr Pettigrew declined to give them to him; he asked Mr Heiner if he could have access to those documents and Mr Heiner declined to give them to him. So I was mindful of the previous decisions that had been made in respect of his requests and I was also mindful of the state that he was in at that stage.

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And that mindset or position didn't really change right throughout the course of the steps that had ultimately led to the destruction of these documents, did it?---No. And partly because I thought that some of the material that had been gathered had been gathered unfairly. 1

A lot of the early interaction in relation to Mr Coyne seeking access to these documents was because he believed he was being denied natural justice by the Heiner inquiry? ---That's right.

And that allegations were being made against him and others that he wasn't fully aware of and he had never been provided with the particulars of those allegations?---I thought that that was the case. 10

And that was a concern, I think, that you expressed in your earlier evidence, that not only were others potentially being disadvantaged, but so was Mr Coyne?---Absolutely.

But there was a second - sorry, to carry on from that, that was one of the bases that formed the requests that were being made to you for those documents to be released to him to satisfy the general tenets of natural justice?---Yes. 20

That was one basis. The other base was on regulation 65 of the PSM and E, Public Service Management Employment Act? ---That's right.

Is that right?---That's right.

Yes. So there were two limbs, effectively, under which these documents were being sought?---Yes.

And in fact on 16 January - and it's exhibit 109, not that I think you need to see it - 16 January Mr Coyne sent a memo directly to you requesting copies of those documents and particularly cites regulation 65 of the PSM and E? ---That's right. And I think that - I can't recall precisely, you'd have to help me here, but I think 65 relates to records on their own personal file. 30

We'll come to that in a minute because - - -?---Does it?

- - - it becomes relevant; the very point you raise becomes relevant as this matter progresses. In response to that request under regulation 65 in exhibit 111 - and I don't, again, need you to see this - you respond to Mr Coyne and inform him that no such documents are - no relevant documents are in existence. I'll just take you to the actual wording that you've used, "A perusal of your personal file indicates that no such records are attached." Therefore there's nothing to provide to him under that regulation. Do you agree with that?---That's my understanding. 40

And that's consistent with your understanding that that documents had to be attached to his personal file?---Mm.

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Do you agree?---Yes.

You weren't trying to suggest in there, I assume, that documents of the type - sorry, types of documents that he was seeking, documents involving the Heiner affair relevant to him and complaints relevant to him did not exist, were you?---No, I believe that they did exist but I hadn't seen the nature of them.

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And because they weren't attached - - -?--- - - - what he told me.

And one of the ways and round provided those documents pursuant to his requests under regulation 65 was simply to advise that they did not exist on his file, therefore that provision didn't apply?---That's right. And I would have thought that in the way in which they had been - the way in which those things have been - as they had been created in an unfair manner, should mean that they perhaps should not go on his file.

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Commissioner, could the witness see exhibit 113, please.

COMMISSIONER: Sure.

MR BOSSCHER: Mr Copley ask you some questions at this document?---Yes.

This is a letter direct to you from Rose, Berry and Jensen, who were acting on behalf of Mr Coyne and Ms Dutney?---Yes.

There are some parts of that letter that the Commissioner has ordered not be published so just be careful before you answer any question, although I don't intend to take you to that part. But one of the things being specifically requested in there was all of the relevant documentation being carried on by the Heiner inquiry. Do you agree with that?---Yes.

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And it is primarily worded and based on the principles there of natural justice?---That's right.

So nothing to do with regulation 65, simply natural justice and fairness?---That's right.

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You agree with that?---That's right.

Can the witness please see exhibit 120. Actually, Commissioner, is that a convenient time? It's just on 1 o'clock.

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COMMISSIONER: Yes, that might be a good time. All right, we will adjourn till - Mr Hanger, I propose to release the - I'm just going to non 3(e) terms of reference now - what I propose to do is order the release of the department's December 2012 submission on the 18th of this month, Monday. **1**

MR HANGER: Whatever - we're perfectly happy with that.

COMMISSIONER: Yes, okay. I just thought I'd let you know that's when I propose to do it.

MR HANGER: Yes. No, thank you. **10**

COMMISSIONER: On the understanding that we reached yesterday.

MR HANGER: Yes.

COMMISSIONER: Okay, thank you. 2.15.

THE COMMISSION ADJOURNED AT 1.03 PM UNTIL 2.15 PM

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14/2/13

MATCHETT, R. XXN

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THE COMMISSION RESUMED AT 2.28 PM

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COMMISSIONER: I'm sorry for keeping everyone waiting; my apologies. Now, Mr Bosscher?

MR BOSSCHER: Thank you, commissioner.

Ms Matchett, Mr Copley has taken you to a number of documents, most of which I'm going to refer back to you but in a different way. I don't intend to take you to them unless you believe it to be necessary but I'm going to endeavour to summarise them till I get to the ultimate point of where I'm going, but if you do need to see them, then please feel free to ask for them and if I think you need to see them, I will make sure you have them in advance?---Thank you.

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When we left off, we were discussing the fact that there were two separate bases on which the Heiner documents were being requested. One was under the issue of natural justice and one was under regulation 65 of the PSM and E. That's where we had got to when we broke. Do you agree with that?---Yes.

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And we discussed the fact that Mr Coyne had sent you a memo asking for the documents under that particular provision and that you were of the opinion that that provision didn't apply because they weren't on his personal file and you had responded to him to that effect?---That's right.

And then the following day, exhibit 120 - and again I won't show this to you unless you want to see it - Mr Coyne sent you a further memo effectively stating that his position was that your response wasn't sufficient and that regulation 65 did apply and he outlined some reasons why he believed that to be the case. Do you agree that that was the chronology? I'm happy for you to see it?---I'd like to see it.

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Exhibit 120, please?---Thank you. This one is just directed to the director-general and I'm assuming it's come from - it's saying it's come from John Oxley Youth Centre and I'm assuming it's just gone into records.

So your position was, when you spoke to Mr Copley, you had never seen that until recent times. Is that correct? ---Yes, I think I hadn't seen it till recent times.

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Could the witness, please, see exhibit 122?

Have you had a look at that document?---Yes.

That's a letter, as I see it, from yourself to Mr O'Shea? ---Yes.

14/2/13

MATCHETT, R. XXN

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Dated 19 January?---Yes.

1

So the day after the last document that you looked at which was dated 18 January and it encloses a copy of that particular document?---Yes.

In fact you're asking for Mr O'Shea's advice on that memo from Mr Coyne?---Yes.

As well as the other requests that he's made?---Yes.

The other basis for his request which is the natural justice aspect?---Yes.

10

Now, having seen the fact that it's attached to this letter from you sent to Mr O'Shea, do you believe it's likely that you may have seen it then at or about that time or is it the fact that someone else has done this letter for you? ---I think somebody else has prepared this letter for me and has attached those documents to it. Whether I went through and looked at them - I believe I didn't because I don't - haven't got a clear memory of that particular document. It's a matter of lots of these memos were floating around at that time.

20

But this is a document to asking Ken O'Shea - to the crown solicitor asking for legal advice - - -?---Yes, that's right.

- - - on the particular attachment?---That's right.

You don't believe that you, with the greatest respect, bothered to read the attachments?---I may have but I've got no recollection of having read it.

But it's very clear from that particular document that you have asked Mr O'Shea to provide you advice on both of the bases - - -?---That's right.

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- - - that the documents are being sought?---That's right. I was wanting as much advice as I could get on the various issues that were being raised by Peter Coyne directly himself and through his solicitor.

Could you now look at exhibit 124, please? You have been asked to look at that, I believe, already by Mr Copley, but that is in part response to your request for advice the previous day from Mr O'Shea. It deals with the issue of natural justice. Do you agree with that?---Yes.

40

Do you also agree with the proposition that it does not deal with the other basis for which you had sought advice in this particular letter?---No.

So as at this particular date, 19 January, assuming you received it about that time, you did have some advice on the issue of natural justice but the advice in relation to regulation 65 was still outstanding?---That's right.

1

Could you now look, please, at exhibit 125? Could the witness also see exhibit 323 at the same time?

Now, firstly, exhibit 125 is the minutes of a meeting at which you were present and Ms Crook from your department and the relevant unions, Mr Lindeberg for the POA and Ms Walker and Ms Ball for the QSSU?---Yes, and they're the notes that have been recorded by the union. They're not an agreed notes from that meeting.

10

No, I understand that, but that's a minute - a version of somebody of what took place?---That's right.

If you would then look, please, at the same time at exhibit 323, you have a note of a meeting with Mr Lindeberg on the same date?---Yes.

Was that a separate meeting? It only has his name at the top?---I think it was because he wasn't the same - I don't think he was the same union as - - -

20

He's recorded by - - -?---He's recorded as being at that meeting, yes.

Yes. Does your diary shed any light on that, whether there's a separate meeting with Mr Lindeberg additional to the meeting that's referred to in those minutes?---I'll have a look. There's a meeting at 3 o'clock, a meeting with Ken Lindeberg, and represented from the State Service Union Janine Walker and Sue Crook.

30

That seems to reflect?---That's the same - it seems to be the same meeting.

The minutes that are there?---Mm.

Now, your handwritten note - sorry, first question: is there a separate meeting in your diary for that day with Mr Lindeberg?---No.

Is it the logical progression then that the note that you have made here, your handwritten note, is part of your recollection or what you jotted down so far as that meeting was concerned?---No, it may have been a separate meeting I had with Mr Lindeberg after that meeting. It may have been that. I do recall on one occasion in early January having a conversation with him and at part of that conversation, which is what I think is referred to at the bottom there, that he was wanting to write an article for the POA and asked me if he could have a photograph taken with me.

40

So that's a separate issue raised, but your recollection now, having reference to all of these documents, is that the handwritten note relates to a separate meeting that you had with Mr Lindeberg on that day?---I think it could be, yes. You know, that's the best I can give you. 1

Thank you. I'll just take you back then before we come to that note to exhibit - to the typewritten exhibit number 125?---125?

Yes. The second-last paragraph says as follows: "It was stressed that the abandonment of the inquiry was a serious matter and that we were not at all supportive of this move," especially as in our view it was within the chief executive's power to conduct a departmental investigation." Now, that's somebody's recollection and recorded recollection of the view being expressed by the unions to you. Does that accord with your recollection?---That would have been, I think, the view of the union, yes. 10

That they didn't want Heiner shut down?---No.

Now, going to that page of exhibit 323, you've made a note there in your conversation to Mr Lindeberg, "Express need for - - -"?---323? I'm just not - - - 20

Apologies?--- - - - sure which one I've got.

It's your handwritten notes?---Yes.

It's the one with the asterisks down the left-hand margin? ---Yes.

The first item of business that you record is, "Express need for tapes of interviews secured." Is that correct? ---Yes. 30

And the word "secured" underlined several times?---Yes.

Now, as I understood your evidence, and feel free to correct me, Mr Lindeberg expressed to you in that meeting given he was the POA representative and Mr Coyne was one of his members, that those documents were to be secured and maintained?---Yes, and that's what I did.

At that time?---Yes.

Now, by this particular date, 19 January, you had, as I counted up, at least four separate requests for those documents to be provided to Mr Coyne either by himself, by his lawyers or by Mr Lindeberg on behalf of Mr Coyne. Would you agree with that?---There possibly would have been more. 40

Could I ask you now to look at exhibit 129? That's another letter to you from Mr O'Shea and it attaches a potential letter to Mr Heiner, a potential letter to Mr Coyne's solicitors, provides you with some detailed advice, but again I suggest to you it doesn't deal in that correspondence with the request for the documents that had been made by numerous parties under regulation 65 and that that piece of advice is still outstanding?---I'm not sure whether that was a statement or a question.

1

Sorry, I'm asking you to agree with - to confirm that if you're willing to do so?---Well, I just haven't got that letter in front of me. I assume that's - I'm assuming that the letter - it touched on regulation 65, but I can't recall whether it went before 23 January or after.

10

I'm taking you through chronologically so your letter to Mr O'Shea has already gone. In fact, it went - - -?---I didn't think it was the letter from Mr O'Shea that you were referring to, I thought you were referring to a letter about regulation 65.

You had a memo from Mr Coyne asking for the documents pursuant to regulation 65 and you attached that memo and another memo that Mr Coyne sent you asking for the documents on the basis effectively of natural justice?---To Ken O'Shea.

20

You sent them both to Ken O'Shea and he's responded in part - we went through to the natural justice issue?---That's right. That's right, yes.

Then he sent you this further letter of advice that you have now?---No.

But again, not answering that question?---That's right.

30

Do you agree with that?---Yes.

So as at the date of that particular document your request for advice is still outstanding on regulation 65?---Yes.

Could you please look at exhibit 141?---Thank you.

Could I suggest to you that's a specific request to you by Rose Berry and Jensen again for the Heiner documents and again solely in relation to regulation 65?---That's right.

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Now if I could take you, please, to exhibit 151?
---Thank you.

This is the - leave aside the first page, but page 2 which starts "Cabinet in confidence," this is the submission that you were asking questions about earlier, seeking two things from cabinet. (1) is an indemnity for Mr Heiner and (2) is the destruction of the Heiner documents?---That's right.

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I don't recall what your evidence was, but who do you say authored that? It's signed by the minister but who do you say authored it?--I think that I prepared some of it and I think Sue Crook prepared some of it.

1

As I understand the chain of command with a cabinet submission a number of people might participate in its creation but it's then signed off by you as the director-general and then it's given to the minister for her signature if she's content with the contents?---That's right.

10

So before this went to Ms Warner for signature you had at least considered the content of it, if not authored some of it?---Yes.

If I take you to the second page of the document and I take you to the heading Purpose/Issues and the third paragraph, "Current government policy provides for crown employees to be indemnified from costs associated with legal claims arising out of the due performance of their duties"?---I'm sorry, I've just - I'm sorry, I just missed where you're at.

20

Okay?---Are you in the cover sheet or are you in the body of the submission?

I'm in the body of the submission. It's headed, the page I'm referring to, Cabinet in Confidence.

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It starts underneath that, "Security classification"? 1
---Yes, I've got that. Which page, 4, 5, 6?

The very first page?---Four.

I don't have numbers on mine, I'm afraid. There is a cover page which is the decision, signed by Mr Tait?---Are we looking at the same document? I'm looking at 151.

Yes?---Okay, yes, the cover sheet, and then the pages thereafter are numbered. 10

Okay. Well, the very next page, the first heading in the body is Title, and then the next heading is Minister?
---Right. You are looking at the cover sheet. Okay.

I'm reading it from the online version that's been posted?
---Don't you have the word "cover sheet" in yours?

I do, but on the front of mine is another sheet which would be definition be the cover sheet. At the top of it - - - ?
---Sorry, there's a bit of confusion.

We're on the same page now because - - - ?---All right, 20
we're on the same page now.

Do you see the heading Purpose/Issues?---Yes.

Third paragraph down, "Current government policy provides for crown employees to be indemnified" - et cetera. Do you see that there?---Yes.

I take it that that's why indemnity was not being sought for others additional to Mr Heiner, because there was already a policy in place?---That's right. 30

Do you agree with that?---Yes, that's right.

So that all of the employees, et cetera, who may have given evidence before Mr Heiner, by virtue of government policy already had a form of indemnity?---Yes.

And then if you could turn that page, please, to the heading Objective of Submission. And the second paragraph says:

Destruction of the material gathered by Mr Heiner in the course of his investigation would reduce risk of legal action and provide protection for all involved in the investigation. 40

And then the relevant sentence is, "The crown solicitor advises that there is no legal impediment to this course of action." Do you see that there?---Yes.

Now, that inconsistent, isn't it, with the fact that you hadn't yet received advice from Mr O'Shea in relation to your question and the question being posed to you for access pursuant to regulation 65?---I'm not sure whether regulation 65 - how that interplays with what was being proposed by the Crown Law in terms of the destruction of the documents gathered by Mr Heiner.

1

Well, you'd been asked for the documents, hadn't you?
---Yes.

Various bodies, solicitors, Mr Coyne, POA, et cetera. That's correct?---That's correct, yes.

10

You'd been asked for them on - - -

MR KEIM: Commissioner.

COMMISSIONER: Excuse me, Mr Keim.

MR KEIM: Commissioner, I do object to the way in which the question is being put because it's simply unfair to say that that paragraph is wrong when the O'Shea letter authored by Mr Thomas couldn't have been clearer in the advice; as the submission says, "No legal impediment to this course of action." Whether Mr Thomas had dealt with the intricacies of regulation 65, the advice was absolutely clear that there was no legal impediment. So to suggest that that paragraph is untrue in the light of the documentation in our submission is simply unfair, Commissioner.

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COMMISSIONER: Mr Bosscher.

MR BOSSCHER: I have to agree. I'll move on.

30

At the following paragraph, "Results of Consultation: no specific objections have been raised to the proposed course of action." Do you see that there?---Yes.

Had you told the POA or the other union that it was proposed to ask cabinet to destroy the Heiner documentation?---I think at some of the meetings there'd been discussion along the lines that we were looking at what could be done with the material that was gathered by Mr Heiner.

So at some of the meetings prior to this cabinet submission discussions had been held with the union of the potential of destroying the Heiner documents?---I don't know whether it was saying the potential to destroy, but we were looking at what could be done with the materials that had been gathered by Mr Heiner.

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Let me put it to you another way, it's stated there that there's no specific objection to the proposed course of action, but it's quite clear that had you asked to either Mr Coyne or his solicitors whether they had any objection to the shredding of the Heiner documents, that an objection would have been raised?---Yes, but they weren't consulted.

1

No, they weren't. And I'd suggest to you that neither of the unions were consulted on that point either?---I believe they were. I believe there were discussions with the unions about what was going to be done with the material.

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Now, if I could take you, please - I don't need to take you to this I'll just put this to you and I'm sure it's not controversial, but that shortly after this time a decision was made to relocate Mr Coyne from his current position to another position?---That decision was made on 13 February, or was conveyed to him on 13 February.

Now could I ask you please to look at just the date on that cabinet document you have in front of you?---The cabinet submission 13 - sorry 5 February, with the decision being taken on the 12th.

20

And could you please now look at exhibit 153. Again on this particular date, which is the - can't see a date on it - received by the Crown Solicitor's Office on 14 February? ---That's right.

But your letter doesn't have a date itself on it. Do you agree with that?---That's right.

One would assume that it was shortly before it was received?---Yes. But it's not my signature, that's one that Sue Crook prepared for me

30

And it's on that date that Mr O'Shea is sent again a request in relation to - or seeking advice on regulation 65 and the solicitor's request?---That's right.

Do you agree with that?---Yes.

Were you aware that that letter had been sent?---I was aware that they were following up the various letters that were being received from Peter Coyne's solicitors and the various memos, phone calls and notes that he was sending in to the department.

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He was peppering your office, wasn't it?---And not just my office; a number of areas of the department. He was peppering Ian Peers, he was peppering personnel, he was sending material in a number of areas across the department.

At one point you actually had a telephone call with him to say, "Look, you're not the only person that this department has to deal with and we'll get to you when we get to you"? ---Well, that was partly in relation to the number of phone calls he was making to my office in relation to an appointment that I'd already made with him, wanting to set up a meeting with me to talk about the meeting that I was going to have with him. I didn't have time in that role to have a meeting with an officer about the meeting prior to the meeting actually taking place.

1

Okay. Could I ask you now to look at exhibit 159. This is on the same date as the letter that you've just looked at to Mr O'Shea, again asking you for advice on regulation 65 and it records a telephone conversation Mr Walsh has with Mr Berry on behalf of Mr Coyne, seeking assurances that the documents were not going to be destroyed. Was that brought to your attention at that time?---Yes, or sometime after it. I've noted it up there, that's my writing on the top saying I saw it on the 21st of the 2nd.

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Okay?---Because I was away at that time that called went in, I think.

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As a result - - -?---And I suppose - - -

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Sorry?---I was going to say from my point of view the important part is the final paragraph where Mr Walsh is saying, "I advised Mr Berry that he" - Walsh - "did not recall having previously received any request in writing for an assurance in relation to the possible destruction of documents relative to the inquiry and that I presume that he would be forwarding this request in writing," and he advised him that we would get legal advice if that was received.

1

As a result of being made aware of this information, did you direct anybody to follow up with the crown solicitor for an answer to your second letter seeking advice under regulation 65 that you recall?---At that time we would've been fairly closely following up things with the crown solicitor. There would've been quite a bit of backwards and forwards, I think. I can't recall specifically saying, "As a result of this telephone call, somebody ring up Crown Law and find out what they're doing," but we were having regular contact with them. I think there were - yes, there were numerous phone calls and letters.

10

Could I now ask you, please, to look at exhibit 170? That's a letter to you from Mr O'Shea - sorry, from you to Mr O'Shea dated 22 February. Do you see that?---Mm.

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Attached to that is a letter from Rose Berry and Jensen dated 15 February?---Yes.

And then attached to that is a draft letter dated 16 February to Rose Berry and Jensen from yourself indicating that there were some discrepancies between different versions of what was said on the telephone but also making reference to their request pursuant to regulation 65?---Yes.

30

Now, did you see that particular letter?---No, I don't think so because that one's initialled there by Sue Crook. I certainly saw the letter from Rose Berry Jensen to us asking about his secondment to another section. That's that letter of the 15th.

What's the date of the letter from you to Ken O'Shea on the top of that document?---22 February.

Could I ask you now to look at exhibit 176? That's a letter to you from Mr O'Shea?---Yes.

40

Did you see that letter?---Yes, I think I recall that and the draft - - -

And did you see - apologies; were you going to say something?---I just said, yes, I think I can recall seeing something like that.

And the attachment?---And the draft letter, you know, back to Mr Coyne saying that there's a difference in the recollections of the conversations. 1

And there's also ongoing consideration of their request relevant to section 65?---Consideration, yes.

At this stage, had you at any time or, to your knowledge, had anyone in your office informed Mr O'Shea that a submission had already gone to cabinet recommending that the Heiner documentation be destroyed?---Yes. I wrote to Ken O'Shea saying, "Please be advised on 19 February they asked for a memorandum," you know, that cabinet had asked for a memorandum. I kept him informed all the way along the line. 10

Now, if you look at exhibit 178, that's a letter to you from the POA?---Yes.

Again indicating that the documentation relevant to Heiner was still being sought pursuant to that regulation on behalf of Mr Coyne?---Yes.

It also refers to a meeting held between you and Mr Lindeberg on 23 February 1990?---Yes. 20

Do you have a note of that meeting in your diary?---I have and it's about John Oxley and the Logan Hyperdome.

John Oxley and the what?---The Logan Hyperdome.

Do you have any recollection of what was discussed at that particular meeting, independent reoffending?---No.

I put it to you and ask you to comment on this - I put to it to you that in that meeting Mr Lindeberg told you that the union on behalf of its members required the Heiner documents pursuant to regulation 65 and if they weren't granted access, they would joint Mr Coyne and Ms Dutney in court action for those documents?---I don't recall that conversation. 30

I put it to you and ask you to comment that in response to that statement by Mr Lindeberg you assured him that the documents were safe and that Crown Law still hadn't formed a view on what should be done with them?---I still don't have a recollection of that conversation. 40

You can't confirm that occurred, nor can you - - -? ---Something occurred.

- - - have a memory to be able to dispute it?---Something occurred. Some meeting occurred on that date because I've also got that Sue Crook also attended that meeting, but I can't remember the content of that meeting at all.

Could I ask you, please, now to look at exhibit 183?---Yes, I'm looking at it. **1**

If I have got the right exhibit, that's a letter again by you to Mr O'Shea?---That's right.

Seeking information or assistance in responding to the requests that you had been receiving from time to time from various bodies but particularly the solicitors to their correspondence?---That's right.

And that correspondence all relates again to regulation 65? ---Yes, but it also refers to the decision by cabinet which I note, just looking it now, there's a typographical error in the first paragraph. It should say "on 5 March" instead of "15 March cabinet decided that the material gathered by the course", blah, blah, blah, "to be handed to the state archivist," so I was providing him - making sure that Ken O'Shea was aware of that cabinet decision. **10**

So the decision has been made by cabinet that the documents can be destroyed?---That's right.

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Again, you're informing Mr O'Shea of that fact?---That's right. 1

More importantly, you're saying, "What do I tell the lawyers who are asking for these documents?" That's what you want him to do?---That's right, "Advice, please," and I was also drawing to his attention that the cabinet decision doesn't extend to the other documents that had then at that time been located. That's the original letters of complaint.

I just need to check one thing, commissioner, and then I'll be finished. Yes, I have nothing further, thank you. 10

COMMISSIONER: Thank you. Mr Keim?

MR KEIM: Thank you, commissioner. Could the witness be shown exhibit 125, please, commissioner?

COMMISSIONER: Sure.

MR KEIM: That's Ms Ball's note of the meeting on 19 January 1990?---Yes. 20

Do you recall that?---Yes.

Ms Ball, from that document, we can see, was recording that on behalf of the Queensland State Service Union. Is that correct?---That's correct.

My learned friend Mr Bosscher took you to the second-last paragraph of the document where Ms Ball says, "It was stressed that the abandonment of the inquiry was a serious matter and that we were not at all supportive of this move." Now, the State Service Union, if we can put it broadly, was the union representing those people who had made complaints about Mr Coyne. Is that correct?---That's correct. 30

The Professional Officers Association to which we've heard reference was the union which represented Mr Coyne and Ms Dutney. Is that correct?---That's correct.

Mr Martindale was the secretary of that union and Mr Lindeberg was an organiser. Is that correct?---I believe so.

I just wanted to ask whether your recollection of that meeting allows you to recall whether the statement that, "We were not at all supportive of this move," was reflecting simply the State Service Union's view or whether it reflected the view of both unions?---My recollection would be that it was the view of the SSU, QSSU. 40

Yes, and what was the attitude of Mr Coyne's union, as far as you knew?---I think that they felt that that might be the fairest course of action to take. 1

Commissioner, could I ask that the page of MFI 6 which is the notes that the witness referred to - perhaps if the witness could just see that document again, please?
---Thank you.

Ms Matchett, am I right in saying that in terms of the notes of your conversation with Mr Thomas about which you were asked questions, including by my learned friend Mr Hanger, it was the first of that bundle from which you gained assistance. Is that correct?---That's correct. 10

Are there any other pages of that bundle that assist with regard to that telephone conversation or with regard to the matters about which you were asked questions concerning that telephone conversation?---This is obviously some notes that kind of carry on. The first page is the notes that I took when I met with Barry Thomas. The next page seems to indicate that I had a telephone call from Kevin on 24 January and he's saying something like, "Chat with members yesterday"; he'd chatted with members yesterday, at John Oxley and indicating that he's in a bind. He's on tape as saying a grievance procedure and wants to see documents. 20

So is that Mr Kevin Lindeberg, is it?---I think this is Kevin Lindeberg, you know, either ringing me up or talking to me, telling me what his thoughts are, and then the next page is the notes associated with my discussion with Mr Heiner and then there's a further page that has got some other notes on it.

Okay, but in terms of - - -?---They're just a bunch of notes that are together. 30

Yes?---They're not sequential or anything like that.

Okay?---They weren't in a book or anything.

The statement you refer to on the second page in the conversation with Kevin where it says, "Department should have told them to use grievance procedure," is that - that's something you said or something the other person said?---I think that might have been something that Kevin said, that they should have been told to use the grievance procedure, but of course as we now know, they couldn't use the grievance procedure with Mr Heiner in situ because Mr Heiner, as he was appointed under section 12, couldn't - wasn't an officer of the department and couldn't avail himself of the grievance procedure. 40

Commissioner, I'd ask that those first two pages of MFI 1 be made an exhibit in the proceedings.

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COMMISSIONER: So you want the first two pages of MF1 6 made as an exhibit. 1

MR KEIM: Yes, please, commissioner.

COMMISSIONER: The balance kept as MFI 6.

MR KEIM: Yes, please.

COMMISSIONER: Exhibit 324 will be two pages of what formerly was MFI 6, which I think can be described as two pages of notes. 10

ADMITTED AND MARKED: "EXHIBIT 324"

COMMISSIONER: The other two pages of notes in Ms Matchett's handwriting will remain as MFI 6.

MR KEIM: Thank you, commissioner.

Ms Matchett, can you tell me this, at any stage did you receive any information that any of the materials gathered by Mr Heiner had anything to do with child sexual abuse of residents of John Oxley or any of the other institutions run by the department?---No. 20

That's all I had of the witness, thank you, commissioner.

COMMISSIONER: Thanks, Mr Keim. Mr Copley?

MR COPLEY: Before the witness is excused, Mr Commissioner, in my submission you, Mr Commissioner, should consider whether or not Mr Bosscher shouldn't be invited to put whatever proposition he has instructions to put to this witness about what it is that she has done wrong in connection with Mr Coyne's rights, because Mr Lindeberg has leave to appear representing himself, as I understand it. Mr Coyne does not take part and has not ever taken part in this commission of inquiry except to obey a lawful summons to attend and testify. 30

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And we're really none the wiser from cross-examination of the witness about how it is she's supposed to have failed, from the perspective of Mr Bosscher's client. And it would be an unfortunate situation if in a few weeks' time you were to receive a written submission from Mr Bosscher setting out that for example this witness failed in this regard or that regard when nothing has been put to her for her to comment upon it.

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COMMISSIONER: Well, I was assuming because nothing was put, there was no reasonable basis to put it in.

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MR COPLEY: Well, that's generally how these things work in courts of law, but - - -

COMMISSIONER: I'll just confirm it with Mr Bosscher.

MR COPLEY: - - - I know from some correspondence I've seen that Mr Bosscher may or may not be here when it comes time to make submissions and it would be unfortunate if we have a situation where Mr Bosscher is not here and allegations are being made about the witness that haven't been put to her.

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COMMISSIONER: Sure. Well, on the basis of the assumption that there was no sufficient basis to put any allegation, there would be even less basis to suggest that in a written submission or our oral submissions.

MR COPLEY: Well, yes - - -

COMMISSIONER: Doesn't that follow?

MR COPLEY: Lawyers might understand that, but - - -

COMMISSIONER: What are you saying about Mr Bosscher?

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MR COPLEY: Beg your pardon?

COMMISSIONER: What are you saying about Mr Bosscher?

MR COPLEY: What I'm saying about Mr Bosscher is he may not be here. He's telegraphed to me that he may not be here when it comes time to make submissions.

COMMISSIONER: I see.

MR COPLEY: And his client might not understand the distinction.

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COMMISSIONER: All right.

MR COPLEY: And so - - -

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

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MR BOSSCHER: Yes, I do.

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COMMISSIONER: And do you want to respond to that?

MR BOSSCHER: No. I've nothing to put to the witness.

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

MR BOSSCHER: That's so.

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

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

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

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MR BOSSCHER: Nothing additional to that.

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

MR BOSSCHER: Sorry, I don't understand, Commissioner.

COMMISSIONER: Right. Well, I thought you said beyond what Mr Copley put you don't have anything in addition.

MR BOSSCHER: No.

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COMMISSIONER: But by that do you mean that you adopt whatever submission he's going to make?

MR BOSSCHER: No.

COMMISSIONER: You don't know.

MR BOSSCHER: No. I don't know what submission he's going to make.

COMMISSIONER: Therefore your answer to me is from your point of view there is no suggestion that can be made to Ms Matchett and if Mr Copley wants to make any, that's for him and you won't either endorse or not what he says.

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MR BOSSCHER: That's so.

COMMISSIONER: Okay. Now, what is your position, Mr Bosscher, about staying with us for the final whistle?

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MR BOSSCHER: I'm unavailable unless something changes in response to my correspondence to the attorney-general. 1

COMMISSIONER: When do you become unavailable?

MR BOSSCHER: As of - I understand we are not sitting tomorrow so in about an hour and 15 minutes.

COMMISSIONER: Rightio. Okay, thanks for that, Mr Bosscher. Is Ms Matchett free to leave?

MR COPLEY: Yes, Mr Commissioner. 10

COMMISSIONER: Okay. Ms Matchett, thank you very much for coming. I know it was a long time in the witness box and it's never easy to answer questions about something that happened a long time ago. We appreciate your effort. You're formally excused from the obligation of your summons?---Thank you.

Thank you?---Including in my diary?

I think that's yours, isn't it?---It is mine. Thank you very much. 20

Yes, you can take that?---Thank you Commissioner.

WITNESS WITHDREW

MR KEIM: May we have leave to withdraw too, please, Commissioner?

COMMISSIONER: Absolutely. Thank you. Yes, Mr Copley.

MR COPLEY: Mr Commissioner, I understand that before I call the next witness there's a barrister who would seek leave to appear on her behalf. Mr Byrne, proceed. 30

COMMISSIONER: Good afternoon, Mr Byrne.

MR BYRNE: Commissioner, may it please, my name is Byrne, initials M.J. Queens counsel, instructed by Callaghan Lawyers. I seek authority to appear on behalf of Ms Warner, and consequent upon that authority, to cross-examine Mr Comben if it becomes necessary.

COMMISSIONER: Mr Copley? 40

MR COPLEY: I have no objection to Mr Byrne having authority to appear.

COMMISSIONER: Welcome, Mr Byrne, you have authority to appear.

MR BYRNE: Thank you.

MR COPLEY: When I call this witness I'm going to ask her whether or not the statement that she's shown is her statement, then I'm going to ask you to vary the order of questioning and invite Mr Bosscher to go first so that he can ask whatever questions he needs to ask of Ms Warner before he is no longer with us. 1

COMMISSIONER: Good idea, Mr Copley. Are you okay with that, Mr Bosscher?

MR BOSSCHER: No. 10

COMMISSIONER: You're not?

MR BOSSCHER: No.

COMMISSIONER: Why not?

MR BOSSCHER: I haven't prepared a cross-examination at this stage of Ms Warner.

COMMISSIONER: Is it complicated?

MR BOSSCHER: I don't know. 20

COMMISSIONER: Have you got instructions from Mr Lindeberg about it?

MR BOSSCHER: I've got some instructions about it but Mr Lindeberg - - -

COMMISSIONER: See how you go anyway. I'm sure that - see how you go, we'll play it by ear.

MR BOSSCHER: Play what by ear, Mr Commissioner? 30

COMMISSIONER: I'll let Mr Copley call the witness, tender the statement, and then I'll call on you to examine her and then we'll see what happens from there.

MR BOSSCHER: I'm making that submission to you now that I believe it would be unfair to call upon me to do that at this point in time. If you want to do it in three minutes, we can do it in three minutes.

MR COPLEY: My learned friend's client has had 23 years to be ready to cross-examine this witness. Now, Mr Bosscher hasn't had 23 years, but he's had all of these exhibits for a long, long time and he should be ready to go. 40

MR BOSSCHER: I didn't receive a statement from Ms Warner, from recollection, until yesterday.

MR COPLEY: Neither did I.

MR BOSSCHER: It's 18 pages long. I haven't considered it. I haven't prepared a cross-examination for it. I anticipated doing that, if I was going to be required to cross-examine her, overnight. I wasn't aware we weren't sitting tomorrow. She should be led - as every other witness has been before you - by Mr Copley to see what comes out of it before any person who has leave to appear is called upon to cross-examine.

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COMMISSIONER: Are you available tomorrow if we sit?

MR BOSSCHER: I don't know, but I presume I am, unless somebody has inflicted something upon me during the course of today that they haven't yet told me about.

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COMMISSIONER: If we sit tomorrow, Mr Copley, what do you say about the order of examination?

MR COPLEY: Well, I still say that Mr Bosscher can make a start this afternoon and go for as long as he can, and then we adjourn to tomorrow.

COMMISSIONER: That's what I was going to do too, but he says he can't even start. If that's what he tells me, I have to accept that.

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MR COPLEY: But it's not satisfactory. Everybody must be ready to proceed.

COMMISSIONER: Yes.

MR COPLEY: If in fact - - -

COMMISSIONER: But I can't flog a dead horse.

MR COPLEY: In fact, given the time of the day and given that he won't be here after tomorrow - or after today - then the inference should be drawn is he's simply made no preparations.

30

COMMISSIONER: Yes, but where does that take us?

MR COPLEY: Well, it leaves us in a very unsatisfactory situation.

COMMISSIONER: I know.

MR COPLEY: Because things have been said about the rights and wrongs of what this witness has done for decades.

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COMMISSIONER: I know, but how will that be affected by the order of examination?

MR BOSSCHER: With respect, it can't be.

MR COPLEY: In which case he can crack on with it now.

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COMMISSIONER: But he says he can't. 1

MR BOSSCHER: And nor, with respect, should I be asked to.

MR COPLEY: Well, he's not in a trial defending someone on a charge.

COMMISSIONER: I know, but - - -

MR COPLEY: He's in the same boat as me. I got the statement at the same time as him. 10

COMMISSIONER: Yes, but you probably prepared something earlier. I'm not going to keep Ms Warner waiting, so we'll call her and you can examine her.

MR COPLEY: All right.

COMMISSIONER: Yes, Mr Bosscher.

MR BYRNE: Can I, just for the record, indicate that I have other arrangements tomorrow, on the basis that the - - - 20

COMMISSIONER: Yes. We will press on, see how we go. How long will you be, Mr Copley?

MR COPLEY: Not very long.

COMMISSIONER: Okay. Well, then, we'll just play every ball on its merits.

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WARNER, ANNE MARIE affirmed:

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ASSOCIATE: For recording purposes please state your full name and your occupation?---Anne Marie Warner and I'm retired.

Please be seated.

COMMISSIONER: Good afternoon, Ms Warner; welcome?---Hello.

MR COPLEY: Could the witness be shown her statement, please?

10

Would you just look through that document, please, to ascertain whether it's a statement that you signed on 13 February 2013?---Yes.

Okay. So that was signed yesterday?---Yes.

Do you recall what time it was signed?---About 2 o'clock, I think.

Okay, thank you. I tender that document.

20

You have got a copy there, have you?---I've got a copy.

Okay, that's good. You may need it.

COMMISSIONER: It will be exhibit 325.

ADMITTED AND MARKED: "EXHIBIT 325"

COMMISSIONER: Can it be published?

MR COPLEY: Yes, please.

30

COMMISSIONER: I direct its publication.

MR COPLEY: Could the witness see exhibit 151, please?

You can ignore the first page for the moment. If you would look at the second and subsequent pages, you'll see that your signature appears or a signature which we have heard evidence is yours appears at the foot of page 3. Do you agree?---Yes.

And then your signature appears at the foot of page 7. Do you agree?---Yes.

40

Now, you didn't compile that document, did you? You didn't put the contents in and type it up?---No.

Who gave it to you sign?---It would've been the acting director-general.

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WARNER, A.M. XN

Do you remember her giving it to you?---I can't say that I can remember but she must have. 1

Can I suggest to you it was the very first cabinet submission that you ever signed?---Yes.

Would that help you in remembering it?---No; no, I'm sorry.

What knowledge of the contents of this document did you have other than what was in it? For example, did you know anything about what was in it before you signed it?---I would've had discussions and briefings before about the matter - about the issues that surrounded the Heiner inquiry before signing the document, yes. 10

Yes, okay. Were those discussions or briefings written or oral?---From memory, they were verbal, but there may have been some written remember but I cannot recall it.

The recommendations were that the Queensland government give an indemnity to Mr Heiner for costs?---Yes.

Were you happy enough to take that forward to the cabinet? ---Yes. 20

The second recommendation was that all the material collected by Mr Heiner in the course of his investigation with the exception of material forming the part of official files be destroyed?---Mm'hm.

Were you content to take that recommendation to cabinet or did you have any misgivings about it?---Well, "content" perhaps would not be the right word, but I understood that it was the main option that we were given by the legal advice that we had. 30

And where did you get that understanding from?---From the acting director-general.

Okay. So you duly signed that?---Yes.

And no doubt it was submitted?---Yes.

Do you recall if it was discussed on 12 February 1990 in cabinet?---I don't recall but I am pretty certain that it was.

Okay, because there's a minute on the front recording cabinet making a decision or not making a decision, as the case may be, about recommendations?---Yes. 40

All right. Now, I will just get you to look at exhibit 151A?---Is that another - - -

Sorry?---That's another one.

You don't have it yet. No?---Yes.

1

Now, this is addressed to "the Honourable the Minister", isn't it?---Yes.

And it says "Submission number 100" and to that extent it corresponds with what I have just shown to you, doesn't it? ---Yes.

Have you seen that document before?---I would think so.

Do you have a recollection of having seen it before?---No, I don't have a recollection, but the police showed me a copy of this, I think, and after perusing it I - I think that it was indeed the briefing notes that would've been given to me for discussion in cabinet.

10

When you went to cabinet, do you recall speaking to these notes or reading from them?---I don't recall, but I would have.

Would you have read out everything in them or just parts of it?---Parts of it, I would say.

20

Now, you know because you were present that cabinet deferred consideration of the question of destruction? ---Yes.

As a result of that, you decided to take a further submission to the cabinet, didn't you?---Yes, from memory, my understanding was that they decided to indemnify Mr Heiner but not to destroy the documents and to seek further advice about what else could be done to secure them.

I'll get you to look at exhibit 168, please. Forget about for the moment the first page. If you would concentrate on the second and third pages which are numbered 1 and 2, that's a document, we have heard, signed by Mrs Carrick? ---Yes.

30

Have you seen that document before?---Yes.

Other than when the police showed it to you last week or this week?---No, I would have seen this in cabinet.

Right?---If not before cabinet.

40

All right. Can I suggest to you that you probably saw it before the cabinet - - -?---Yes, I would - - -

- - - because it was a submission coming from your department?---Yes.

Did you play any part in compiling the contents of it?
---No, except to say that there would have been discussions about what we do after the cabinet's decision to defer and only in those sorts of discussions would I have had some input into the way forward.

1

All right. Well, there are four options that were included in the document that Mrs Carrick signed?---Yes.

So to this extent there's a degree of ambiguity about your position because the document simply is putting up four options to cabinet?---Mm'hm.

10

Now, you must have had a view yourself as to which of the four was the best or the better or the preferable one?
---No, not necessarily at that point. I would not have had a particular view about the way to go. I think it would be fair to say that cabinet was concerned about the destruction option and wanted to find others. The other three were options submitted for their consideration, but, I mean, I think that they were considered not appropriate actions.

Would you concede this much at least: that no option would have made it onto this document unless you regarded it as at least a feasible and palatable option?---No, I think that options which are not palatable sometimes are put on these documents for everybody to know what the options could - the breadth of the options.

20

Were any of these options not palatable to you?
---"Palatable" is perhaps not the right word.

Okay. Can you suggest - - -?---I would've considered these other options and I was prepared to discuss those options in cabinet.

30

So you were prepared to discuss the option of destruction - - -?---Yes.

- - - notwithstanding an awareness that there had been a number of demands seeking access to the material, including requests from solicitors acting on behalf of staff members?
---Yes.

So when you went into the cabinet meeting, you clearly had read this submission?---Yes.

40

Okay. Now, the front of the document - the cabinet minute records that it was determined that a decision would be deferred once again to allow the secretary to the cabinet to speak with the state archivist?---Yes.

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Now, we will take back 168 and we will give to you exhibit number 181. Forget about the first page for the moment. The second and third pages - the third page numbered 3 bears your signature, doesn't it?---Yes.

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WARNER, A.M. XN

23-94

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In this document under your signature you recommend that the material be given to the state archivist for destruction?---Yes. 1

So because that's your recommendation can we take it that you thought that was the preferable option for cabinet to adopt?---I think by this stage it was the only option.

Why do you say that?---Because the other options to protect the documents were not considered adequate protection for one reason or another. 10

What about the option of just the cabinet noting these options on the second occasion and deciding, "Well, we'll simply defer any further decision on these documents unless and until solicitors acting for these people actually commence a proceeding in the courts"?---I don't think that that was considered a reasonable option at the time. I don't have a memory of why that was the case at that time, but I since have an understanding of why it shouldn't be the case. Do you want me to tell you that?

Well, I'd like to get you to comment on this proposition, that a decision simply to defer making any decision about the documents pending the commencement of legal action couldn't have had any - couldn't have disadvantaged the state. It would have protected the state from a suggestion that it had destroyed documents, because it would have allowed this solicitor who was making comments or writing letters threatening to do something, it would have given him - it would have allowed for time to demonstrate whether he was, to put it in colloquial terms, fair dinkum about pursuing these documents, because - - -?---Yes. I don't think that was the only issue that was before us. The issue that was before us was that, as I understand it, Mr Coyne himself was very keen to defend himself from what he believed to be unfair allegations and in order to defend himself he needed those documents. It was that disputation that was causing considerable unrest at the John Oxley Centre which we needed to stop. 20 30

But by the time March 5 came around he'd been moved from there - - -?---Yes, I know.

- - - by your director-general, hadn't he?---Yes, but there was still, I suppose, if you like, the aftermath of the disputation that had occurred for a very long time at the centre. 40

Well, for better or for worse, cabinet decided to authorise their destruction. Did you have any conversations yourself with the state archivist about her attitude?---No.

Did you ever see the documents or the material Mr Heiner had gathered?---No.

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WARNER, A.M. XN

Did any member of your staff - I assume - this was back in 1990, of course. Things might have been different then to how they are now, but apparently ministers have these workers that work for them who aren't public servants but are people that are there at the whim of the minister today. Is that the way it was in 1990?---I wouldn't describe it as a whim, but yes, we had staff that were not part of the department.

1

All right. So did you have staff who were attached more to you than to the department?---Yes.

10

Did any of your staff look at this Heiner material?---No.

Is there any reason why you or your staff didn't look at it to see what the contentious nature of it was?---Yes, because we believed that a lot of the information there was said to be defamatory and we did not, on advice, want to become party to defamatory information.

Excuse me for a minute, Mr Commissioner.

Now, as far as you're aware - correct me if I'm wrong, as far as you're aware, the secretary to the cabinet, or the cabinet secretariat, had no involvement in the compilation of the first cabinet submission you took to cab?---No. The police said that it had been suggested that they had had - when I had my interview with the police, that they had actually developed - - -

20

Yes, but, listen, just answer my question from your knowledge?---Sorry, to my knowledge, no.

In relation to the second cabinet submission that I showed you, exhibit 168, the short one with the four options, to your knowledge did cabinet have any - the cabinet secretariat have any input into the compilation of that document? Remember, that's the one dated 13 February? ---Well, it had been deferred so that the cabinet secretariat would further investigate options. So they may have had some input, I don't know.

30

You don't know?---No.

I'll just remind you that the decision of 19 February which pre-dated the document dated 13 February signed by Mrs Carrick for you, the decision on 19 February was to allow the state - the secretary to liaise with the archivist? ---Right.

40

Does that assist?---Not really.

Sorry?---Not really.

That doesn't assist you in helping you remember whether or not - - -?---Well, I'd say no, if that was the case.

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WARNER, A.M. XN

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No further questions.

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COMMISSIONER: Mr Hanger?

MR HANGER: Ms Warner, I think your government came in just after the Fitzgerald commission had finished?---Yes.

I take it, as I think you've made clear, you were very concerned about doing what was the right thing?---Yes.

In the kind of area that Fitzgerald was looking at?---Yes.

10

Yes, and the thought of destroying documents troubled your cabinet and you looked at it very carefully?---Yes.

Gave it careful consideration?---Yes.

After the careful consideration you thought that the best thing was to - it would be desirable if the documents were destroyed?---Yes, the only solution.

I would ask you to elaborate a little more why you say that was the only solution. Mr Copley put something to you? ---Yes. It was considered the only solution at the time because there were a number of objectives that had to be reached, and one of them was to settle matters down at John Oxley. Therefore we had to find a way of drawing a line under the confusion around the Heiner inquiry and one of those ways was to - because people thought that we wanted to use that information against them, that the department wanted to use that information against them, that that information could be used against each other. So there needed to be some resolution of those documents not being in a position to do anybody any harm. We tried to find a way of doing that without destroying them but we could not find a way of doing that without destroying them, so for everybody's peace of mind, all parties, it was thought best to destroy the documents.

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Thank you.

MR HARRIS: I have no questions, commissioner.

COMMISSIONER: Thank you. Mr Bosscher?

MR BOSSCHER: Thank you, commissioner.

What was in the documents?---I don't know.

40

Sorry?---I have no first-hand knowledge of those documents.

None at all?---No.

You've never looked at them?---No.

Your director-general gave evidence - or the acting director-general at the time gave evidence earlier today. She says she never looked at them either. Would that surprise you?---No.

1

Why did cabinet defer its original decision?---Because of the perception that destroying documents would create.

I take it cabinet knew what was in the documents?---No, they did not know what was in the documents. It was the mere fact of destroying the documents that cabinet thought was a perception, a problem of perception.

10

So cabinet didn't really care what was in them, it was the perception of destroying them that was the problem?---We were told by a number of - from a number of sources that the information was not required, that it was not going to be used in any practical - or for good purpose, that - - -

Well, just to stop you there, who told you that?---I think that the discussions between the acting director-general and Mr Heiner indicated that the material was not going to be used for recommendations.

20

Recommendations so far as his inquiry was concerned? ---That's right.

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But again you have taken a submission to cabinet to destroy documents that are public records and you can't tell us what was in those documents?---There was a dispute about whether they were public records and that's what the debate between the crown solicitor and the archivist was about. 1

So the issue of the perception was the problem so far as the initial cabinet discussion was concerned?---Yes.

The perception of destroyed documents whether they be public records or not?---Yes. 10

Not one other cabinet minister asked you at that meeting then, I take it, what was in the documents?---I think I would've outlined that the material was not considered useful material by Mr Heiner or by the acting director-general or - it wasn't constructively useful material, as I understand it, but I can't remember who told me that the information - it must have been the acting director-general - that most of the information was said to be of low-level nature not relating to the good behaviour of - the good conduct in the John Oxley Centre.

Sorry, the last point you said I didn't hear?---The good conduct. It wasn't going to add to creating good conduct in the John Oxley Centre. 20

I appreciate I seem to be harping on the point, but I'm asking you a specific question and that is: did anyone at cabinet that day ask to know what the contents were of the documents that you were recommending be destroyed?---I can't remember.

You don't recall at all?---I can't remember a specific question of that nature. 30

But somebody clearly raised the issue that they weren't comfortable with these documents being destroyed; not because they were worried about what might be in them but because of a perception it might have created?---I think that the argument about the need to destroy the documents was already achieved. It was understood that they should be protected from misuse, that information should be protected from misuse, and therefore - - -

Can I just stop you there then? How was that understood? No other cabinet - - -?---Because I understood that the crown solicitor said that there was no privilege attached to that information that would prevent people from suing each other or tarnishing each other's reputations. 40

We need to go back a step. One assumes - and correct me if I'm wrong - that you're the only person sitting at that cabinet table, being the author of the submission requesting these documents' destruction, that knows anything about this particular matter?---Yes.

14/2/13

WARNER, A.M. XXN

The minister for finance and the minister for trade
et cetera, minister for the environment - you wouldn't
expect them to have any idea whatsoever - - -?---No. 1

- - - about Heiner or the Heiner inquiry or what was in the
Heiner documents?---Yes.

You would agree with that, wouldn't you?---Yes.

So you have brought this submission to cabinet and a
cabinet discussion has followed clearly because it hasn't
simply been rubber-stamped, has it?---No. 10

Objection has been raised by somebody at that meeting to
the course of action that you were proposing?---Yes.

I suppose my first question is: who at that cabinet table
raised the objection?---I can't remember exactly who.

You have no recollection at all as to who raised the
objection?---No.

None?---No. 20

Just to be very clear, the objection was raised on the
basis of not what was contained in the documents but on the
basis that this wouldn't look good?---Yes.

As a result of that person - do you know who raised that
objection?---No.

You don't recall?---No.

Do you recall how long the conversation or the discussion
took during this cabinet meeting in relation to - - -?
---Which one are we talking about, which cabinet meeting? 30

The first one. I haven't moved past that one yet?
---All right.

How long the discussion took in relation to this particular
agenda item?---I'm sorry, I would only be guessing because
I have no memory of the length of time it took.

Was there any discussion around the issue of an indemnity
for Mr Heiner?---Yes.

There was a discussion around that?---I think so. 40

It wasn't just simply rubber-stamped. It was bandied
about?---No, I think that the circumstances of the Heiner
inquiry were obviously drawn to the attention of cabinet so
they would know what they were agreeing to.

Some information in relation to that was in your
submission?---Yes.

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WARNER, A.M. XXN

Did you speak to your notes, the briefing notes, you were referred to before - - -?---Yes. 1

- - - cabinet was asked to make a decision?---Yes.

As a result of both of those communications combined, there was further discussion about whether or not Mr Heiner should be indemnified?---There would've been a broad discussion.

Did anybody, to your recollection now, raise any objection to that?---I have no recollection of that. 10

You have no recollection as to who raised objection to the destruction of the documents but you do have a recollection as to the basis on which that objection was raised?---Yes.

And not one person sitting at that cabinet table from the premier down asked for a briefing from you as to what was in the documents that they were being asked to destroy?---I think I made it clear that I had not seen the documents.

You did make that clear and my question to you is that not one person in that cabinet room asked you, "What is it that we're being asked to destroy? What's in these documents"? ---I think that there was advice from the crown solicitor and that would have been in the cabinet submission. 20

It wasn't part of the cabinet submission that we have seen and the cabinet submission that you were shown, exhibit 151. Was there other material that went to the cabinet that we haven't seen?---There would've been the body of the cabinet - the background information as well as this small documentation.

What do you mean by "the background information"?---Well, there's usually a sort of more explanatory part of the cabinet submission that goes with the actual submission so you've got - I think it's usually called "background" or something like that. 30

The document you have in front of you is exhibit 151. Is that correct?---I don't know whether it's 151 or not.

It will have a number on it if you want to have a look? ---No, it's 160.

Could the witness see 151, please?---Sorry, 181. 40

151?---Sorry, got the wrong one.

Do you have that document, Ms Warner?---151.

Yes. Now, the page you have just turned over - that is a document, that one page, that would not have been before the cabinet, isn't it?---No, that's the cabinet decision.

Yes, so that comes after the cabinet discussion obviously. So then the next page is headed "Cabinet in Confidence". Do you see that, cabinet submission, cover sheet and then title?---Mm'hm.

1

And that document goes through - firstly, it has the purpose and issues of the recommendations being made. Do you see that?---Yes.

The objective of this particular submission?---The purpose you're referring - - -

10

Yes, I'm taking you through what's contained in this document?---Yes.

So there are the purposes and issues. There's the objective of submission, then there's the heading "Urgency"?---Mm'hm.

Next heading "Consultation"?---Mm'hm.

Then the results of the consultation?---Mm'hm.

Financial considerations, public presentation and what general or sectional support can be expected. It goes on what criticism is anticipated and how will it be answered and then the two recommendations and then underneath that we see your signature and the date?---Mm'hm.

20

So that is the cabinet submission, isn't it?

MR COPLEY: I submit that that's an unfair question because she should be allowed to turn the page to look at the next page.

MR BOSSCHER: I'm going to go on with that because I understand - - -?---I'm sorry, I don't know where you are exactly. Can you show where you are exactly?

30

It's marked on mine bottom of page 3?---Yes.

40

I see your signature, "Anne Warner, Minister for Family Services"?---Yes. 1

And the date?---Yes.

Which you've signed off?---Yes.

And that, as I understand it, is the cabinet submission that goes to cabinet. And if you turn the next page we then have what we call the body of the submission?---Mm'hm.

Which also goes to cabinet?---Yes. 10

That is a little bit more expansive. It has the background of the particular issue?---Yes, and the advice - it has quite clearly here the advice from the crown solicitor.

And then it has the objective that's being sought?---Yes. But the question that you asked me a little while back was whether or not the information from the crown solicitor became available to cabinet, and it is here in section 3 of the background.

But my question to you initially was whether or not anybody at this cabinet meeting bothered to find out what was in the documents that they were being asked to destroy; not that the crown solicitor said that they could or what the background to the Heiner inquiry was, but did anybody in that cabinet room bother to find out through you - not that they would have been successful, of course - but endeavour to find out through you what was in these documents that they were being asked to destroy?---Well, what I would have told cabinet and what I will tell you is that the matter that was covered in the documents was potentially defamatory, and that's what the crown solicitor said, and that cabinet had that information; that the information that Mr Heiner had gathered was potentially defamatory. 20 30

I can see that. I've read that document?---Yes. That's basically the crux of the matter, that it was not protected information, as it should have been, and that people had given testimony on the basis that they were - - -

Hang on, is that in there, that people - contained witness testimony?---I think that would have been part of the discussion.

You believe that would have been part of the discussion? ---Yes. 40

Do you have any recollection of that?---I have no exact recollection because it was 23 years ago.

Yes?---But it would have been part of the discussion

How would it form part of that discussion if you do not know now, nor did you know then, what was in these documents?---Because we were told by the crown solicitor that the information was potentially defamatory. 1

Again my question goes to this: you said that it would have been part of the discussion that these documents contained persons' testimony, but you don't know that, do you?---Yes, that information would have been available, that it was - - -

It's something that you know now, but - - -?--- - - - that it was material gathered by Mr Heiner in the conduct of the inquiry, which presumably would be testimony. 10

So you make the assumption that that's what would be in there?---Testimony?

Yes?---Words, yes.

Now, the issue of perception that affronted the cabinet, instead of the issue of what was in the material, you don't recall who raised that, but how was cabinet run? Was it majority decisions required to pass cabinet decision?---I don't believe that that's actually relevant to this question. 20

That's a matter for either Mr Byrne to object on your behalf or - - - ?---Mr Commissioner, do I have to divulge - - -

- - - or the Commissioner to pull me up on?--- - - - how cabinet was run?

COMMISSIONER: What was your question, Mr Bosscher? 30

MR BOSSCHER: Whether a majority of persons present were required for a cabinet decision to pass.

COMMISSIONER: What do you say, Mr Copley?

MR COPLEY: Well, it's a question in the abstract, so in my submission there's no reason why the witness can't say what the general practice of cabinet was?---Okay.

COMMISSIONER: Yes, I - - - ?---Generally we did not take votes. 40

So it was a consensus - discerned consensus?---Yes.

Thank you, Ms Warner.

MR BOSSCHER: Thank you. So in relation to this particular matter there was no consensus that these documents should be destroyed at that time?---That's right.

The decision was deferred?---That's right.

1

It was deferred for you to try and find other solutions to avoid the perception or the poor perception that concerned cabinet about the destruction of documents. That's correct?---Yes.

And although cabinet was informed that these documents were not required and contained defamatory material, the general consensus of cabinet was: that doesn't matter. We don't want a poor public perception?---No, I think the consensus of cabinet was that it did matter but that we would like to find an alternative method of protecting the documents.

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To avoid criticism?---To avoid the perception.

To avoid criticism?---And given that we have this inquiry 23 years later, I think there is some validity to that fear.

That is a fair point. I'm not going to ask you this question again because it is getting repetitive, but I just want to be absolutely clear that no one raised at that meeting or sought from you detailed information as to what was contained in the Heiner documents?---Not to my recollection.

20

In your statement at paragraph 10 you put a slightly different perspective on what you've just told us now in that cabinet did agree to indemnify Mr Heiner but did not agree to destroy the documents and wanted to seek an alternative way of protecting the documents?---Yes.

MR BYRNE: With respect, that's precisely what the witness has said.

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MR BOSSCHER: I'll endeavour to clarify that. I withdraw my previous comment.

What do you mean by protecting the documents?---So that they could not be used to defame anybody, cast doubt on people's reputations, to be used as weapons, if you like, between people.

And as at the first cabinet meeting where this was discussed, were you aware as the minister that at least one party, through his solicitors, was seeking access to these documents?---Sorry, I don't know the date of that information coming to my attention. It may have been or may not have been at that stage.

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So you don't recall when you became aware of that?---I don't recall when I became aware of that. I think it was - I know that cabinet become aware of that but I'm not sure whether it was at the first submission or later submissions.

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COMMISSIONER: But the purpose of the destruction was so that nobody could use them as weapons, including lawyers acting for somebody else?---Yes. 1

Whether you knew of a specific person or not, that was the whole point?---Yes.

MR BOSSCHER: The decision to remove Peter Coyne, was that a decision that you made?---No.

Was it a decision that you were aware of before it was implemented?---I think so. 10

If I take you now please to paragraph 15 of your statement. Do you recall at the second sentence that at some point in time you were asked in parliament a series of questions about the Heiner affair - this is obviously post the destruction of the documents?---Yes.

I assume that the time frame. Yes? To which you gave answers as per your brief and very similar to the sorts of statements I made. You then go on to say, "Probably in more detail than I recall now." In those questions that you were asked were any of them directed as to what the contents of the Heiner documents were? 20

MR COPLEY: Well, now, we need to proceed fairly carefully here. My learned friend is asking the witness what the content of questions in parliament was. Now, he would have a means of knowing what the content of questions in parliament was by reading the Hansards.

COMMISSIONER: Yes.

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MR COPLEY: And even before the witness even was to answer that question, if she's permitted to answer it, there might be an issue for you to consider, Mr Commissioner, of the relevance of a question in which she's being asked, "Well, what do you remember people in parliament asking you about these documents?" years later because if she remembers something and says, "I said this" or "I said that," then maybe my friend is thinking that he will use her answer as a prior inconsistent statement.

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COMMISSIONER: You couldn't use it if it was said in parliament.

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MR COPLEY: That's my point so therefore - - -

COMMISSIONER: I will ask Mr Bosscher. The purpose of the question, Mr Bosscher, before I decide the relevance of it?

MR BOSSCHER: The purpose of the question is to find out whether any of those questions that were asked of Ms Warner went to the content of the documents, the Heiner documents, and to what was in that material. My friend is quite right. I could put Hansard directly to her.

20

COMMISSIONER: You couldn't challenge - - -

MR COPLEY: I'm not saying you can't - - -

COMMISSIONER: You couldn't impugn anything that was said in parliament so you couldn't challenge anything. You can prove the fact that it was said but you can't query whether it's right or wrong or you can't use a statement that was made in parliament to cross-examine a witness who made it or who was present in parliament at the time because that's parliamentary privilege.

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MR BOSSCHER: I understand.

COMMISSIONER: So if you just want to find out what was said, I have got no problem with that, but I'm not even sure if that's the best way to find out what was said because Hansard will do that for us.

MR BOSSCHER: As I said to you earlier, commissioner - - -

COMMISSIONER: I think you're doing very well, Mr Bosscher.

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MR BOSSCHER: I appreciate the praise, but that's something that could have been looked at or was going to be looked at.

COMMISSIONER: Yes, but it's not controversial though. You can't change it. It's history.

MR BOSSCHER: No, I understand that.

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MR COPLEY: These documents in parliament have been around for years and years. My friend didn't need to wait to get a statement from a witness to go looking for parliamentary documents. Indeed, there's a misconception abroad about this commission that it's got some duty to provide statements to those with authority to appear. It doesn't. 1

COMMISSIONER: No.

MR COPLEY: It only does it when it suits it because it's a convenient way and an economical way and an efficient way of getting some form of evidence before the inquiry so that we can save time during hearings. 10

COMMISSIONER: Yes.

MR COPLEY: So, for example, the comment, "I didn't get the statement," is neither here nor there. There is no entitlement to a statement in the first place.

COMMISSIONER: No.

MR HANGER: I support what Mr Copley says. It's the Parliament Act, section 8. It says, "The freedom of speech in debates or proceedings in the assembly cannot be impeached or questioned in any court or place out of the assembly," and then it defines the meaning of "proceedings in the assembly" includes "all words spoken and acts done in the course of, or for the purposes of or incidental to, the transacting of business of the assembly" so it's pretty broad. 20

COMMISSIONER: Yes, and I think Mr Bosscher accepts that.

MR BOSSCHER: I do. 30

COMMISSIONER: Okay.

MR BOSSCHER: Further in that paragraph, Ms Warner, you say this:

People refused to accept that that was the reality of the situation and became fixated and more and more emotional and more and more extravagant in their belief about what was in the documents.

Do you see that?---Yes. 40

I'll ask you this question again: what was in the documents?---I don't know.

So how could they become more and more emotional or particularly more and more extravagant about their belief as to what was in them if you don't know what was in them? ---I think you should ask those people who were becoming emotional and extravagant. I was not.

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It's fairly hard to criticise someone of being extravagant in their belief as to a particular thing when you don't have any knowledge of that particular thing?--I have other evidence other than seeing the documents myself about the nature of what was in - and I've already told you that they were low-level comments made about staffing matters at John Oxley.

1

You did tell us that. You didn't tell us though, that I recall, where that came from?--I think that I would've been briefed by the acting director-general about that.

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COMMISSIONER: That's what you mean when you say they became more impassioned and extravagant. Your best information from the best available source to you was that what was in it was innocuous except that it might be used in defamation proceedings against somebody else and therefore nobody else would have had any better basis to believe anything different about the content that what you had been told was in the documents?--That's right.

MR BOSSCHER: And you believed that it was your acting director-general that told you what was in them?--Yes.

20

Or gave you a summary of what was in them?--No, gave me an idea of the nature of the material.

Was there anybody else that could have briefed you about the contents of those documents?--I don't have any direct recollection of anybody at that time saying things to me - saying those things to me. I can't put a face on another person who would have given me that advice. I may have read it in briefs but I'm not - I can't swear to that.

As I understand your statement as well though, written briefs particularly at this point in time were very rare and that the great majority of your briefings came verbally to you from Ms Matchett?--Yes, as I said, there may have been both but I remember the verbal briefings perhaps better than the written ones.

30

So far as the advice that you referred me to earlier from Crown Law, do you recall ever directly being provided with that advice or simply information as to what that advice was?--I don't recall being given that advice directly but I was given information about what the advice was.

And that information would have come to you again from your acting director-general?--And perhaps a brief.

40

And perhaps?--A brief.

And you would have relied on the accuracy of obviously what you were being told?--Yes.

Could I ask you to look at paragraph 28? Particularly from the second sentence onwards I'll just ask you to read that just to yourself. Is that a good summation of what you understood to be the Heiner documents?---No, it's not a good summation.

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This is your statement?---Yes, I know, but it was based on the interview that I had with police and I was trying to explain to them that the matters that Mr Heiner would have heard would not have been people making compliments about each other.

10

No?---They would have been making criticisms of each other.

So that is an extract or a summation of what it was that you told police recently when talking about this matter? ---Yes.

Is that a good summation of your depth of knowledge as to what was in those documents or detail of knowledge, that it was people being nasty about each other?---And that it was about starting matters.

I don't see that there in your statement?---No.

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But that's another recollection that you have?---That is the recollection that I have.

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Could I take you to paragraph 30, please? You refer there to some documents that you were asked to - or that you were sent by the Department of Premier and Cabinet late last year, in November of 2012?---Yes.

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You then go on to say, "I do recall from a briefing note that my department was at pains to point out to me that it was not a matter of a criminal activity in destroying the documents"?---Yes.

Do you see that in your statement?---Yes.

10

So a briefing note - well, sorry, I'll take one step back. Was a copy of that briefing note emailed to you amongst that material?---Yes.

Was that a briefing note that you were given at or about the time that these matters went to cabinet?---I don't recall when the briefing notes were - the briefing notes were recently sent to me, last November.

I understand they were only sent to you recently, but I would presume, given you're now retired and certainly not the minister anymore, that you're not getting ongoing briefing notes about government business?---No.

20

So if you've been sent briefing notes by the Department of Premier and Cabinet they would have been about - or copies of documents you would have received at the time that you were the minister?---Yes. I just don't recall the dates, yes.

Yes, I understand that. So my question I'm asking you is firstly, you've received a briefing note from somebody at pains to point out to you that the destruction of the documents was not criminal?---Yes.

30

So you had a written advice or briefing note to that effect?---Yes.

Prepared by whom?---I don't know.

Do you still have a copy of it?---Yes.

Are you able to provide it, produce it?---I don't know. I was asked - the reason these briefing notes were brought to my attention was because the prime minister and cabinet contacted me and said did I give permission for these notes to be made available to this commission, and I did. So I'm surprised, I suppose, that they haven't emerged at any stage, but I have copies of the material that was sent to me.

40

Just excuse me for a minute.

COMMISSIONER: While they're discussing things, Ms Warner, do you see in paragraph 28 you say the archivist came back and indicated that the documents would become available through freedom of information? Do you remember her doing that?---Do I remember saying that? 1

No, do you remember - yes, do you remember - - -?---Well, yes, my recollection of the state of play with the archivist was that she was asked if we could put the documents for safe storage in the archives.

Yes?---She said, yes, we could do that, but that they would become available when the government introduce freedom of information, thereby not providing a secure place for them. That's why that was not a - - - 10

Freedom of information was - - -?---Was not - - -

It wasn't actually on the books at the time, but it was contemplated?---No, but we had made a promise that we would introduce it and therefore - because I think what she said was that under the previous government it would have been feasible to just put the documents in the archives and let them stay there without anybody being able to use them, but that was not going to be an option that was available to us. 20

Unless you passed a law?---Well, I know, but sort of law?

How did they protect the Connolly-Ryan documents? It's a CJC - - -

MR COPLEY: They did it - section 374 or thereabouts of the Crime and Misconduct Act.

COMMISSIONER: Yes. Not a - - - 30

MR COPLEY: They can be accessible but you have to ask the parliamentary - the crime and misconduct commissioner.

COMMISSIONER: Yes?---It wasn't an option that was made available to us.

Okay, thanks.

MR BOSSCHER: Commissioner, I've discussed that matter with Mr Copley about these particular briefing notes. Neither he nor I are sure which documents Ms Warner is referring to. He hasn't been provided with them either. He suggests that the person who may have knowledge of them would be Mr Hanger, because they've come from the premier's department. 40

COMMISSIONER: Mr Hanger?

MR HANGER: I'm told that everything that has been asked for and everything of possible relevance in this has been given. I've told you that I'll give you a - I'm instructed that we'll be providing a statement from the crown solicitor to that effect.

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MR COPLEY: No, my learned friend is a bit confused. We're not talking about documents the crown solicitor ever had, we're talking about documents that were provided to Ms Warner in November last year.

COMMISSIONER: Yes.

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MR COPLEY: Now, I don't know what documents Ms Warner is referring to. No-one has clarified with her what the date of the documents were, who wrote them, what the nature of them was. Any documents that I understood Ms Warner to have seen prior to cabinet making any decisions, any of these three decisions, I have tendered. So all I'm saying to Mr Bosscher is I can't assist him with what documents the witness is talking about, but Mr Hanger represents the premier's department so maybe he can.

COMMISSIONER: Because what she says is, "After viewing the documents that the Department of Premier and Cabinet emailed to me last November." So do you know offhand what they were?

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MR HANGER: No, I have no idea. We'll find out, but perhaps she can help us as well.

COMMISSIONER: Well, it seems that it goes on, "I do recall from a briefing note that my department was at pains" - to point something out to you. Are you saying in paragraph 30 there, Ms Warner, that the documents that were emailed to you last November from the Department of Premier and Cabinet included a briefing note?---Yes.

30

The briefing note reminded you that the department at the time of the cabinet meeting was at pains to point out that there was nothing criminal involved in the discussion?--- That's right.

All right. Do you still have the briefing note?---Yes.

MR COPLEY: Then maybe the witness can produce it.

MR BYRNE: Commissioner, I have copies and if it assists - they relate to briefing notes 99 - - -?---I'm surprised you didn't tell them.

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They relate to briefing notes in respect to questions in 1993, so they're well post the event.

COMMISSIONER: The event.

MR BYRNE: Yes.

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COMMISSIONER: All right. Do you want to show Mr Bosscher and then - - -

MR BOSSCHER: No, I don't need to see them, if that's the case. We couldn't get some clarity around when they were authored, but if they post-date this matter then - - -

COMMISSIONER: I might have a look at them, though, if I can.

10

MR BYRNE: Certainly.

MR COPLEY: Well, they're irrelevant, though.

COMMISSIONER: Mm?

MR COPLEY: Just bear in mind they're probably irrelevant, Mr Commissioner. If they're written, they're created in 1993?---That's when they - - -

COMMISSIONER: I see, you're saying in 1993 your department was keen to point out something about that?--- Yes.

20

I see, yes?---Those are the only briefing notes that I was given.

I won't see them?---That's probably why you didn't bother to get them.

It sounds like it.

MR BOSSCHER: Yes, so that's why I haven't - I don't now call for them, but we couldn't get some clarity as to when those briefing notes were produced until Mr Byrne - - -

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COMMISSIONER: Yes, okay. They didn't relate to the event itself. I see, thank you.

MR BOSSCHER: I imagine that's arisen subsequent and certain other advices are provided - - -

COMMISSIONER: While we're on it, Ms Warner, see paragraph 31, you say that you first heard about Heiner and the uncovering of child sex abuse evidence. You say, "I believe I had heard it at the Forde inquiry for the first time." Do you mean to say that you were at the Forde inquiry?---No, that was a slip of a tongue. It meant that I think that that idea was generated around about that time, before it was - - -

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Before 1999?---Yes. Whether it was actually produced at the Forde inquiry I don't know, but it was around about that time.

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That you first heard about it?---That there were media reports of that allegation. 1

That's the first time, in 1999, you had any nexus between Heiner and child sex abuse, in your mind?---Yes.

You think it emanated from the Forde inquiry?---I can only assume - well, I'm making an assumption because there were youth workers giving evidence to the Forde inquiry and they were talking about things. I honestly don't know, because I didn't attend that inquiry, nor did I pay much more attention to it, because to my knowledge it was wrong. 10

I see. Thank you. Yes, Mr Bosscher?

MR BOSSCHER: Thank you, commissioner.

If I could ask you, please, now to look at paragraph 38. If you could just read that to yourself. Is it fair to put to you this and you can agree or disagree, that you have no recollection at all as to whether or not any of these type of debates took place in relation to the Heiner documents? ---That would be a fair thing to say. All I can say is that my method of discussion with the department was quite often, I think, irritating from their point of view. I would put up devil's advocate arguments against what they were saying to test the validity of their argument. 20

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So that was your normal practice, to - - - ?---Well, it was a common complaint that was made of me. 1

Yes, and I'm not being critical of it, but it was a method that you used to try and get the best outcomes?---Yes.

But to be specific in relation to this matter, although that was your usual practice, you don't have any recollection of doing it in this case?---No, I don't.

Doesn't mean you didn't, you just don't remember whether you did. Now, after the first cabinet meeting where the decision was deferred, was it your recollection that it's at about that time that Mr Tait then becomes involved in - - - ?---I thought so. I thought so. It was after it was decided that he should make investigations. 10

Now, that would normally be the role of your department, wouldn't it?---I think so, but I think people were trying to be helpful.

There was a suggestion at one point in time that perhaps these documents themselves could form part of cabinet documents by being attached to a cabinet submission and therefore be protected that way. Were you aware of that - - -?--- I'm aware of that - - - 20

- - - proposal being floated?---I'm aware of that idea being floated but - - -

Was that something that you thought of?---Nothing came of it.

Sorry?---Nothing came of it.

No. So was that a proposal did you put forward?---No. 30

Do you know where that came from?---No.

Can I ask you please now to have a look at paragraph 53. I just need to get a time line on this cabinet memorandum. Could the witness see exhibit 168, please?---Yes.

Do you have that in front of you at the moment? That is the second time that this matter came back before cabinet, as I understand that. Does that accord with your recollection?---Yes. 40

And once again, a decision was made by cabinet to defer the destruction of those documents?---Yes.

That particular issue, was it once again discussed by members of the cabinet?---Yes, it would have been.

Do you recall who it was that raised the dissent in relation to the destruction of the documents on this occasion?---There would have been a number of people. 1

Do you now recall at this time who they would have been or who they were?---No. It would be conjecture on my part to say it was one or another at this stage.

But slightly different to the previous meeting that you talked about, did you recall that there were a number of dissenters? I'm not trying to put words in your mouth, but what I'm putting - - - ?---I'm sorry, are you implying that I suggested earlier that there was only one dissenter? 10

No, I'm implying that you suggested earlier that you didn't have any recollection of - - -?---Who they were.

Of who they were and I don't recall you giving evidence as to whether there was one or more?---No, I don't either.

Do you recall now, then - let's not get confused, though - the first cabinet meeting, were there are a number of dissenters on that occasion?---There was a general discussion and people were raising other options to the destruction. I don't know whether you call that dissent or would you call that a constructive discussion about how to deal with the problem. 20

Moving to the second cabinet meeting, the one we're dealing with now in this exhibit, there were still - humour me with the word, but there was still dissent about whether or not these documents should be destroyed?---Sure.

And other alternatives, as I read your statement, were once again to be sought out?---Yes. And again, the basis that seems to be, if I take you to paragraph 50 of your statement, from memory those discussions were - - -?---At paragraph, sorry? 30

50, Ms Warner?---50?

Yes:

From memory those discussions were that it was not a good idea to destroy the documents and to find something else to do with them. This was the discussion, to destroy them would not have looked good even though there was good reason to do it? 40

---Yes.

Yes. That's your recollection of -again, my words - the sticking point so far as this cabinet decision was concerned?---That's my recollection.

That the primary push-back for the destruction of these documents was the fact that it would not have looked good, the perception?---That's right.

1

During the course of that particular meeting do you recall anyone in that cabinet room - - -?---I'm sorry, which meeting are we talking about now?

We're on the second one?---Second one, okay.

Do you recall anyone in that cabinet room at that time asking for detail as to what it was that they were being asked to destroy?---I have no recollection of that.

10

COMMISSIONER: Ms Warner, why was everyone so concerned about protecting people's interests against being sued the defamation? Normally if we say something and say it in a non-privileged or non-confidential arena and we're open to it?---I think the problem was the level of disputation at the John Oxley Centre.

Yes?---And the unpleasantness and disputation that had occurred out there, and that they'd gone through this process where they had been trying to find a solution through the Heiner inquiry only to find that it was a flawed inquiry in terms of producing any results. And that in that process that matters would have been aired that could give rise to future and continuing arguments, and that was what we were trying to stop.

20

Is that because you saw that as a matter of public interest - - -?---Yes.

- - - or as a matter of - you saw it as a matter of public - - -?---Well, it was a matter of public interest to ensure that the John Oxley Centre ran as smoothly as possible.

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COMMISSIONER: Did you see the existence of the Heiner documents as an impediment?---Yes. 1

I see. Mr Copley, just while I'm interrupting maybe you can clarify this. You know how there has been evidence that Mr Heiner, certainly from Ms Matchett, was shocked to find out that he hadn't actually been appointed under the Commissions of Inquiry Act.

MR COPLEY: Yes.

COMMISSIONER: But he never purported to exercise any powers under that act. 10

MR COPLEY: No.

COMMISSIONER: Everything was voluntary.

MR COPLEY: Yes.

COMMISSIONER: So far as the other evidence.

MR COPLEY: Some witnesses have said that he made plain to them - - - 20

COMMISSIONER: Have they?

MR COPLEY: Some witnesses said that it was their understanding that they didn't have to talk to him.

COMMISSIONER: Yes, that's right. No-one has said otherwise, have they?

MR COPLEY: No, he didn't ask them to hand over any documents. Some witnesses do say that he assured them that whatever they said to him would remain confidential. 30

COMMISSIONER: Yes, but his actions are inconsistent with his alleged belief about what he was appointed under.

MR COPLEY: Yes, they are, they are, and he wouldn't have had an Order in Council like you have got.

COMMISSIONER: No, he wouldn't.

MR COPLEY: So why he had that belief that he expressed in that letter - - - 40

COMMISSIONER: Yes, just seems - - -

MR COPLEY: Mr Nix was mystified as to where he got it from.

COMMISSIONER: So that's how cabinet saw it, "Yes, there's a public interest in us destroying these documents for the sake of the operation of the institution"?---Yes. That's what was at stake. 1

Yes. You weren't really interested in the private position of people or may not be sued for defamation?---No; no; no, the problem was that - stopping the disputation and argument that led to the poor running of the institution.

Okay, thank you. Sorry, Mr Bosscher. 10

MR BOSSCHER: Is that a convenient time? It's now 4.30.

COMMISSIONER: How much longer do you think you will be?

MR BOSSCHER: I would imagine I would still be at least 20-odd minutes and then I would be asking you to not hold me to finish anyway in case there was something to follow up with.

COMMISSIONER: All right.

MR BOSSCHER: I don't know long Mr Byrne intends to be. 20

COMMISSIONER: Mr Byrne, what's your availability? I will ask Ms Warner as well, but it looks like we will have to invite you both back?---Yes.

MR BYRNE: I have made other arrangements for tomorrow.

COMMISSIONER: Yes, that's okay.

MR BYRNE: I know nothing of Mr Bosscher's arrangements. I believe I'm available Monday and Tuesday and possibly Wednesday of next week. 30

COMMISSIONER: Right. Mr Bosscher, if I adjourn the further examination of Ms Warner to a date that's convenient to Mr Byrne and everyone else and it's also convenient to you, will be completing the examination yourself?

MR BOSSCHER: No, Mr Lindeberg will be representing himself from this point forward unless matters change so far as correspondence you're aware of.

COMMISSIONER: Right, but you have got 20 minutes yourself. If you were going to finish it, you have got 20 minutes left yourself. 40

MR BOSSCHER: I would anticipate at least 20 minutes, yes. I haven't gone through my instruction - list of questions yet. I have just been doing it off the statement at the moment.

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COMMISSIONER: Mr Copley?

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MR COPLEY: My learned friend Mr Bosscher says he has got 20 minutes and then he would need more time anyway. My submission is that it's 4.36. We should adjourn and reconvene on Monday. Mr Byrne is available on Monday.

COMMISSIONER: Ms Warner, are you available on Monday?--- Yes.

MR COPLEY: Ms Warner would appear to be available. Mr Comben who Mr Byrne wishes to cross-examine is coming Monday.

10

COMMISSIONER: All right.

MR COPLEY: I mean, that could be changed but that is the plan, for him to come up from where he lives to be available Monday, so he can give his evidence and be cross-examined by Mr Byrne who will be here anyway.

COMMISSIONER: Right. That makes sense.

MR COPLEY: Then there is one other witness on my list to be called after that, but Mr Byrne has no interest in him.

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COMMISSIONER: All right, thank you. Yes, Mr Hanger?

MR HANGER: What's the future timetable then? That's Monday. What is happening after that?

MR COPLEY: The future timetable is that we will finish Ms Warner on Monday. We will call Mr Comben, then we will call Mr Stuart Tait and then, as far as I'm concerned, unless anything dramatic falls out of any of those three people in their evidence, I take the view that I have put before you all relevant evidence - I'm sorry, there are two witnesses that are relevant to Mr Harris's interest in the matter of Farquhar or Shelley Neil, a solicitor from the Legal Aid office, and, I think, a police officer so I had forgotten about them. They will both be giving evidence by phone Tuesday.

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COMMISSIONER: So we will just have to review it on Tuesday anyway, I think.

MR HANGER: What about the other part of the inquiry, the other grounds? Are we going to have hearings on those next week?

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COMMISSIONER: Excuse me, Mr Hanger. The answer is no. Monday, Tuesday, Wednesday I have allocated for 3E, but from what Mr Copley says we may not need the Wednesday. Even if we don't need the Wednesday, I won't be using that for non-3E. Non-3E recommences on Monday the 25th.

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MR HANGER: That's the following week. 1

COMMISSIONER: That's the following week, yes.

MR HANGER: Thank you.

COMMISSIONER: I expect that will be Monday, Tuesday and then there will be submissions, I think. Have I given directions yet?

MR SELFRIDGE: Yes. 10

COMMISSIONER: Did I give them?

MR SELFRIDGE: Yes.

COMMISSIONER: Did I publish them?

MR SELFRIDGE: I don't know about published, Mr Commissioner, but you certainly heard them in open court in the commission last week.

COMMISSIONER: I better check to see if I have actually published them, but I have made them anyway. 20

MR HANGER: Those are submissions. You wanted submissions. I think it is in a very short time frame; one might say an impossible time frame like the last day of the sittings, I think, from memory, but is that in respect of 3E as well as - - -

COMMISSIONER: No.

MR HANGER: It's only on the only half.

COMMISSIONER: It's only the other half, but I was working on the basis that everybody would have been doing submissions progressively rather than waiting the night before they had to address to do it. For non-3E I think the submissions are due. The written submissions are due 1 March and the 7th for 3E, is it? Is that right? 30

MR COPLEY: I don't know. I haven't been told.

COMMISSIONER: That's right, sorry, it's verbal submissions for non-3E on the 7th. So I have already said that before, but you better think about it. Assuming that you're right and that you have got all relevant evidence in on this bracket and that nobody says otherwise or convinces me otherwise, we will need to think about final submissions. 40

MR COPLEY: We will, a timetable. I will think about it.

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COMMISSIONER: Will you do that?

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MR COPLEY: Yes.

COMMISSIONER: Okay, thanks. Thanks very much; Monday.

THE COMMISSION ADJOURNED AT 4.44 PM UNTIL
MONDAY, 18 FEBRUARY 2013

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WARNER, A.M. XXN

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