https://www.asap.unimelb.edu.au/asa/aus-archivists/maillist.html#04047

THE HEINER AFFAIR

Is there confusion in the little isle? Let what is broken so remain.
The Gods are hard to reconcile: 'Tis hard to settle order once again.
There is confusion worse than death, Trouble on trouble, pain on pain,
Long labour unto agèd breath,
Sore task to hearts worn out with many wars
And eyes grown dim with gazing on the pilot-stars.

Song of the Lotus-Eaters

These postings reflect the developing nature of the Affair so some of the statements are deficient because they derive from the incompleteness of the available information at the time they were written. I have not sought to correct, update, or annotate them. The emergent nature of the facts also gives the lie to those who, from time to time, alleged that a dead horse was being flogged here.

My involvement began when I mastered the Senate's report on Unresolved Whistleblower cases. While I was still writing up my Appreciation of the case, I contacted the Australian Society of Archivists to suggest that some kind of action was needed from the professional body. Because a meeting of the ASA Council was imminent, the then President, Mark Stevens, suggested I submit what I had for their consideration. My analysis was substantially complete, not yet finalized but in substance it was what was put on various websites then and in later years. In the comedy of errors that followed, Council took no action and I was subsequently berated (1) for submitting an incomplete document and (2) because my analysis of the facts and the issues made no recommendations for Council to follow!

Shortly thereafter, the finalized Appreciation was mounted onto the Educators' Home Page at Edith Cowan by Mark Brogan. About a year after that, as the controversy heated up on the listserv, the finalized Appreciation was also put up on Mike Steemson's RIMOS website. Two years later, Mike cobbled together an update from material I sent him. Both of these were enhanced with Mike's unique journalistic flair. When my website was launched, they were also added here.

TIMELINE

1996: February ASA Council responds to my Appreciation of the Affair - **EXHIBIT ONE**

1996: 2 April Heiner and the Public Interest [uploaded to Educators' website]

1996: 21 October Morris/Howard Report debated in Queensland Parliament

1996: 20 December ASA response to Morris/Howard Report

1997: 7 March Senator Woodley's remarks in the Senate

1997: 19 March ASA Council's defence

1997: 20 March ASA Council's defence cont'd

1997: 21 April Council of Federal, State & Territory Archivists on Heiner

1997: 23 May Motion to 1997 ASA AGM (never put)

1997: 26 May Heiner goes international - **EXHIBIT TWO**

1997: 28 May The CJC defence

1997: 28 May Senator Woodley for ASA Council

1997: 11 June Queensland Government responds to advice regarding Heiner Affair

1997: 16 June ASA Statement on Heiner [First Statement] - **EXHIBIT THREE**

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1997: 17 June Heiner and Morris/Howard

1997: 6 August Queensland Supreme Court closes down Connolly/Ryan Inquiry

1997: 8 October Heiner – now what?

1997: 9 December Heiner goes back into the Senate

1998: 19 February Mander Jones Award [for the Weekend Independent]? Outrage from ASA

1998: 26 May Heiner continues

1998: 29 May Heiner continues, and continues, and continues …

1998: 31 July Heiner in Parliament

1998: 28 August "… nonsense about documents …"

1999: 22 February Heiner on Sunday

1999: 24 February ASA Position on Heiner

1999: 25 February ASA Position on Heiner

1999: 5 March Heiner in Parliament (again)

1999: 18 March ASA Position Statement on the Heiner Affair [Second Statement] - **EXHIBIT FOUR**

1999: 18 March COFSTA Position on Heiner [Objecting to Second ASA Statement] - **EXHIBIT FIVE**

1999: 31 March Heiner on Sunday (again)

1999: 29 April COFSTA and Heiner

1999: 29 July Heiner in Parliament (again)

1999: 8 October ASA Position on Heiner [Final ASA Statement – epitaph for QCJC] - **EXHIBIT SIX**

1999: 2 November Lindeberg Petition tabled in Qld Parliament

2001: 22 August Heiner in the Senate

2001: 5 November The Heiner Affair – Startling New Evidence Bursts on the Scene

2001: 12 November The Heiner Affair – Even More Damning Revelations

2001: 18 November The Heiner Affair – Victim's Parents Question CJC's Findings

2001: 19 November The Heiner Affair – CJC Media Release on Latest Revelations

2001: 20 November The Heiner Affair – "nothing was done"

2001: 5 December The Heiner Affair – A Former JOYC Youth Worker Speaks Out

2001: 7 December Queensland Affairs

2002: 9 January Heiner Again – A Bear's View

2002: 12 April Court Decision and Shades of Heiner

2002: 24 April Heiner Affair, etc.

2003: 28 May Heiner in Parliament

EPILOGUE: What happened next

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EXHIBITS

EXHIBIT ONE: The ASA's Response to my Appreciation	16/17 February 1996
EXHIBIT TWO: The ICA's Refusal to Consider the Matter	21 May 1997
EXHIBIT THREE: The ASA's Statement (the First Statement)	18 June 1997
EXHIBIT FOUR: The ASA's Statement (the Second Statement)	18 March 1999
EXHIBIT FIVE: The Government Archivists' Dissent	18 March 1999
EXHIBIT SIX: The ASA's Criticism of the Queensland CJC's Conduct	8 October 1999

DOCUMENTS

DOCUMENT A: Morris/Howard Report tabled in Queensland Parliament	10 October 1996
DOCUMENT B: Draft Notice of Motion to 1997 ASA AGM	24 July 1997
DOCUMENT C: Queensland DPP advises against laying charges	11 June 1997
DOCUMENT D: Confidence Motion in Queensland Parliament (debates)	30 July 1997
DOCUMENT E: Cabinet documents tabled in Queensland Parliament	30 July 1997
DOCUMENT F: Extract from Debate in Queensland Parliament	25 August 1997
DOCUMENT G: Further debates in Queensland Parliament	4 March 1999
DOCUMENT H: Queensland Parliament debates Forde Report on Child Abuse	28 July 1999
DOCUMENT I: ASA receives Lindeberg Petition	2 November 1999
DOCUMENT J: Australian Senate debates the Affair	June/August 2001
DOCUMENT K: Allegations of Pack Rape at John Oxley Youth Centre	3 November 2001
DOCUMENT L: Who Knew About the Rape Claim and When Did They Know It?	8 November 2001
DOCUMENT M: Victim's Parents Respond to CJC Findings on the Rape Claim	17 November 2001
DOCUMENT N: Former JOYC Youth Worker Speaks Out on the Rape	7 November 2001
DOCUMENT O: ASA's Restatement of its Position	13 December 2001

1996, February: ASA Council responds to my Appreciation of the Affair

Towards the end of 1995, I was contacted by Kevin Lindeberg seeking advice on technical questions relating to the role of archivists in the appraisal of government records. This was my introduction to the Heiner Affair. A Senate Committee, investigating "unresolved whistleblower cases" had been taking a second look at the Affair which had already been the subject of scrutiny. I began reviewing the already voluminous documentation and concluded that others were debating issues of great moment for us professionally without archivists themselves being heard on the matter. Two issues stood out –

1. The shredding of the Heiner records with the consent of the State Archivist, as an element in the governance arrangements for dealing with whistleblowing, was of great import to the profession - yet hardly anyone amongst us seemed to know about it.
2. The investigation was on-going and the role of the Archivist was being represented by others (and, in some cases, misrepresented) without any input from us.

The documentation by now was so extensive and the issues so convoluted (making the unpicking of the archival issues especially difficult) that I wrote up an "Appreciation" to clarify my own thoughts and to assist others in concentrating theirs. Because of the timetable of the current round of investigation, there

was a time element. I contacted ASA President (Mark Stevens). An ASA Council meeting was imminent. My Appreciation was substantially complete but needed more work on citations and timelines. We agreed he should present it to Council in its present draft form. Council effectively decided to do nothing.

Refer to **EXHIBIT ONE**

A year later, with growing notoriety of the Affair and my nagging about it on the list, this Council meeting itself became the subject of disagreement. In their own defence, councilors posted justification for their handling of the Appreciation. These came down to two-

> **The Appreciation was a draft**. This is true but it was not referred to at the time and it provides no justification for Council to have ignored it. It was substantially complete and in the form uploaded by Mark Brogan to the Educators' website some six weeks later and is now displayed on this website. The facts and the issues were plain to see. The technicality that it was in the final stage of preparation provides a pretext but not a good reason for Council to do nothing.
>
> **Hurley made no recommendation**. It was for Council to decide what to do about it, not me. Mark and I had discussed setting up a Task Force but clearly Council would have to decide on the course of action to be taken. I made the mistake of thinking these people were responsible adults capable of making up their own minds. It would be charitable to think they didn't make up their minds to avoid confronting a difficult situation. Be that as it may, in the eight vexatious years that followed they were left in no further doubt as to what my recommendations would be.

1996, April 2: Heiner and the Public Interest

An Adobe Acrobat (PDF) copy of Chris Hurley's "Records and the Public Interest: Shredding of the Heiner Documents An Appreciation " has been placed in the case studies area of the Archival Educators' Home Page at URL:-

<broken link>http://liswww.fste.ac.cowan.edu.au/archives/arced/<broken link>.

The Heiner documents were the records of interview and related material gathered by retired stipendiary magistrate Noel Heiner in the course of an aborted inquiry into the John Oxley Youth Centre, Wacol, and its manager, Mr Peter Coyne, in late 1989 and early 1990; they were shredded on the order of the Queensland Cabinet on 23 March 1990.

In the wake of the destruction, attention has focussed on whether the destruction should have proceeded and how powers exercised by the State Archivist under public records law should be exercised. The QLD Criminal Justice Commission (CJC) has asserted that :

> *the role of the Queensland State Archives (QSA) is to assess the "historical value" of the records, and *it is no business of QSA to consider other issues (such as the interest of citizens in availability of records in possible legal proceedings) when exercising that discretion

The Queensland Crown Solicitor (K M O'Shea) has argued that :

> *Government has a right to destroy "its own property" (public records) "in accordance with a Statutory regime which permitted ... destruction (the Libraries and Archives Act 1988)"4 , and *there is no statutory obligation on the Government or the Archivist 5 to consider, before destroying records, the implications of legal proceedings which have been "threatened" but not yet instituted.

Hurley's appreciation is an investigation of underlying issues and implications of the Heiner case. He concludes that

> "The professional associations - the Australian Society of Archivists (ASA) and the Records Management Association of Australia (RMAA) have long argued the propriety of submitting records disposal practices to professional review in theinterests of public accountability (not just preservation of an historical record). Nowhere has the opposing case (that governments are free to destroy records at their own discretion subject only to a consideration of historical value and that State archives authorities have no role to play in support of accountability) been so strongly and persistently placed on the public record. It cannot be allowed to stand. ASA and RMAA should

take up the challenge and do whatever is necessary to place on the public record their opposition to the stance taken by the Queensland authorities in the Heiner case."

To down load and read the full text of Chris Hurley's appreciation 1) get a free copy of the Acrobat Reader from Adobe's Web server (http://www.adobe.com/) 2) specify Acrobat as a browser helper application in Netscape preferences 3) go to the Archival Educators' Home Page and down load the document.

Chris has suggested that archivists concerned about the affair should communicate their views to the Society's President, Mark Stevens.

1996, October 21: Morris/Howard Report debated in Queensland Parliament

Refer to **DOCUMENT A**

1996, December20: ASA response to Morris/Howard Report

prompted by ASA Bulletin No. 130 - Dec. 1996

Re the "Heiner Affair": The President's Letter states (inter alia) "It is likely that there will be yet another inquiry to which Council would make a submission touching on the importance of strong archives legislation" (p.159).

1. This will be good, but the time is long gone for archivists to have made their stand. I believe Council's silence up to this point has been little short of scandalous. We needed to raise the archival issues when they were on the table - i.e. when the Queensland Criminal Justice Commission (CJC) presented a view of the Queensland Archivist's role (in defence of its own and the Queensland government's action or inaction) which was simply a travesty.

2. Our failure as a profession to take up that issue when it was timely means that it has slipped from the agenda. The latest report (Morris/Howard) scarcely touches upon it and I believe it will not now be properly addressed in the terms of reference of the Inquiry which is about to begin. Instead, Morris/Howard reported on the much narrower, legalistic (and from our point of view, less relevant) issue of whether or not criminal charges could be laid against anyone.

3. In other words, the archival issue has been allowed to slip from the agenda. No one else was going to put it there for us. We had to do that. And we didn't. Any submission from us now is likely to be dealing with issues so remote from the terms of reference that we can expect to have little impact and receive little attention and we may even be ruled as falling outside the Inquiry's brief.

4. If Council does make a submission, it should not be by way of "touching" on the importance of strong archives legislation. So far as the Heiner Affair is concerned, the existing Queensland legislation is quite strong enough to have done the job. The problem was not a want of strong legislation. The problem was that the Archivist was treated as a rubber stamp, that she was not informed of relevant facts, and that her proper role under the legislation was disregarded and, ultimately, denied before a Senate Inquiry by the Queensland CJC. And we did nothing.

5. We don't need to "touch" on the importance of strong legislation; we need to go in hard and take a stand on how the legislation we have in Queensland was subverted and how it should be administered.

1997, March 7: Heiner Affair goes on, and on … Sen. Woodley's remarks in the Senate

The Story So Far ...

In 1990, records being sought in legal action about to be undertaken against the Queensland Government were destroyed by direction of the Cabinet (!) and with the approval of the State Archivist (who was apparently kept ignorant of the proposed legal proceedings and of Cabinet's reasons for wanting to be rid of them). The Government's action was later investigated by the Queensland Criminal Justice Commission (QCJC) which dismissed claims of impropriety. Subsequently, QCJC defended the Government and its own investigation to a Senate Committee of Inquiry into the shredding on the

grounds, inter alia, that the Archivist had no role other than to assess the "historical" importance of the records.

An independent inquiry set up by the Queensland Government last year discovered that there had subsequently been a second (unauthorised) disposal and that it was open to conclude that criminal charges could be laid in respect of both matters. This finding is currently before the Queensland Director of Public Prosecutions. Another inquiry is looking into the role of the QCJC.

During the many inquiries into the Affair (both State and Federal) the voices of ASA and RMAA have ne'er been heard. In Feb/Mar last year, I wrote an analysis and recommended that the ASA Council take action by publicly stating a professional position refuting the QCJC position on the role of the Archivist. They refused.

Now read on ...

After prolonged delay, Kevin Lindeberg, one of the principals in the case, has obtained documents under FOI disclosing that legal advice from the Queensland Crown Solicitor was given beforehand that the second disposal would be unlawful without the Archivist's approval. It went ahead anyway and claims were later made that it was done "on legal advice". It also appears that the Crown Solicitor (despite his own earlier advice that unauthorised disposal would be unlawful) was party to the drafting of letters telling people that the records no longer existed on departmental files.

Much of this byzantine story can be found in the pages of "The Weekend Independent" at http://uq.oz.au/jrn/twi/.... [I have trouble downloading it sometimes, but if I persist I find I get most of it.]

In the latest edition (12 March, 1997), Senator John Woodley (DEM) is quoted as saying, "Everything I've seen confirms the terrible injustice done to Kevin Lindeberg. I'm appalled this issue is still dragging on. It's like pulling teeth." He says a judicial inquiry is needed.

Perhaps Senator Woodley would be a suitable write-in candidate for election to the next ASA Council (assuming, of course, he would wish his good name to be associated with an outfit like ours).

1997, March 19: ASA Council's defence

<<Bob Sharman: I must say I am heartily sick of what Chris Hurley has been saying about the Heiner affair … Council in February 1996 resolved that the President should write to Chris to find out if he was proposing to do an article for Archives and Manuscripts. The comment was also made, and I dare say this was conveyed to Chris, that his evidence base was too narrow and that there was a need to look at all the evidence not just the finding of one agency. >>

<<Adrian Cunningham: The paper Chris Hurley refers to was given to Council members on the first morning of the February 1996 Council meeting in Adelaide as a late paper. It was a lengthy and detailed analysis of the affair and came to Council with a very brief and somewhat ambiguous covering letter. We all read the paper overnight and discussed it the following day. After having read the paper I personally was quite unclear as to what exactly Chris wanted us to do. The paper had I gather been written for publication, not specifically for the edification of Council. It was not until some months later, in conversation with Chris, that I learnt what he had wanted us to do was publicly criticise the QCJC position on the role of the archivist in authorising destruction of records. (The QCJC had argued that the archivist could only take into account the long term historical value of records when making a disposal decision).>>

Adrian Cunningham writes : "I feel I have to put the record straight on behalf of ASA Council in the face of Chris Hurley's criticisms..." First of all, good-oh. A reaction at last. Up to now, it's been like sticking a fork into blancmange.

Now.

Adrian's defence boils down to this. I didn't make clear what I wanted them to do and anyway it wasn't timely to do it.

I can't speak for the state of Adrian's mind in February 1996. What I can say is that his account bears no relation to the response that was given to me in (then President) Mark Stevens' letter to me after the February meeting - **EXHIBIT ONE**.. Although I do not have it before me, I will be unpacking it in a few days and I will then be happy to make that letter available to Adrian or anyone else. It is not a difficult or (in my view) ambiguous document. At any rate, I remember it very well.

It says that Council decided, by (the sense of Mark's words were) a very considerable majority, not to take the matter up (but instead to cover the issue in a general policy paper on disposal). He then went on to enumerate the reasons why Council had decided to reject my proposal (to say nothing of Mark's own proposal, discussed with me before the Council meeting, that a Council sub-committee be established).

Now I suggest that a group of people who are unsure what it is that you are asking them to do does not itemise for you their reasons for not doing it.

There was never any suggestion from me that my analysis was written for publication. Mark's letter informed me that it was Council's suggestion to me that (since they weren't going to do anything about it) I might like to publish it. The suggestion that it might be published was made by Council to me, not the other way round (as Adrian suggests).

The QCJC statements concerning the role of the Archivist had not been made in 1991 (when, as Adrian says, they made their original investigation) but in 1995 defending that investigation before a Senate Inquiry and the Report of that Inquiry had just been released. It was not old news ("a bit after the fact"), as Adrian suggests.

In the subsequent 13 months, the campaign to keep Heiner alive has forced disgorgement of fresh revelations of poor and possibly unlawful recordkeeping practices in Queensland. We chose not to be part of that campaign.

The Qld investigation into the Affair by two QC's was not yet under way. It came later. Its existence was no obstacle to Council acting in February 1996, as Adrian states (" When we discussed the matter last February the issue was under investigation by a team of lawyers hired by the Qld Govt.")

Adrian says, "Chris seems to have assumed that we would know what to do without having to be told, but in a case as complex as this, that was an unfair assumption." Reply : No, I assumed, on the contrary, that you would not be familiar with the case (it took me weeks to distil it from the Senate Committee transcripts and reports). My attempt was to distil that down for you and give you something on which you could act (without the necessity of doing that research for yourselves) in a time frame which required speedy action. You can't expect public issues to move at the pace of ASA Council deliberations. This public issue required a speedy announcement of an ASA position (in my opinion). My analysis was an attempt to assist you to do it.

The reasons Council gave me for not acting were all ad hominem reasons for rejecting my analysis. Mark's letter stated that Council rejected my analysis because they felt I "was too close to the issue" and had not consulted all sides (it is still unclear to me what other sides should have been consulted before rejecting the QCJC view). Their reason for doing nothing, in other words, was based not upon their independent evaluation of the issue but upon their judgement of me.

And, if I may be allowed to say so, that ad hominem approach to the matter is the only point of congruence I can find between Mark's account of Council's actions last year when he wrote to me about the February meeting and Adrian's defence of them now.

P.S. I am resending this message after an error report. It gives me a chance to mellow-out a little. All this would be of small consequence if Council could bring themselves, as Adrian almost does, to say "Look, we made a mistake, we've learnt the lesson, we have to handle public issues better in future". But then he goes and spoils it by trying to justify their inaction (with pretty poor arguments) and to say (for

God's sake) that it was my fault for putting a complex piece of business before them, poor lambs. What we need to learn from all this is how not to respond to public issues in future. Even if Adrian's reasoning was valid (I do not think it is), it was Council's job to find a way to put on the public record our objections to QCJC's outrageous and professionally objectionable misrepresentation of the archivist's mission - not to find excuses for inaction. By the way, I think it is still not too late for ASA to take a public position on the QCJC argument before the Senate Committee, though even I would concede that it's now getting to be old news.

Note: Despite saying, in his posting of 18 March, that "I feel I have to put the record straight on behalf of ASA Council" as quoted above, Adrian Cunningham also says elsewhere in the same email "I hasten to add that I am doing so as an individual member of Council and have not consulted with any of my Council colleagues on this posting."

1997, March 20: ASA's defence cont'd

(1) **Adrian says - "... All I can say is that, had Chris made his desired course of action absolutely clear when he presented us with his analysis, Council may well have reached a different decision..."**
Reply: The proposal put to me ahead of that meeting by Mark Stevens (then President) was that he (Mark) would propose to Council establishing a special committee (including me) to develop a "speedy" public response on the issue. I agreed to go with this proposed "absolutely clear" course of action. Mark's subsequent letter to me made it absolutely clear to me that Council did not adopt this proposal - not from any confusion of mind, but because they rejected my analysis of the issue. I wasn't there, but it seems to me that Mark's account of Council's deliberations and Adrian's recollection of it are substantially at odds. Either Adrian's recollection is wrong or Mark's account of it to me is inaccurate.

(2) **Is it worth dealing with water under the bridge?**
Reply: Yes. There are important lessons to be learned here about how we handle (or mishandle) public issues in the future. I too regret that those lessons look like being lost in a whelter of self-justification and squabbling about what did or didn't happen.

(3) **Adrian says - "It is not true to say that Council has played no part in the campaign over the last year in the ongoing investigations into the Heiner case. I know that our President has had a number of lengthy telephone conversations with journalists from Queensland where she has argued the ASA's position on the destruction of records."**
Reply: So far as I am aware ASA's "comment" has continued to be in general terms, not on the specifics of the case. I would not regard this (and I know others do not regard this) as contributing in any helpful way to the "campaign". We can certainly debate whether ASA should participate in or comment on particular cases (I can see there might be different views on that). But we aren't having that debate, are we? We're being told instead : "It's all right, we did our bit. And if we didn't, it's Hurley's fault for not telling us what to do - and p.s. it was probably not worth making a fuss about in the first place."

(4) Morris/Howard Report: The point Adrian makes about the Morris/Howard Report (two lawyers who investigated the issue last year) is interesting. He says (rightly) that they said nothing about the archives issue - unless you consider a finding that criminal charges can be laid against people for destroying records is an archives issue. I think Adrian is trying to suggest that this proves it wasn't very important anyway. The question is this: If we didn't make an issue of it, who else was going to? Was the archives issue off the agenda by that stage because we failed to get it on? We'll never know.

(5) What now? The Heiner case is still producing revelations, virtually while we chatter about it so pleasantly on the Internet. The latest issue of the Weekend Independent carries new ones. Revelations of how illegal destructions were carried out and by whom. No doubt if the President thought she wanted to say something about that, she would be quoted (even now) - as I'm sure she would have been quoted (if she'd said anything worth quoting) on any of the other scandals that have emerged from this case since the benighted February Council meeting where I so signally failed to make my intentions absolutely clear.

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1997, April 21: Council of Federal, State & Territory Archivists on Heiner

<< The ASA Bulletin, April 1997, p36 reports "The Council [COFSTA] expressed its support for the State Archivist and for the findings of the Morris Report that the State Archivist acted in accordance with the Libraries and Archives Act 1988.">> Further to Glenda's posting of last week, it might be worth spelling out what the COFSTA (Council of Federal, State & Territory Archives) motion was for those on the List who aren't recipients of ASA literature. Last December, COFSTA "passed a unanimous motion of support for the actions of the Queensland State Archivist in the matter of the Heiner Inquiry records" and "expressed its support for the State Archivist and for the findings of the Morris Report that the State Archivist acted in accordance with the Libraries and Archives Act 1988".

A century ago France tore itself apart over the "Affair". I hope we don't do the same over the Heiner Affair but, like Glenda, I have questions about COFSTA's action. In the same issue of the ASA Bulletin reporting the motion, the President says she is awaiting a call to the table to put archivists' views. If or when that call ever comes, I urge her not to follow the COFSTA lead when articulating a position on behalf of the wider archives community. It would be better if we could all pull together, but there are limits.

The COFSTA motion is unfortunate on two counts.

COUNT ONE - ARE WE A PROFESSION OR A CLUB?

Supporting the actions of the Queensland Archivist does not address the central issue - viz. Did the Queensland Archives system fail Kevin Lindeberg and Peter Coyne? And if it did fail them, what needs to be done to make sure it doesn't fail again - in Queensland or elsewhere? I think it did fail them. COFSTA and anyone else who pleases may disagree.

If so, they should say that they think the system worked for Lindeberg/Coyne and be prepared to defend that view. But it is not only wrong, it is also bad strategy, just to ignore the issue altogether and limit our comment to defending Lee McGregor. Whether or not Lee acted properly is of secondary importance - however much it matters to Lee and her friends (amongst whom, I had not thought it necessary to say until recently, I count myself). One does not have to be as "principled" as Chris Hurley (I use inverted commas to denote the sneer in the voice of many who call me that) to see the unwisdom of the COFSTA approach.

For archivists to support one of their own, while appearing to weasel out of tackling the core issue, does Lee herself no good. We have commented readily enough on high principle during similar scandals (where the role of the Archivist was not in question). Our reluctance to do so here has naturally raised the suspicion that we have something to hide (even if we don't).

The COFSTA approach makes us look like a club closing ranks to protect one of our members. We are made to appear more concerned about Lee's good name (and about not admitting that anything in the archives garden might smell) than we are about the public whose rights and interests it is the purpose of the Archives System to protect. The COFSTA motion focuses entirely on the protection of Lee and on reassuring the public against doubts as to the efficacy of the Archives System - not at all on the damage done to Lindeberg and Coyne. There is no suggestion in that motion of sympathy for (or even awareness of) their situation, let alone a suggestion of concern over whether we have some professional responsibility for it. We are lined up with all those other groups (police, lawyers, doctors, to say nothing of politicians) who the public suspects, with some justification, of being self-serving cliques closing ranks under criticism to protect their own members and their own interests instead of looking out for the public they serve.

What was the alternative? To have addressed the real issue first and then expressed a view vindicating (or condemning) Lee. To say: "yes, the system failed these men and it was/was not the archivist's fault in whole or in part" or "no, in our view the system didn't fail in this case, no defence is necessary, and we are prepared to say why". If we do that, and thereby expose our own evaluation of the rights or wrongs

of the case to public scrutiny, our motives may still be questioned but at least we can't be accused of avoiding the issue.

COFSTA doesn't seem to have a view on the merits of the case - it relies instead on the opinions of lawyers. But lawyers cannot tell us what the professional issues are here or how those issues can be resolved. We must tell them - and not take refuge in the fact that our Archivist hasn't been found by a couple of QC's to be actually in breach of her own Act. So what?

Moreover, if we fail to do that, if we continue to expose ourselves to the charge that we are a club and not a profession, we impeach our own future credibility as witnesses to professional standards when (or if) we are "called to the table". Why should anyone take notice of our view on the standard if our motives can thus be impugned? I deplore ad hominem arguments, but I recognise their force. To avoid that charge, we need to make it clear that our first concern is not the well-being of our colleagues but the integrity of archival standards (the maintenance of which may be our special business, but is everybody's concern - not our private domain). Even if you think this is high-principled twaddle, you should be able at least to see the utilitarian value of thus preserving our ability to influence events.

I think I will not see again in my lifetime a case which offers so many (hitherto wasted) opportunities to nail down the standards of public sector recordkeeping.

COUNT TWO - WHAT THEN IS THE STANDARD?

Whether the findings of Morris/Howard in fact support COFSTA's view will be a matter for debate amongst those who have actually read the Report. This probably excludes quite a few on the List.

As I have said before (and I hope this is pretty much beyond debate) the approach taken by Morris/Howard was (not surprisingly given their background and terms of reference) narrow and legalistic. They reached conclusions about circumstances in which it was "open to conclude" that breaches of the law had occurred which might lead to court action - mostly to do with tampering with evidence and mostly under provisions of the Crimes Act. On the whole (in part, I believe, because we weren't at the table by the time the terms of reference were set) they didn't deal with the implications for archives laws - matters which received much more attention at two Senate Inquiries at which we were also not represented. I think all this gives little room for satisfaction or complacency on our part.

The issue here is that there are two standards - the strict legal standard, enforceable at law, and the higher "professional" standard about how the archival discretion over disposal should be exercised. No one suggests that the manner in which the archival discretion should be exercised is enforceable at law (apart from minor administrative law remedies - cf. the FBI Case). The issue here is not whether Lee broke the Libraries and Archives Act (the issue dealt with chiefly by Morris/Howard) but whether she (and others) acted properly in administering it. You can act within the law and still act improperly. And if you can act improperly within the law, the law needs to be changed.

A succession of inquiries into corruption have found the law in need of change to remedy corruption (both legal and illegal) - including both W.A. Inc and Fitzgerald (each of which involved failures in recordkeeping leading to recommendations for reform which we as a profession embraced eagerly). But time and again we have seen recognition of systemic failure and proposals for reform blunted by a relapse into complacency that the problem was one of "rotten apples" not a flawed system.

Once the fuss dies down, we are told either : "the charges were dismissed, there was no problem" or "the rotten apples have been removed, everything's O.K. now". Until next time.

We ourselves have been victims of this amnesia in both W.A. and Qld - where archives reform spurred initially by corruption inquiries has stalled and legislative proposals have been watered down. How can we credibly uphold the need for systemic reform if we ourselves behave like this?

The Lionel Murphy Affair finally boiled down to whether you could dismiss a High Court Judge for anything less than a criminal conviction. The problem with that defence is this - Do we want to live in a society in

which the best thing you can say about a High Court Judge is that he isn't a criminal? The standard has to be higher than that.

Do we want to uphold a standard for administration of the archives laws where the best we can say is that our Government Archivists haven't been caught out in an actual breach of the laws? If the outcome when Government Archivists act "in accordance" with the archives laws is no different from Crimes Act protections against tampering with evidence, what need do we have of archives laws anyway?

We have to be able to expect more of our Government Archivists than to be able to say : "they've done a good job, no court has found them in breach of the law and the subsequent Inquiry did not find it 'was open to conclude' that they were". So far as Morris/Howard investigated the circumstances of the destructions, they admitted that they couldn't find all the relevant documents they would need to reach a conclusion and were mystified by their disappearance. It's bad luck for COFSTA that fresh information on the destructions (including some of the "missing" documents) have been unearthed by Lindeberg since COFSTA's meeting. A salutary warning to all those who eschew the "principled" approach.

A failure (by us of all people) to uphold a higher standard in this case is not going to help the next Government Archivist who finds him- or her- self in trouble. [Nothing I have said above should be taken, by the way, as implying that Lee McGregor herself has in any way failed to uphold that standard - whatever it is. Nor, of course, that she hasn't.]

If we ever decide to take a position on Heiner - when we are "invited" to the table - even supposing (heaven forfend) that we did something vulgar like pushing our way up to it uninvited, I urge that we do not follow the COFSTA lead on this.

1997, May 23: Motion to 1997 AGM (never put)

<<21 April, 1997 : It is with pleasure that I announce that Lee McGregor has been appointed to the position of Director, Information Management/State Archivist, Information Management Branch, Division of Information and Procurement, Department of Public Works and Housing (formerly known as Queensland State Archives)>> I think I am going to have the bad taste to propose the following motion to the Adelaide AGM and I would be glad to hear from anyone who thinks he or she might have the bad taste to second me :-

Refer to **DOCUMENT B**

1997, May 26: Heiner goes international

The Heiner Affair was submitted for consideration to the inaugural meeting of the ICA's Electronic and Other Current Records Committee to be held at The Hague on 18-20 June 1997 under the chairmanship of Canada's John McDonald.

An attempt has been made to head it off by ICA's Secretary-General, Charles Kecskemeti, who has referred the matter back to Australia.

Since those to whom it has been referred include George Nichols (implicated in the COFSTA Declaration of Dec. 1996) and Kathryn Dan (who has helped preside over inaction by ASA so prolonged as to be perceived as amounting to a definite policy) we cannot expect the aggrieved parties in the case (Kevin Lindeberg and Peter Coyne) to have any faith in that process.

The Kecskemeti communication to Lindeberg follows. I should point out that, as I understand it, Lindeberg referred the matter to ICA for consideration in the light of the professional and ethical issues involved (with special reference to ICA's mission statement and the ICA Code of Ethics) - not, as Kecskemeti implies, for juridical action.

It's fascinating to me that Lindeberg has taken the trouble to find out what ICA's mission and Ethics Code are. How many of us, I wonder, would know?

Kecskemeti seems to be having the same trouble as COFSTA in identifying the central issue : viz. supposing it to be about blaming or exonerating Lee McGregor ("ICA ... is not ... a jury of honour entitled to blame individual archivists"). This comment is interesting for two reasons.

First, Kecskemeti seems to take it as a foregone conclusion that "blame" would be the outcome of an ICA consideration of the case.

Second, COFSTA appeared to have no qualms about acting as a "jury of honour" to exonerate an individual archivist. I criticised them for that and presumably Kecskemeti would agree with me - but perhaps I presume too much. It is a curious role-reversal, however, since ICA seems to have a code of ethics and COFSTA, so far as I know, does not.

COFSTA could, of course, have responded to my criticism by saying that it is not concerned with professional issues - a point likely to be lost on the outside world, but arguable. But what then was the point of their Dec.'96 Declaration?

As I have pointed out before, Lee's guilt or innocence is not the key point and Lee herself would have been very much better off - as the recipient of any "protection" we sought to give her (had we thought it appropriate) - if we did not keep false-footing ourselves by abdicating from involvement with the professional issues arising out of the Affair.

All that has been asked of the profession (here and internationally) is that it take a clear, firm, and sustained position on the correct interpretation of the archival role - in the light of a record which reveals

(1) an unambiguous assertion by Queensland authorities that the Archivist's role is only to deal with the historical importance of records and that it is not the Archivist's role to protect the rights and entitlements of citizens, and

(2) well documented actions of Queensland authorities which appear to have breached (with impunity) both archives and criminal laws and the failure of those laws to uphold justice in the Heiner case.

And, naturally, a sustained defence of that position as this extraordinary case continues to unfold. It remains a mystery to me why it is proving so hard for us to do that.

Refer to **EXHIBIT TWO**.

For those who are interested, I have not had many offers to second my ASA AGM motion on Heiner. An interesting run of supportive mail, but not many offers to go public. I can't think why.

1997, 28 May: The CJC defence

<<Shauna Hicks: Chris' use of the phrase "Queensland authorities" implies more than one party yet, I believe, his statement is based on the testimony of that one officer of the CJC. No doubt if I am wrong in my interpretation of Chris' statement, he will let us all know. However, what I think also needs to be stated is that this is not the official view of the CJC on archives and public records management. Nor is the CJC the Queensland Government and the CJC certainly does not speak for the Queensland Government. >>
Shauna is correct that the unambiguous statement to which I refer was made by CJC to the second Senate Inquiry (which was held) in 1995 and, so far as I am aware, has not been made, or repeated, publicly by any other Queensland Authority.

I take up her invitation to refute the statements/inferences she makes.

Shauna's description ("testimony of a Criminal Justice Commission (CJC) officer who appeared before the Senate inquiry") hardly does justice to the occasion. The Inquiry in question was inquiring into the adequacy of CJC's investigation of Heiner. The Senate Inquiry was set up because the Queensland Government had declined to implement changes to whistleblower procedures. The Commonwealth argued that Heiner (amongst others) indicated the need for change. The Queensland Government argued that change was not needed because (inter alia) its own CJC provided an adequate response. The Queensland Government took refuge in silence, but CJC defended itself before the Senate Inquiry.

Of course, there is no other statement from Queensland on the CJC "defence" because the Qld Govt has steadfastly refused to comment - one way or another - and has refused permission for Qld State Archives and other Qld authorities to appear or comment either.

It is certainly true, therefore, that the CJC statement does not represent an official Qld position in a formal sense.

That said, one must look at the context in which it was made.

It was made by CJC's representative to the Inquiry (a lawyer named Barnes). To describe him as an "officer" appearing "before" the Inquiry is disingenuous to say the least. He was appearing for CJC, not giving testimony but arguing the CJC's case. The statement in question was not made by an officer of CJC, it was made by CJC itself through its nominated representative as a considered statement of its position in 1995 defending itself on matters of great moment before a solemn tribunal evaluating CJC's efficacy.

It cannot be tossed aside as if it were the aberrant opinion of a rogue officer.

Moreover, the case developed by Barnes (on behalf of CJC) was that the CJC's investigation of Heiner (amongst others) was adequate. This part of the CJC's defence did represent the official Queensland position adopted and repeated many times by the Queensland Government. The CJC was, in effect, arguing the Queensland Government's case because it was running the same defence. It's just that the Qld Govt chose to take refuge in silence before the Senate Inquiry (and since).

Formally, the CJC was on its own, but politically (in reality) the CJC defence was the Qld defence.

Moreover, the CJC statement was not made in isolation. It was simply an element in the CJC defence (the Queensland defence) and that defence had been systematically developed over several years as the response to Heiner was constructed not just by CJC but by the entire Qld Administration. It was made up of a succession of congruent views and opinions (all documented in the appendices to the Senate Inquiry's Report). To take this one statement out of its context (as Shauna does) to demonstrate an alleged isolation from the rest of Queensland "opinion" seriously misrepresents its significance.

In the light of this, it serves little purpose to go back to an earlier statement (1991) by CJC upholding a different view. In 1995, CJC was fighting for its life - successfully, it's holding on (no bad thing, I am a supporter of its mission - just a critic of its performance).

In the interval since 1991, CJC had participated in the nightmare of consequences growing out of its original decision to dismiss Lindeberg and Coyne. Those consequences had by 1995 entangled not only CJC but the Crown Solicitor, several ministers and senior bureaucrats, and (arguably) the entire Queensland Cabinet. The 1995 statement represents a key part of the defence being mounted at that time by CJC, not only of itself but (by extension) of all these other eminent and beleaguered persons.

1997, May 28: Senator Woodley for ASA Council

<< Senator Woodley spoke in the Senate on 26 May 1997 on the Heiner affair >> The following extract from the Woodley speech to the Australian Senate demonstrates, I think, why he would have made an excellent write-in candidate for the ASA Council elections. All the ASA and ICA need do now is say, "Hear, hear!".

> The issue at stake is essentially a simple one, but one of great importance. If the Crown or the state, through its statutory keeper of public records, cannot be relied on to impartially and independently protect public records from destruction when those records are known to be required for foreshadowed court proceedings or when it is known that they are the subject of a legally enforceable access statute, the due administration of justice is gravely imperilled. That is essentially what the Lindeberg declaration states in a document I wish to table later.
>
> As a Democrat, I find it hard to think of anything more serious than the Crown or state deliberately shredding public records to thwart justice. One of Australia's leading Queen's Counsel, Mr Ian Callinan, described it

> as an unthinkable act. It is made much worse, however, when executive government uses and abuses the independent and impartial good office of a state or federal archivist to achieve that objective. Archivists should be protecting records in the public interest, not destroying them for any desired outcome of executive government or its agencies at the expense of individual lawful rights. It is fundamentally undemocratic and may breach criminal and administrative law in the process.
>
> Archivists must be able to lawfully withstand pressure from any executive government and its agencies when incidents like this occur in the future. Former Queensland Police Commissioner Noel Newnham, now a lecturer at Charles Sturt University in Sydney, described this case as `monumentally serious'. He courageously, and quite properly, I believe, criticised the CJC's handling of the Lindeberg complaint and the cavalier manner in which that body treated him.
>
> Let me conclude by saying this: it is totally unacceptable for any Australian government to send to the international community a signal that shredding public records to stop their use in court proceedings or to stop lawful access to them is acceptable conduct in our public and legal administration or in any aspect of public life at all. It brings our reputation as a nation governed by the rule of law into unacceptable disrepute.

<<Mark Brogan: Since it is unlikely that Senator Woodley could be persuaded of the benefits of such high office, my view is that we should settle on a lesser goal - say incorporation of the Woodley sentiments into a motion for the Adelaide AGM? In drafting such a motion, I see it as very counter productive to revisit the Heiner affair, a move which would doubtless stymie any attempt to deal with the underlying issue >> You ask for my reaction to your proposed motion.

One part of me says that half a loaf is better than none and that, of course, such noble, high-minded sentiments must be applauded (that's the warm and cuddly side of my nature coming out).

The other part of me says that for ASA to pass such a motion at this time would be like King Herod speaking in praise of motherhood (that's the arrogant, impractical, nasty side of me coming out).

You, of course, understand that the difference between your proposed motion and what Senator Woodley said is that his remarks were grounded firmly in the position he has taken on the Heiner Affair. They emanate from his condemnation of what happened and are a demand that such things not happen again. Your proposed motion avoids making any such connection.

To disconnect those sentiments from the particular case which gave rise to them and, hence, their focus robs them not just of their moral force, but also of a substantial part of their meaning.

Moreover, the Heiner case is not dead. The Qld Govt still has to announce its decisions on prosecutions coming out of Morris/Howard. The Connolly/Ryan Inquiry is still proceeding. The call for yet another Inquiry into Heiner is still on the table. The choice of not taking a stand on Heiner (while mouthing pious sentiments) and yet avoiding the obloquy which that craven course must bring upon us is not really available.

Even if we desire not to "revisit" Heiner, we can't avoid having it drop in on us - uninvited.

Events are still unfolding which require that we speak out - not in generalities but by repudiating what was done to Lindeberg and Coyne and offering our professional advice on what must be done to reform the Queensland system to prevent such injustice happening again. In order to offer such advice, you have to acknowledge that injustice was done in the first place. Otherwise, why try to change things? To try to do the one without the other makes us look ridiculous and robs us of our credibility.

This is what I think.

- Would I, therefore, vote for your motion - if put? Of course, I would.
- Would I think it repaired the damage done? Certainly not.
- As an attempt to heal the wounds, I think your proposal is admirable.

But this isn't just about us. It's about how we inter-act with the world outside of us. Maybe you're right and I am wrong, but I just can't see it.

In any case, as ever, with regard and respect.

<<Marl Brogan: Agreed. Declarations of 'noble' principle are often the resort of hypocrites. For this reason, the proposed motion should not substitute for other action on the Heiner issue. However, if the current silence in cyberspace is anything to go by, prospects for anything other than 'motherhood' statements from ASA seem very slight indeed ... In 'motherhood' we trust.. >

1997, June 11: Queensland Government responds to advice regarding Heiner Affair

Refer to **DOCUMENT C**

The release was picked up by the Courier Mail (Brisbane's only daily newspaper) and the following appeared on page 10 on Thursday 12 June).

No Charges Over Heiner Affair

The marathon Heiner document shredding saga ended last night with the announcement that no one would be charged over the affair.

Premier Rob Borbidge, who is in Indonesia released a statement announcing Director of Public Prosecutions Royce Miller QC had advised against charges being laid against any person in relation to the affair, which began in 1990.

Last November, the Government referred to Mr Miller allegations that sensitive documents had been destroyed under the former Labor government.

Brisbane barristers Tony Morris, QC and Eddie Howard had recommended an inquiry be set up after compiling a report accusing former family services minister Anne Warner of making an illegal paymentof $27190 to a former public servant to buy his silence.

The barristers had suggested Family Services Department officers might have destroyed evidence and conspired to pervert the course of justice - offences which carry jail terms of up to seven years.

The shredded documents related to an inquiry by retired magistrate Noel Heiner into the John Oxley Youth Centre, set up late in 1989 by the National Party government.

Ms Warner said the documents had been destroyed to stop public servants taking legal action for defamation against people who had given evidence at the inquiry.

Mr Borbidge said Mr Miller advised that the time limit for starting any proceedings had lapsed, although one criminal charge dealing with abuse of office could, theoretically, be laid.

Mr Borbidge said the Government had accepted Mr Miller's advice, which stated: "Very considerable time has been expended by a good many people in the pursuit of the truth regarding the Heiner matter. One has to wonder whether the public interest requires further exploration or whether it is now time to put the matter to rest".

Former Labor premier Wayne Goss last night described the allegations as "flawed". "I never feared anything would come of it. What I did resent was the continud reports of some unspecified “wrongdoings", he said.

Opposition Leader Peter Beattie, who estimate more than $400,000 had been spent on the affair, said the decision was "extraordinary". "He (Mr Borbidge) should apologise to Wayne Goss and the Cabinet. It is a humiliating admission that all this nonsense from Borbidge was nothing more than political rhetoric", he said.

Ms Warner described the Morris/Howard report as a witch hunt. "The Director's advice confirms my worst suspicions that th Government was using this in a political way and unfortunately a large number of individuals have been caused a great deal of stress", she said.

But whistleblower and former union offical Kevin Lindeberg, who lost his job after complaining about the incident, said he was outraged. "For over six years, I have wanted the Criminal Justice

> Commission to properly investigate the shredding but instead it has lied publicly, misled the State Parliament and the Senate, misquoted and misinterpreted the law and tampered with the evidence", Mr Lindeberg said.

1997, June 16: ASA Statement on Heiner

The following statement on the Heiner Affair has been endorsed by the Council of the Australian Society of Archivists. In view of the ongoing media interest in the matter, Council decided at its May meeting in Brisbane to prepare a statement for release to the media and politicians, etc. Previous to that Council had been awaiting the response of the Queensland Government to the Morris/Howard report, in the hope that this may have provided an opportunity for the ASA to present its views through formal channels. As we now know the Qld Government has decided to shelve the Morris/Howard report. Nevertheless, Council feels there is value in presenting a public statement of the views of the Society. The recent Qld Government decision to shelve the Morris/Howard report is unlikely to be last we ever hear about the case. Thanks to everyone who provided comments and input into the development of the statement.
Adrian Cunningham (on behalf of ASA Council). Refer to **EXHIBIT THREE**.

1997, June 17: Heiner and Morris/Howard

In a charming episode of "Yes, Prime Minister", Sir Humphrey Appleby catalogues the 5 or so stages by which Governments avoid doing something they don't want to do, beginning with -

> "We don't have all the facts we need to justify taking action"

and culminating in -

> "Well, we could have done something ... but it's too late now".

This must seem quaintly apposite to Lindeberg & Coyne in view of the Queensland DPP's decision to reject the Morris/Howard recommendations re criminal prosecutions on the grounds that -

> "the time limitation for commencement of any proceedings under the Libraries and Archives Act had, in any event, elapsed"

and that -

> "Very considerable time has been expended by a good many people in the pursuit of the truth regarding the Heiner matter. One has to wonder whether the public interest requires further exploration or whether it is now time to put the matter to rest once and for all".

This is ironic (presumably unintended) because most of the time and expense has resulted from the Queensland Government (and others) fighting every inch of the way to deny that crime or misdeeds of any kind ever occurred. Only by dogged persistence (and in the face of ridicule and abuse) has Lindeberg established his case and (over the last 12 months) squeezed out the evidence he needs to sustain it. He now finds that the time and expense he (and others) put into it are used as the reason for doing nothing about it.

Meanwhile, the Connolly/Ryan Inquiry into the Queensland CJC and Heiner is still hearing submissions. Could someone tell me if ASA has been "called to the table"?

1997, August 6: Supreme Court of Queensland closes down Connolly/Ryan Inquiry

The Queensland Supreme Court has granted an injunction closing down the Connolly/Ryan Inquiry into the State's anti-corruption body, the Criminal Justice Commission (CJC), on grounds of "bias".
Amongst other matters being considered by Connolly/Ryan was the Coyne/Lindeberg case against the CJC arising out of the Heiner Affair.

In extraordinary developments prior to the Inquiry's closure, submissions and evidence relating to Heiner were censored under a suppression order issued by Connolly/Ryan. Amongst matters being dealt with behind closed doors was the CJC defence of itself on Heiner and the role of the Archivist.

What next?

Read all about it at SMH -
http://www.smh.com.au:80/daily/content/970806/national/national12.html

https://www.asap.unimelb.edu.au/asa/aus-archivists/maillist.html#04047

1997, October 8: Heiner – now what?

In my last posting on this matter, I asked "What next?".

You can find out by looking at the latest Weekend Independent.

You will recall, that the Connolly/Ryan Inquiry into the Queensland Criminal Justice Commission (QCJC) issued a suppression order in July over an exhibit (Document 394). The Inquiry itself was then closed down by order of the Supreme Court of Queensland.

Certain testimony and argument before the Connolly/Ryan Inquiry, including (so I understand) QCJC's latest attempt to justify its actions in this case and (I assume, but we may never know) the 1997 version of QCJC's views on the role of the Archivist, were also suppressed.

What made the suppression of 394 unusual was the fact that it had already been publicly available together with other exhibits for two months (since May) before the suppression order was issued (in July). Since the closure of Connolly/Ryan, efforts to have the ban lifted have involved the Press Council, the Queensland Attorney-General, and the Speaker of the Queensland Parliament.

Those who viewed it before its suppression say that Document 394, prepared by barrister Roland Peterson, deals (inter alia) with QCJC's treatment of and views upon the archival aspects of the Heiner Affair and with the role played by the Queensland State Archives.

Now, apparently in defiance of the suppression order, the Weekend Independent (October Issue) has published the entire text of 394 on the Internet.

Will the Queensland authorities take action? Is it possible there may be a test case on press freedom and the efficacy of suppression orders?

What ever next?

Read all about it at -

http://www.uq.oz.au/jrn/twi/top10.html

Almost as an aside, I understand consideration is also being given to whether QCJC is in contempt of Parliament for misrepresenting the views of one parliamentary committee to another on the Heiner matter. This too is being reported in the Weekend Independent.

<<Mike Saclier: Sounds as though "They" may have already acted - a visit to the TWI URL gets me the September issue with a blinker that says the next issue is due 6 October (i.e. two days ago even in Queensland). The issue looks as though a bomb has gone off - most of the links don't lead where they say they are supposed to. >> I replied to Mike Saclier's posting on his troubles getting into the Weekend Independent site as follows:

> It IS a difficult site. Try getting through on -
>
> http://www.uq.oz.au/jrn/twi/twi.html
>
> rather than -
>
> http://www.uq.oz.au/jrn/twi/top10.html
>
> I just did it and 394 is still there.

He followed my suggestion and still had trouble. All I can say is keep trying. It is still there, in the October section under the "Shreddergate" banner.

ALTERNATIVELY : I just did an Infoseek search using the terms "Weekend", "Independent", and "Heiner" which threw up numerous 100% hits back into the site (to say nothing of other sites I didn't know about where this case is beginning to be documented). You can open any one of the TWI hits and find a link at the bottom of the page back to the current edition. Once in the current edition, scroll down to "Shredergate" - then keep scrolling down to October 1997 and there it is.

P.S. For those who want a quick brush-up on what Heiner is all about, one of the pages I discovered was Chris Griffith's Whistleblower Page which has an excellent summary as at 4 Sep 1994.

https://www.asap.unimelb.edu.au/asa/aus-archivists/maillist.html#04047

1997, December 9: Heiner goes back to the Senate

Last Friday (5 Dec.) the Senate referred the Heiner question back to its Privileges Committee on the motion of Senator Woodley : "Having regard to the documents presented to the Senate by the President on 25 August 1997, and any other relevant evidence, whether any false or misleading evidence was given to the Select Committee on Unresolved Whistleblower Cases, and whether any contempt was committed in that regard".

This will be something of a mystery for those of you who haven't been following the Heiner saga blow by blow, through every twist and turn (and a turn-off for those of you who think the issue is unimportant). I'm not sure I'm fully up to date, but here is what I understand to be happening now.

BACKGROUND

In 1990, the Queensland Government destroyed records being sought by Peter Coyne for the purpose of taking court action against the Government and/or some of its employees. These documents related to a inquiry launched (and then terminated) by the Government into Coyne's management of the Wacol Centre.

We now know of at least two destructions, the first of which was approved by the Queensland State Archivist in a matter of hours after receiving a request from the Queensland Cabinet Office and the second of which occurred apparently without her consent. An officer of Coyne's union (Kevin Lindeberg) who was sacked because of his involvement in this case sought to have the Queensland Criminal Justice Commission (QCJC) find that the destruction of these documents was wrong.

The CJC found that no wrongdoing had occurred and Lindeberg has since waged a campaign alleging that the CJC investigation was (at best) mistaken and or (worse) part of a deliberate whitewash. An independent inquiry by two Queensland Barristers (Morris/Howard) last year uncovered previously undisclosed evidence (including evidence of the second destruction) which the CJC admits it failed to find and recommended criminal prosecutions, but these recommendations were subsequently rejected by the Qld DPP.

CJC has defended its actions during a succession of inquiries at both State and Federal level (including 2 Senate Committees of Inquiry). In the course of its defence, CJC has argued that the State Archivist is concerned only with historical value when appraising records and that the Government (which apparently did not tell her of Coyne's interest in the records when seeking her approval for their destruction) had no obligation to disclose to her their relevance in proposed court proceedings. This aspect of the CJC defence has now been criticised by the Archivists' Society (ASA) and the Records Managers' Association (RMAA) - earlier this year.

The most recent Inquiry (Connolly/Ryan) was closed down earlier this year by the Qld Supreme Court. During that Inquiry some of the evidence was in camera and some of the submissions were supressed.

THE PRIVILEGES ISSUE

This new matter has to do with an apparent conflict between statements made by CJC to one of the Senate Inquiries and facts supplied by another source.

As part of its defence, CJC has claimed that it had been vindicated because its own handling of the Affair was twice scrutinised by Queensland's Parliamentary Criminal Justice Committee (PCJC) which had found no evidence to substantiate Lindeberg's complaints. PCJC is the Queensland "watch-dog" over CJC. Last year, PCJC examined its records and concluded that no such scrutiny had occurred as claimed by CJC. The PCJC then asked the CJC to explain and was told that CJC could not respond because to do so would be a breach of federal parliamentary privilege - since the alleged misrepresentations by CJC had been to a federal Senate Inquiry and could not be investigated by a State parliamentary body!!!

The PCJC chair (Vince Lester) is reported to have said that CJC's unresponsiveness on this issue "strikes at the very core of the accountability of the CJC to the Queensland Parliament".

The issue has been rolling back and forth between the Queensland and Federal Parliaments over who should do something about it and last Friday's action by the Senate means it will now be investigated federally. Here is part of what the Senate President had to say on Thu. 4 Dec. (from draft Hansard) :

> "The PRESIDENT--Pursuant to standing order 81 Senator Woodley, by letter dated 4 December 1997, has raised a matter of privilege ... The matter he raises is the suggestion that the Queensland Criminal Justice Commission may have misled a Senate select committee.
>
> "This matter was raised in correspondence I had with the Parliamentary Criminal Justice Committee of the Legislative Assembly of Queensland and which I tabled in the Senate on 25 August 1997. That committee made a request that the Senate investigate the matter. The committee indicated that its attempts to investigate the matter itself were frustrated because the evidence in question was the subject of federal parliamentary privilege and therefore could not be investigated by a state parliamentary committee.
>
> The Criminal Justice Commission declined to answer questions on this basis ...
>
> "... In this case, statements to a Senate committee are alleged to conflict with statements made elsewhere and other available information. The statements in question were made in response to questions put in the course of proceedings of the Senate select committee. Only the Senate can investigate the truth of those statements.
>
> "I consider that the matter clearly meets the criteria I am required to consider. I therefore determine that a motion to refer the matter to the Privileges Committee may have precedence. It is for the Senate to determine whether the Privileges Committee should inquire into the matter. I table correspondence from Senator Woodley. Senator Woodley may now give a notice of motion. If it transpires that this is the last day of sitting of the Senate in this period of sittings, in accordance with standing order 81(7) the motion may be moved later during the sitting. "

SHOULD WE DO SOMETHING THIS TIME?

In a listserv debate on Heiner earlier this year, I argued that it was still not too late for ASA to stand up for the archival position. I still think we have a professional responsibility and interest in obtaining a disavowal and repudiation of the CJC position. It is possible, however, that this time we really have missed the bus.

The specifics of the latest allegation have to do with CJC's evidence before a Senate Inquiry in 1995 in which ASA did not even participate. The evidence in question did not relate directly to the elements in the defence of CJC to which ASA has now stated its objections. It may be, therefore, that the investigation will be narrowly focused on issues which do not involve us (see extract from draft Hansard below) and that we would have no opportunity to participate.

On the other hand, the proposed investigation could be wide enough to involve a review of substantial parts of the CJC's evidence before the Senate Inquiry - including its (mis) representations of the role of the Archivist and its failure to interview the Archivist or investigate her actions - or even a review of the Archivist's actions. In that case, I fail to see how we could remain aloof.

I believe the ASA should ascertain from the Senate Privileges Secretariat whether it would be possible or appropriate for expert opinion on the archival issues raised by CJC's evidence to be placed before the current inquiry and then let us all know -

(1) whether we can make representations and to whom and

(2) what ASA intends to do if the Senate is prepared to receive such evidence in this instance.

It should be noted, however, that the climate for revisiting the substantive issues may not be good. Here is an extract from last Friday's draft daily Hansard :

> "Senator ROBERT RAY (Victoria) (6.07 p.m.)--I am not going to delay the Senate long on this, and I am not speaking as the chairman of the Privileges Committee this time, only as a member. These sorts of matters have been constantly sent to the Privileges Committee. Similar ones from the same complainants

have been there before and have been dismissed. It was hoped that the Connolly-Ryan inquiry would have given them the avenue to air these grievances, because basically the intention is to air other grievances rather than those strictly defined by you, Madam President. I am really not sure whether the Senate and the Privileges Committee should bother with this one because it will come up with the same results as it has every time in the past.

"This to me has been a waste of the time and resources of the Privileges committee once again. The main reason I suspect it is back here--I am not suspecting Senator Woodley but the people who have raised it with him--is that the Connolly-Ryan commission has closed down. Suddenly their great venue, which I really would encourage them to take these issues up in, is no longer in existence.

"I stress that I am not speaking in this debate as chairman of the Privileges Committee. I guess I will not oppose Senator Woodley's motion, but people are going to have to stop thinking, `Oh, look, we've got a little problem here. Let's punt it off to the Privileges Committee.' It is just an absolute waste of resources because we are never going to get to the bottom of it, as we have not on the previous several occasions when this sort of issue has come up related to the same complainants.

"Question resolved in the affirmative."

1998, February 19: Mander Jones Award [for the Weekend Independent]

I have today nominated "The Weekend Independent" for the Mander Jones Award on account of its coverage of the Heiner Affair. My Statement in Support is given below. If you agree this is a good idea, why don't you let Council know?

Statement in Support

I wish to nominate the Department of Journalism at the University of Queensland (editor and publisher of the Weekend Independent) for the Mander Jones award in the category of Best article about archives or a related field written by an Australian in a journal not primarily intended for archivists or record managers on account of their series of articles relating to the Heiner Affair.

Queensland's Heiner Affair is a unique instance of a public issue in Australia in which the creation, management, disposal, and use of records has been of central, rather than peripheral, concern.

The history of the Affair is long and complicated, beginning in 1990 and coming to light only in confused and unrelated fragments in the face of a determination on the part of Queensland authorities to hide, disguise, and distort the truth. It is still unravelling before the Australian Senate in 1998.

The process by which the truth has been revealed has essentially been through a succession of Inquiries at State and Federal level. Each of these Inquiries has been limited by its own terms of reference and jurisdictional limitations, with the result that the whole story has never emerged all at once. Only the dogged determination of individuals and the media not to let the matter rest has kept it alive. Each successive Inquiry has been sparked by revelations or issues unearthed by media or by the participants in the Affair.

The role of the Weekend independent has been critical in three respects:

a. in unearthing and publicising matter which has led to further inquiries and discredited Queensland authorities case;
b. in maintaining pressure during long intervals when the Affair was in danger of dying for want of interest; and
c. in placing the recordkeeping aspects of the Affair in the forefront of its coverage and keeping it there.

I am not aware of any instance of a media outlet focusing so clearly on the relationship between recordkeeping and a public policy issue in this country or so accurately representing a point of view on the centrality of recordkeeping to accountability in a manner in which archivists and records managers could approve.

> Although the coverage extends back many years, it is still continuing and therefore qualifies for consideration in this year's honours. I believe the award should, however, if conferred, acknowledge the cumulative effect and value of the series. Specifically, I propose that the journal's courage in October 1997 when publishing Exhibit 394 to the Connolly/Ryan Inquiry in defiance of a suppression order - thus upholding both archival issues and free speech at one and the same time - should be taken into consideration and I enclose a copy of that issue of the paper.
>
> For these reasons, I believe the Weekend Independent deserves a Mander Jones Award. A complete archive of their coverage can be found in full at http://www.uq.oz.au/jrn/twi/twi.html

<<Kathryn Dan: Decisions on winners of Mander-Jones awards are not made by Council … I must also say I was surprised to see this on the list as, ordinarily, nominations for awards are made in confidence.>> Aw, shucks! I guess I've been sprung.

That's right, folks, I had an ulterior motive (who woulda thunk) – which would have been frustrated more than somewhat if the nomination had been made in confidence. But that wasn't my only motive, and I still think the award should be made for reasons stated.

And we are all free to let councillors know what we think, on this or any other issue - even if the Pres. believes it doesn't make any difference.

<<Steve Stuckey:… where did Mr Hurley get the impression from what Kathryn Dan has written, in response to his inappropriate public nomination, or anything else, that she thinks that what members say to Council makes no difference?…I am personally offended by the intimation of Mr Hurley's last sentence. He should retract it.>>

<<Michael Saclier: … Kathryn's last sentence certainly gave me the distinct impression that any statements in support of Chris's nomination would be consigned to the rubbish bin, because it wasn't Council's responsibility. As for the inappropriateness of the public nomination, is it stipulated in the rules that the public revelation of a nomination is forbidden? It doesn't say so on the form.>>

<<Colin Smith: … it seems very important to me that we should seize some such opportunity to register the profession's approval of what 'The Weekend Independent' has done.>>

Should I apologise? I thought long and hard last night about what was due to whom.

Since at least February 1996, no member of Council can claim to have been ignorant of the facts and issues in the Heiner Case. In my increasingly public dispute with them over ASA's handling of the Case, they have never taken issue with me on the central merits of the Case. As anyone can verify by looking back over the list archive, Council has used every procedural and tactical argument in the book up to and including the sub judice rule to justify inaction. You will have noticed, as I have, that we are still arguing procedure.

As MS points out, there is no constitutional or procedural obstacle to my publicising the nomination - however surprising and tasteless Kathryn & Steve find that to be. If they don't like it, let them pass a rule against it.

Council did issue the ASA Statement on Heiner last year and I applaud them for that. But it was done, mind, just before an AGM when a proposed procedural motion of mine threatened to bring the whole issue onto the floor of an AGM. I can't say that this possibility played a part in Council's decision then, but I harbour suspicions.

The MJ nomination was genuine and made in good faith. Having made it I had to consider whether, if it failed, I was happy to let it pass without note behind a wall of confidentiality. Then I had to consider whether to publicise it now (and face an accusation of trying to influence the outcome) or later (and face an accusation of sour grapes). I felt publicity now was the way to go and invited comment from others to Council - not to the Awards Committee. Others too, I know, have felt the nomination itself was an appropriate way of acknowledging TWI.

I considered many issues last night. They all came down to two.

On the one hand there is the surprise and offence caused by my publicizing the nomination. On the other there is Council's eighteen month silence while Heiner was raging.

It wasn't hard to come to a decision.

You'll get your apology, steves, when you know what freezes over.

1998, May 26: Heiner continues

<<Kathryn Dan: …Articles in the last two days the Courier Mail has reported that Noel Newnham (ex-Queensland police commissioner) conducted a series of interviews with those involved in the Heiner Inquiry. These interviews have revealed that allegations of child abuse were made in interviews with Heiner. Newnham is calling for a Royal Commission. It looks like there will be a new inquiry…ASA Council will continue to monitor what happens with this proposed inquiry.>> Today's article can be found at -

http://www.theaustralian.com.au/

The article claims, inter alia, that :

> "... a staff member who was at the [John Oxley] centre in 1989 wrote to the CJC on October 9 last year asking them to investigate the past physical abuse and drugging of child inmates as young as 12. "

and that :

> "... the allegations of child abuse at the John Oxley centre had been given to the aborted inquiry in 1989 by retired Children's Court magistrate Noel Heiner.
>
> "But that evidence was shredded in highly controversial circumstances in 1990 by the then Labor government after it was decided the inquiry had been invalidly established.
>
> "John Oxley staff gave evidence to Mr Heiner that child inmates as young as 12 had been handcuffed to fences overnight, assaulted, drugged and kept in isolation cells for days."

Up to now, it has been assumed (at least by me) that the records destroyed in 1990 were prima facie of no continuing value. Their destruction took on sinister overtones only in the light of knowledge that John Oxley's former director, Peter Coyne, was seeking to subpoena them in impending court action.

In other words, the reason why destruction of the records was controversial was that it deprived an individual (Coyne) of his opportunity to seek legal redress. Until now there has been no reason to suppose that there might be any other grounds for withholding approval for destruction.

The professional issues for archivists have, therefore, been -

1. Whether the Queensland Government was right to conceal from the Archivist knowledge that Coyne had indicated his intention to take proceedings.
2. Whether CJC was right in defending the Queensland Government's action on the grounds that the Archivist's role was limited to a consideration of "historical value".

These new allegations, if substantiated, raise a third issue which we will have to confront in any renewed public examination of the Archivist's role :

> 3. Whether Qld State Archives was right in permitting the destruction of records documenting unresolved allegations of this nature in any circumstances (regardless of the state of their knowledge concerning proposed litigation).

This is not any easy question. But we may have to deal with it.

1998, May 29: Heiner continues, and continues, and continues …

Some of you will remember an exchange I had on the List with Shauna Hicks in late May 1997 (almost exactly a year ago) concerning the significance of the view expressed by Robert Barnes on behalf of the Queensland CJC before a Senate Committee in 1995 - viz. that the role of the State Archivist in appraisal was confined to assessing "historical value" and that withholding approval for records destruction under Queensland's archives law in support of accountability was "no business of the Archivist".

Shauna thought that I had given too much weight to what Barnes said and that it did not necessarily represent the considered views of the CJC. She pointed to an earlier CJC submission to EARC (Electoral & Administrative Review Commission) which had argued strongly in support of the Archives' accountability role.

CJC has just (26 May 1998) been cleared by the Senate Parliamentary Privileges Committee of contempt. The Senate Committee quoted with approval the CJC's latest expression of opinion on this subject -

> "The allegation is based upon differences of opinion about the legal interpretation of the statutory role of the State Archivist. Even if Mr Barnes were completely mistaken in his view about the role of the State Archivist, his expression of an opinion on the topic could never amount to false and misleading evidence. This is especially so when Mr Barnes made it clear in his evidence before the Committee that the Commission's view was based on legal advice it had received from independent barrister:
>
> "...Mr Lindeberg has a view about the obligation of the archivist. The commission does not share that view. Its view is based on legal advice it obtained from the barrister it retained to do the job. (Hansard 23 February 1995 p137).
>
> "In the Commission's respectful submission, the expression of a genuinely-held legal opinion about the statutory role of the State Archivist, even if wrong, could never amount to providing false and misleading evidence."

Despite anything the CJC may have said previously to EARC, it now clearly prefers ("on legal advice") the Barnes view.

The ASA has issued a statement strongly repudiating the Barnes view.

CJC could obviously make a distinction, if it wished, between its submission to EARC (representing what it thinks OUGHT to be the case) and its most recent support for the Barnes view (which is what it believes is IN FACT the case).

It seems to me that ASA needs to take its own legal advice on the question whether, in exercising her discretion under the Queensland Act, the State Archivist is limited to consideration of historical values. If this continues to be a public policy issue bedevilling us and others are going to use unseen legal opinions in support of arguments which are detrimental to us, we'd better have some legal opinions of our own.

It seems to me.

<<Ross D Harrison-Snow: … I feel the continued rehashing of Heiner is unproductive...Chris Hurley's suggestion that the ASA should seek legal opinion on the role of the State Archivist would have no great value, except perhaps to keep this tedious debate alive.>>

<<Greg Coleman: Heiner has gone on long enough for most of us to forget what it is all about. Chris has a great interest in Heiner but his postings on the issue are so historical and complicated that they become indigestible to the average punter…>>

<<Rick Barry: …there are lamentably too many cases like it around the world and too few Chris Hurleys around who persist … When such cases do become less likely to happen in the future, it is in no small way due to the willingness of the likes of Chis to stand up for the very raison d'tre of the practice of archives.>>

<<Greg O'Shea: … the recent front page publicity in the Courier-Mail on Heiner in the midst of a Queensland State Election indicates to me that many are finding it far from boring… Leaving aside the merits of the case or Chris's arguments the Heiner issue has been and is one of the most fundamental to cross the archival threshhold in this country for many a year, if not ever. If the issues raised by the Heiner case are not of serious concern to our Profession and this list-serv then I feel it is a very sad day for us all.>>

Ross Harrison Snow is entitled to his view that Heiner is "unproductive" and "boring".

He is not entitled to describe recent postings as a "rehashing" of a matter which is no longer "alive".

The substantive issue prior to the 1997 ASA statement was the need (as I and others felt) for ASA to speak publicly about the way the State Archivist's role had been represented by Queensland Authorities defending their role in Heiner. That issue arose out of the 1995 Senate Committee hearings.

That stage of the debate effectively came to an end with the ASA Statement on Heiner last year.

I make no apologies for having nagged the ASA Council repetitiously until that statement was issued.

Since then, virtually all of the listerv debate has been about new developments as they occurred - not a rehashing of "old news", as some of those who just want it to go away seem to believe.

Two new things directly relevant to archivists happened in May 1998 :

(1) We learnt authoritatively about the nature of the happenings which Heiner investigated - allegations of child abuse. This raises for the first time the issue of the merits of the Archivist's decision apart from Coyne's intention to litigate (of which she was unaware). If a further investigation occurs, the professional judgement of archivists in adjudicating on proposed destruction of records relating to allegations of child abuse may be considered. It is unthinkable to me that ASA should not have an opinion if such an issue is publicly aired and incomprehensible to me that we are not grateful for this breathing space to consider what that position should be.

(2) In 1995 the CJC said the Archivist has no role to play other than to preserve "history". We need to ascertain if this has been repeated in 1998 by CJC before the Senate - yet again. If they have, well : we protested about it once and we should do so again. If CJC claims they are supported by legal opinion (I don't yet know what's in that opinion or how accurate CJC's representation of its contents is) then we have a new debate on our hands. Someone better placed than I needs to get hold of the Senate Privileges Committee 71st Report and find out. If the CJC's earlier misrepresentation of the Archivist's role has been repeated we should be able to refute it. I would be astounded if any competent legal adviser held the view that the Qld Act prevented the Archivist from considering matters other than history when reaching a decision to approve or disallow an appraisal request. If CJC is suggesting otherwise on the basis of legal opinion, we should fight fire with fire.

No one should find either of these matters tedious yet - since they are completely new!

<<Tom Adami: … I think it is a great development that the affair has been rekindled… It would be remiss of us as a profession were we to think that the whole process since it started in 1989-90 was now 'boring' and 'unproductive'… I believe the Heiner affair has provided us with a defining moment in our professional development. We should not miss the opportunity to state clearly and unequivocally that we are opposed to the arbitrary destruction of records…>>

<<David Hearder: …This issue for archivists within Australia (and internationally) may well be our defining moment (however long lived that 'moment' is becoming...) … So let's take the opportunity to state what we archivists think - if we need a contrary legal opinion to counteract unpalatable 'paralegal' arguments then so be it…>>

<<Colin Smith: It intrigues me that the CJC appeals to some intuitive sense of a dividing line between "history" - which they consider the proper field of the archivist - and what one might, I suppose, rather call "current events" and "legal evidential" use of records ... I think I would want us to be saying that the attempt to divide retrospective investigation involving records into "historical" and various "others" is a nonsense …>>

1998: July 31: Heiner in Parliament

Here is what happened in the Queensland Parliament yesterday :

10.30am : Premier Beattie tables Motion of Confidence in his own government.

11.07am : Leader of Opposition (Borbidge) moves amendment.

12.24pm : Leader of One Nation (Feldman) moves amendment to Borbidge amendment

> "Furthermore to remove the cloud of uncertainty and the taint of possible illegality hanging over the heads of current Government Ministers, being the Honourable Terence Mackenroth, the Honourable David Hamill, the Honourable Robert Gibbs, the Honourable Paul Braddy and the Honourable Dean Wells, arising from the findings of the report to the Honourable the Premier of Queensland and the Queensland Cabinet of the investigation into allegations by Mr Kevin Lindeberg, under the terms of reference granted on 7 May 1996 by State Cabinet to Mr Morris, QC, and Mr Howard of counsel by The Premier in his capacity as leader of the party in power when the Goss Cabinet of the same party met on 5 March 1990, and authorised the shredding of the Heiner documents, immediately authorising the release of all relevant Cabinet papers and documents pertaining to such destruction (the privilege documents); and tabling those documents immediately with the Speaker of Parliament."

The results of the debate are as follows :
Amendment (Mr Borbidge) agreed to.
Amendment (Mr Feldman) negatived.
Question : That the motion, as amended, be agreed to put; and the House divided
AYES, 45 NOES, 43
Read the debate at
http://www.parliament.qld.gov.au:81/hansard.htm

<< Further to Chris Hurley's posting on the confidence debate in the Queensland parliament I thought the following extracts from the One Nation leader in the Qld parliament and one of his colleagues was intriguing to say the least ... The fact that the amendment was defeated indicates that more people than just those of the Labour party are not keen to take on board advice on what to do ... >>

Refer to **DOCUMENT D**

<<As Chris Hurley told us the debate was resolved in the negative against the One Nation amendment and the confidence vote in the Qld government was passed. Nelson even manages to mention this very listserv as the "archivists' mail service line" which is used to "condemn the CJC's position".>>

<< … it is important not only to read what the Member for Caboolture Mr Feldman had to say (Allan Grice was also fairly candid to say the least), but the comments of the Premier Mr. Beattie - particularly his decision to table certain Cabinet Documents from the former Goss Government concerning the Heiner Inquiry. Obviously the Premier thinks the issue is dead and buried. This remains to be seen … >>

Refer to **DOCUMENT D.**

Michael Rogers quotes the Beattie speech, in the course of which certain Cabinet papers from 1990 were tabled. Two of these are reproduced below.

> (1) "That is fact one...the Crown Solicitor advised that the investigation should not continue and that the documentation should be referred to the State Archivist for destruction, because the inquiry was wrongly established and because there was no legal protection for witnesses..." (Beattie)

We have most of the advisings from Crown Solicitor as attachments to the 1995 Senate Report. He advised that the Inquiry should be shut down AND that the State Archivist's approval was required if destruction was thought necessary. He did not advise that the records should be destroyed. That was Cabinet's decision. Beattie is trying to make out Cabinet was constrained by legal advice to destroy. This is untrue. What the Crown Solicitor did say (amongst other things) was quoted later in the Beattie speech : "I do not see any difficulty in destruction of the material supplied to Mr Heiner, naturally any material removed from official files should be returned to those files but the tape recordings of interviews had with people or any notes or drafts made by Mr Heiner should I suggest be destroyed."

[COMMENT : Whether the Crown Solicitor (O'Shea) was correct in law and principle that there was no "difficulty" has been disputed - see (2) below. The real problem is that he gave a succession of advices over a period of time during which events were unfolding. The destruction occurred while solicitors were moving towards legal action. Actions which might involve no "difficulty" today could become dangerous

tomorrow. Beattie is grabbing quotes from all over the shop without regard for their context in the sequence of events and the changes resulting therefrom. Before the subsequent Senate Inquiry, the Criminal Justice Commission argued that the impending legal action was none of the Archivist's business. O'Shea (interestingly) took a completely different line of defence for the Government's actions - in effect, that the Archivist had a legal right to destroy anything she wanted without regard to anything. It is this view, rather than the CJC's, upon which Beattie now seems to be relying - see (4) below.]

> (2) "At that time, no formal legal proceedings had been instituted, nor was any legal action subsequently instituted. Never! No legal action at any time. Never! " (Beattie)

This is a technical defence built around the proposition that an offence against the Crimes Act prohibition on destruction of evidence can only arise after papers have been filed in court. The tabled documents make it clear that Cabinet knew solicitors acting for JOYC staff were in pursuit of the records to take legal action and that this was a reason for destroying them. If an offence occurred, the tabled documents could be taken as evidence of intent - though it has always been questionable whether an entire Cabinet could be convicted of a criminal act or a conspiracy to commit one (that's one for the lawyers!) The legal position, however, is not as clear cut as Beattie makes out. There are plentiful overseas decisions and at least one Australian High Court judgement that obstruction of justice can occur even if "proceedings" have not been formally "instituted". In any case, the question here is not fundamentally a legal one. It is a moral one. Was it ethical for Cabinet to destroy the records in order to frustrate a citizen seeking justice in the courts?

> (3) "At all times Cabinet acted in complete good faith to protect the whistleblowers involved in this case. This was about protecting the whistleblowers. These whistleblowers were given no legal protection whatsoever by the previous National Party Government in the way in which the inquiry was established." (Beattie)

It has also been suggested that the government's motive was grubbier - viz. to oblige its pals in a powerful, friendly union. The fact is, we'll never know what its intentions were and whether it acted in good faith. What we do know is that there was very little ground for fear that the staff whose evidence was destroyed were in any real need of protection. Premier Beattie makes a quite unjustified leap from the Crown Solicitor's words that "Mr Heiner was not appointed by the Governor in Council to conduct this inquiry which, of course, means that the Commissions of Inquiry Act 1954-1989 has no application to the inquiry." to the conclusion that "In other words, people were not protected." As has been pointed out several times since, it is likely that they would have succeeded in any action against them by a defence of qualified privilege.

> (4) "First of all, as one of the Cabinet documents indicates, the destruction was under the terms of section 55 of the Libraries and Archives Act of 1988. It was done under an Act of Parliament. It was not done without some authority; it was done on Crown law advice under an Act of Parliament." (Beattie)

The approval of the Archivist is now being used as "authority" for the destruction. So far as the available evidence shows, the Government failed to infrom the Archivist in 1990 of its reasons for wanting the records destroyed or of the fact that solicitors for JOYC staff were seeking them in order to mount a legal action. If this is true, the Archivist was duped into giving the weight of her authority to the destruction without being fully informed of the relevant facts. How can an action taken under s.55 of the Libraries & Archives Act be used now to give "authority" for an action when the person taking that action was deceived (or, at least, kept in ignorance) then as to the reasons for it?

[NOTE 1 : Bear in mind, however, that the Archivist did examine the records and that they were, on their face, a record of (as yet) unresolved allegations of child abuse. Their destruction may now be regarded as problematic - quite apart from the obstruction of justice issue. As I said in an earlier posting, this is by no means a clear cut thing for us professionally, but we should have a position on it if it comes up. I fear

we may be only one step away now from this Government defending its predecessor - against criticism sparked by the pain of those whose children are alleged to have been mistreated - by saying that it was OK for the records to be destroyed because the Archivist approved of it.]

[NOTE 2 : Interestingly, neither Beattie nor anyone else seems to have made refrence to a second destruction (unearthed by Morris/Howard) for which the Archivist's authority was not sought. The whole Beattie defence breaks down unless this second (clearly unlawful) destruction is now condemned because it had none of the "authority" of the first.]

Refer to **DOCUMENT E**.

1998, August 28: … "nonsense about documents …"

Perhaps those members of the list who are bored by Heiner will be amused by the remarks of the Queensland Minister for Families, Youth and Community Services last Tuesday night (25 August 1998) which may be found at - http://www.parliament.qld.gov.au/ (do an On-Line Document Search under "Heiner").

Refer to **DOCUMENT F**.

1999, February 22: Heiner on Sunday

A segment on Heiner was screened on the Sunday programme yesterday. The "Sunday" site -
http://sunday.ninemsn.com.au/
carries a precis and promises a full transcript soon.

The latest flare-up carries a spin which has been very predictable for some time. It now appears that at least some of the documents destroyed dealt with allegations of abuse at the JOYC. Such allegations are now at the heart of a political storm in Queensland and are currently the subject of a commission of inquiry [Forde Inquiry].

Former Labor minister Pat Comben is being reported variously as affirming or denying that the Cabinet which ordered the shredding knew that the records in question contained such allegations. Go to -
Sydney Morning Herald : http://www.smh.com.au/index.html
There are also stories on the Courier-Mail and ABC sites. It is in the interests of the politicians who ordered the shredding to distance themselves from any suggestion they were covering up abuse in State institutions and to establish that they did not know that the Heiner documents contained anything of this nature. And that is what they are doing:

> [ABC News] :
> Former Queensland Labor minister Pat Comben says he is willing to give evidence to the Forde Inquiry into child abuse in State-run institutions. Mr Comben was a member of Cabinet at the time of the aborted Heiner Inquiry, which was investigating an array of allegations involving the John Oxley Youth Detention Centre. Documents from that inquiry have since been destroyed, sparking claims of a cover-up.
>
> But Mr Comben says at that time, Cabinet was unaware of allegations of child abuse and he is prepared to say so before the Forde Inquiry. "I think the only evidence that I could give to the Forde Inquiry which would be of any benefit is the negative information that the material which Mrs Forde is now considering has recently come out," Mr Comben said. "Certainly we at a cabinet level at a political level at the Parliament had no idea of these sort of specific allegations there have for centuries been generalised allegations in any detention centre at that's about the lowest level that there is and that's all we knew about."

The ASA has said the Government should have given the Archivist all the facts. Here is a member of that Government saying they didn't have the facts to give. It was the Archivist who examined the documents and (presumably) knew what they contained. It was the Archivist who approved their destruction and who could have prevented it.

As I have said before on this list, if this is the line which continues to be pushed and the polies succeed in ducking out, we'll HAVE to have a position on this issue : viz the substantive merits of the appraisal which took place.

If the Archivist's examination revealed that the documents contained not "generalised" but specific allegations of abuse and the Cabinet which ordered their destruction had "no idea" what they contained, what was the Archivist's duty?

The Queensland authorities have previously argued that this sort of thing was "not the Archivist's business". We may find they change their minds and conclude that it was, after all, very much the Archivist's business when it now becomes politically expedient that it should be.

The polies originally argued in Parliament and to the Senate that they ordered the destruction in everyone's best interest. The suggestion now is that it was not in the interests of victims of abuse in State institutions to have evidence of it destroyed. If the polies' first line of defence founders on this issue, it looks like they'll retreat to : "We didn't have all the facts." For this second line of defence to work, there has to be an answer to the question : "Well, then, who did have all the facts?"

<<Bernadette Bean: I watched the "Sunday" report into the whole Heiner thing yesterday with some interest. I'd not really kept completely up-to-date with events but felt I knew a reasonable amount about it. However, I watched the show with two people who knew absolutely nothing about the Heiner enquiry or what archivists are supposed to do. They both agreed at the end of the report that the archivist should take a "significant" share of the blame for the documents being destroyed AND the possibility that any future enquiry into these institutions in QLD could be disadvantaged due to not having access to relevant documents. They argued that the archivist should have known the ministers would try to pull the wool over her eyes and should have looked at the documents more care before agreeing to destroy them. Both the viewers got the impression that the Sunday report was leading them in that direction. I relay this mini community survey to indicate (a) that I suspect the QLD Archives Office will be an easy target in this exercise and (b) I think Chris Hurley is right when he says "...if this is the line which continues to be pushed and the polies succeed in ducking out, we'll HAVE to have a position on this issue : viz the substantive merits of the appraisal which took place." … >>

1999, February 24: ASA Position on Heiner

Dear Aus-Archivists

Now that the Heiner affair has shot back into the media spotlight, questions have been asked on this list about the ASA's position in relation to the disposal decision made by the Queensland State Archives in relation to the Heiner documents.

Previously, the ASA Statement on the Heiner case has criticised the Qld Cabinet for with-holding from the Archivist knowledge that the documents were required for foreshadowed legal proceedings. Our statement was also critical of the kind of political interference in disposal decision making that occurred in the Heiner case and called for greater legislative independence of the State Archives from the Executive/Cabinet, such as that which is enjoyed by the Audit Office.

Last year it was revealed that the Heiner documents were likely to have contained inter alia allegations of child abuse at the John Oxley Youth Centre. In view of this revelation, Kevin Lindeberg wrote to the ASA asking us to condemn the disposal decision made by the Queensland State Archives in this case. Below, for the information of ASA members and others, is the text of the letter of reply that I sent to Lindeberg on 6 October on behalf of ASA Council.

The ASA Council continues to monitor developments in the Heiner case. We decided not to make a submission to the Forde Enquiry into Child Abuse in Qld Government institutions because the terms of reference carefully excluded any possibility of the Enquiry looking into the shreddergate case. As I understand it at the present time, Forde is still refusing to give any consideration to the Heiner shredding case, despite calls for her to widen the scope of her deliberations. Should the Forde Enquiry choose to examine the shredding issue, the ASA will stand ready to make a submission and/or give oral testimony.

I should also remind averyone that the ASA has a formal position paper on the destruction of records. This position paper, which can be found on the ASA Website, has been made available to previous enquiries into the Heiner shredding.

best wishes,
Adrian Cunningham
President, Australian Society of Archivists

Dear Mr Lindeberg

Thank you for your letter of 24 September regarding the Forde Commission of Inquiry and the shredding of the Heiner Inquiry Documents.

The Council of the Australian Society of Archivists has given careful consideration to your request that the Society issue a further public statement on the Heiner shredding, focussing on the possibility that the shredded records contained information pertaining to allegations of child abuse at the John Oxley Youth Centre.

While we certainly agree with you that no archivist should authorize the destruction of records that they know contain child abuse allegations, we cannot be certain that in this particular case the archivist was in possession of such knowledge. The evidence to hand indicates that the archivist made an examination of the Heiner material, but there is no evidence that her examination revealed to her the existence of any child abuse allegations. If such allegations were indeed present in the records, they would probably have been one of a range of issues canvassed therein.

Hindsight certainly proves in this case that the records should not have been destroyed. However, the process of authorising the destruction of records is one of risk management. Although archivists endeavour to acquit this serious responsibility with the utmost care and professionalism, the process is inherently imperfect. The history of archival appraisal is littered with examples of decisions which have proved to be incorrect in hindsight. The sheer volume of material that archivists are called upon to consider means that detailed examination of records during appraisal is simply not feasible. As a result, mistakes are inevitable.

So, our view is that our existing public statement is sufficient. We have stated that the State Archivist needs to perform his or her duties free from political pressure and interference and that, in the case of the Heiner destruction, she should have been made aware that the records were required for foreshadowed legal proceedings. Because of this, and given its terms of reference, we have decided not to make a written submission to the Forde enquiry. Although we would be happy to give evidence to the Forde Inquiry should we be asked, we feel that we do not need to add anything to our statement which is currently in the public domain.

We thank you for your interest in the professional role and responsibilities of archivists and wish you well in your endeavours to seek redress for the injustices you have suffered.
Yours sincerely,
Adrian Cunningham
President

1999, February 25: ASA Position on Heiner

I take it that the President is putting forward the ASA's reply to Mr Lindeberg as the second arm of the ASA's position on Heiner (the first being the ASA Statement of 16 June 1997 also referred to).

The letter to Mr Lindeberg explains why ASA is not seeking to make submission to the Forde Inquiry, but not why the ASA's opinion on the merits of the Heiner appraisal has not been issued publicly. No more of that.

What I find uncomfortable is the suggestion from ASA that (having concluded that the wrong decision was made) this is only what is to be expected, after all, in a "risk management" environment. If that is the professional position on this issue, I certainly wouldn't want to have to defend it.

If records which we concede should not have been destroyed are in fact destroyed under a regime which requires our involvement and prior consent, why shouldn't society "take a risk" and dispense with us altogether? We don't seem to be adding much value to the process to justify the time and trouble we put people to. If preventing the destruction of records which we acknowldege shouldn't have been destroyed isn't what we're there to do, why should we be made part of the process in the first place?

How would the "greater legislative independence of the State Archives" called for in the first ASA statement have produced a different result to justify the legislative effort if the same outcome would (in all probability) have resulted under the "risk management" regime being propounded - which the ASA statement doesn't even hint should be changed? If we aren't prepared to even consider whether relevant changes to the regime which produced a result which we acknowledge to be wrong, what does it matter what we think? The greatest risk here, I think, is being made to look ridiculous.

Greater legislative independence is not a relevant change. How would the outcome in this case have been different if the instead of conferring "greater legislative independence", we did away with the Queensland State Archives altogether?

If we concede professionally that this was the wrong decision (that seems to be ASA's view, not mine) it's not enough to say, "Oh well, these things happen."

Mike Steemson has indicated that my original Appreciation of the case, which went to ASA Council early in 1996 is now available on his web site. You will see there that I discuss the lessons we can learn from Heiner - how to change the system we currently operate when appraising records so we can make it more likely this sort of thing won't happen again. I suggest to the President that, if ASA hopes to maintain a credible position on this, it needs to give some evidence that it is at least open to the suggestion that, having acknowledged that a faulty decision was made, the profession is prepared to ask what went wrong and how such errors can be prevented in future. If we don't get that, all the pain and ill feeling will have been for nothing and our position won't be credible.

This is not to say that I expect others to agree with my conclusions about what went wrong and what we need to change in light of our experience of this case. It's a willingness to try (and be seen to try) that's important.

We could ask, for example, whether the speed with which the appraisal was done (less than 24 hours) was a factor in producing a faulty result.

For what it's worth, I concluded that it is the prevalence of ad hoc appraisal throughout government archives programmes (and I was as guilty as any during my time as Keeper in Victoria) which is chiefly at fault. We need to spend more time establishing disposal "rules" (no, not general schedules) within which one-off decisions (if they're made at all) must be subordinate. Thus, I concluded, a pre-existing rule requiring that records of aborted investigations be kept for a minimum of xx years would have materially altered the position of both the Queensland Cabinet and the Archivist in this case. It wouldn't have necessarily produced a different outcome, but it would have raised a prima facie requirement on both to explain the precise reasons why the standing rule was not followed in this instance and a test or bench-mark against which their actions in this particular case could have been judged.

<<Adrian Cunningham: My thanks to Chris Hurley for continuing to tease out the issues associated with Heiner. He is quite right to argue that we as a profession have to be prepared to learn the lessons of Heiner. One lesson is that as hoc disposal decisions are dangerous and even more risky than better-governed appraisal decisions. This is one of the reasons why the ASA has its position paper on the destruction of records to which I referred in yesterdays' posting - ie. to promote best practice in appraisal.
Another lesson is that appraisal conducted under the circumstances of political interference is more likely to be ad hoc and carried out in unusually short turnaround times such as 24 hours. I still maintain that a request from Cabinet to a public servant who is answerable to the Executive is likely to focus the mind of that public servant and lead to atypical decisions and behaviour. So, I stand by my view that legislative independence is a worthwhile thing to fight for…>>

This is getting interesting. And a bit hairy.

In order to make a nexus between the faulty decision and the need for more independence, you have to say that the Archivist in this case succumbed to pressure and made a decision she knew to be wrong.

I have never said that and, so far as I know, it was only hinted in the Senate Inquiries that she may have felt herself to be under "pressure".

If the ASA harbours these suspicions, it is quite right to argue as it has for greater statutory autonomy. There are, however, laws of libel – even on the Internet.

Meanwhile, I really can't see how the few generalised paragraphs of self-serving, platitudinous clap-trap which make up the ASA's "position paper on the destruction of records" is in any way germain to the issues we're discussing. I hope the author of the pamphlet doesn't sue me now for libel (or is it slander on a listserv?). It's writing of a kind, I suppose.

Go and look at the thing -
http://www.archivenet.gov.au/jsredirect.exe
I ask you.

Adrian says mistakes will happen. Granted. It's what we do about them that counts.

What the ASA said to Lindeberg is : "We can't do anything about the mistake because we live in a risk management environment". But risk management doesn't excuse systemic failure and it certainly doesn't relieve you of an obligation to try to correct it when it occurs.

The ASA did not say to Lindeberg, "We can learn from this and we intend to do so". They said : "This sort of thing is bound to happen under risk management. Don't you worry about that." They said that to Lindeberg last year, and Adrian (in effect) repeated it to the world only yesterday.

What I'm saying is that our professional response has to be a bit better than that. Prudence tells me that I should at this point forebear from reminding him that I've been saying that to ASA for the last 3 years. But what the hell.

<<Adrian Cunningham: … Chris reminds us that he has spent three years asking the ASA to come up with a better professional response to the Heiner situation, but I for one have always been unclear as to EXACTLY what Chris thinks such a better response might consist of. It took some time before I managed to discern that he wanted us to condemn the assertions of the QCJC on the role of the archivist. This we did, amongst other things in our public statement on Heiner. It now seems that Chris wants us to have a better set of guidelines for best practice on appraisal, but even then I am not sure if this is exactly what Chris wants. Perhaps it would not have taken the ASA three years to produce a better professional response to Heiner if Chris Hurley's input on the issue had consisted of less snide innuendo and more constructive advice. Three years ago ASA Council urged Chris to finish his Heiner paper, which is now on the Web, and submit it for publication so that everyone could read and digest it and ponder on its implications. I am glad that it is now in the public domain and I would urge everyone to read it. What this paper does not do, however, is outline views on what the ASA should do about Heiner, that advice has come from Chris by way of eliptical and derisory postings on this listserv…>>

<<Mark Brogan: I agree with Chris that the statement requires revision. The principal problem seems to be that the statement does not assert archival independence in appraisal. In other words, that archivists should be allowed to make appraisal decisions free from political and other interference. A complementary position concerns a code of conduct which clearly sets down the Society's expectation of professional conduct in appraisal and disposal and the Society's preparedness to review conduct which may be contrary to the objectives and mission of the Society. Unfortunately, I searched my copy of the ASA Code of Ethics in vain for anything which clearly conveys the Society's expectations on these issues.>>

In response to Adrian's latest -

(1) I was too hard on the ASA brochure. Less cranky today. It is a very nice little brochure for what, no doubt, it was intended to be - a modest statement of the basics. It conveys important messages at a level well suited for school principals, municipal librarians, and directors of small companies who've never heard of archives. For that purpose it probably works well. It's not clap-trap. Being what it is, it can't help being platitudinous. I hold to its being self-serving, though, or maybe self-promoting and I think that detracts from it.

(2) This thread is about 2 things : the latest ASA "response" to Heiner in terms of a "risk management defence" and the relevance of this brochure in ASA's dealing with the Heiner Affair.

(3) My contempt for the risk management defence is already apparent. It's no good Adrian saying that it was developed in response to a specific request by Lindeberg. It was Adrian who chose, two days ago, to put it forward in response to wider issues which arose subsequently. The brochure is irrelevant here since it doesn't contain a hint of the risk management defence argument he is now using.

(4) The argument that this simplistic and generalised brochure (quite good for the modest purposes for which it was no doubt intended) embodies or provides a point of reference for a suitable professional response to the Heiner Affair started with President Dan and I am sorry to see Adrian clinging to it. It was an absurd proposition when Kathryn Dan ran with it and it remains absurd now.

(5) The Heiner Affair raises challenges for us and issues of legal, political, and organisational complexity far beyond the scope of any of the ideas embodied in the ASA brochure. If ASA wants to be silent, so be it. But to put its little brochure forward as an adequate response to any of the issues raised by Heiner is just ludicrous.

(6) Finally, Adrian goes back to his old argument that the inadequacy of the ASA 's response is somehow my fault because I can't make clear "exactly what Chris wants". My criticism of ASA has never been that they aren't doing what I want. My criticism has always been that what they have done (and are doing) - or NOT DOING, to be more precise - brings shame and discredit on us all. They're adults. I'm an adult. They shouldn't need me to tell them what to do for God's sake. When the history of this is written ASA will not be condemned because it failed to do what I wanted and I won't be condemned for failure to make my wishes clear. It is the profession's failure to respond adequately which will be condemned. That condemnation will be justified and would still be justified even if Chris Hurley had never been born (as Adrian, no doubt, wishes were the case).

<<Livia Iacovino: There are so many issues raised by Heiner. In reading Chris's review it is clear that a narrowly legalistic view, which the Queensland lawyers involved appeared to have taken, provided an inadequate response to the destruction of the records, and to their potential as judicial evidence. For example legal proceedings had not commenced therefore the Qld criminal sanctions for destruction of records relevant to a case could not be invoked. Chris' reference to US case law which indicates that 'charges of conspiracy with regard to "punishable conduct which precedes pendency"' would have been a legal argument against destruction is also a legal response to the issues, albeit an important one. I do not however believe that a narrow legalistic view will provide us with all answers. Surely if potential litigation was possible and the records provided evidence of criminal ot other illegal activity they should not have been destroyed on purely ethical (professional and personal) grounds (assuming the contents of the records were known).

Does normative ethical theory provide an alternative view of what was going on? Some theories would say that there is no 'right answer' (e.g. virtue ethics). If you take a rule-based or act-based theory you may find a rule that would clearly indicate that the destruction was unethical because of the consequences, or that there was a 'rule' internal to that community, which could be the relevant professional community, that would say it was definitely wrong. Ethical rules have become popular and so we have codes of conduct that tell us what to do and are not that different from the law if they have penalties attached. I am not denying their usefulness but they will not provide us with the right answer for every case that arises. These codes take away our ability to act as independent moral agents that ask the question, 'How should I act and live the right life?' The 'right life' is culturally conditioned and that presents another problem if we adopt ethics

in making decisions on professional or other matters. It may sound old-fashioned to talk about 'moral conscience' but I think it is very relevant today.
There is no 'right 'and 'wrong' answers to Heiner. There are many legal and professional ethical issues that it raises. When is the archivist acting in his/her role as a professional or is he/she representing the ethics of the organisation (in the Heiner case the executive in power) and thus not a free agent? When does personal moral conviction enter the scene and so forth. These ethical issues are separate from the statutory independence of the archivist, but equally relevant.>>

I have thought some more about the Cunningham challenge to say EXACTLY what I want.

Of course, I'm not going to do that. My real beef with ASA is that they have (throughout) been ambivalent and anaemic in their response to Heiner, unwilling to criticise QSA, unable to develop and state actively good professional practice, and wishful that it would all go away. If I believed (as I did at the outset) that my professional organisation would naturally feel as affronted as I was and as anxious to fight for professional values, I would have been willing to lay down my agenda, but I feel instead that I'm engaged in a war of tactics with them.

Tactically, it would be foolish for me to put down an agenda. Believing (perhaps wrongly) that they want to weasle out of their responsibilities, for me to give them my agenda would be to give them a tactical advantage. They would be able to switch attention away from the main issue (and their failure to respond) onto an argument about why my proposals couldn't work.

Furthermore, the Heiner Affair has been an incredibly complex and sometimes fast moving business. It requires fast footwork to adjust to changing circumstances and new revelations. An agenda stating at the outset EXACTLY what I want could be invalidated by subsequent developments every few days and become a tool for muddying the waters in subsequent debate when different tactics were required.

Adrian shouldn't be allowed to get away with his insinuations that what ASA Council got from me was a "draft" and that a final has only just recently become available. The Appreciation he and others on Council received in Feb/Mar 1996 was unfinished but was substantially the document now available on Steemson's site. It was submitted as it was to meet the Council's meeting schedule, but subsequent changes were minor. Furthermore, it has been available since April 1996 on the education site. That was announced to this list on 2 April 1996 by Mark Brogan who summarised the essential issues (and who, incidentally, seemed to have no difficulty back then appreciating the significance of the Affair and what I thought should happen). Any one of you, even Adrian, can confirm this by clicking on the list archive. Finally, I repeat what I said before in response to this line: Council gave me several reasons in 1996 for not accepting my analysis and lack of clarity was not one of them; indeed, they countered my proposals point by point - not a sign that they were in any doubt as to what they were being called upon to do.

However, just in case there's anyone out there in the slightest danger of falling for this line of Adrian's about it all being my fault for not clarifying my position, let me state now EXACTLY how I think the ASA Council should have responded to Lindeberg's letter.

Lindeberg asked us to condemn the Queensland State Archives for agreeing to the shredding of records containing allegations of abuse in a State institution for juveniles.

There is no dispute that the Archives did agree to the destruction, that the records were examined by the Archivist personally, and that the records did contain material of the kind described. We know (what is more) that the Archivist gave her consent within 24 hours of being asked to do so by the Cabinet Office.

We know that the Cabinet Office informed the Archivist beforehand that their reason for wanting to destroy the records was to prevent successful court action against those making the allegations (though it appears she was not informed that such proceedings were actually under way). We know that she was party to a prolonged stone-walling of the intending litigant involving a refusal to inform him or his solicitors that the records had in fact been destroyed.

Here is an edited version of what the archives profession (our profession) said in reply to Lindeberg :

"While we certainly agree with you that no archivist should authorise the destruction of records that they know contain child abuse allegations, we cannot be certain that in this particular case the archivist was in possession of such knowledge. The evidence to hand indicates that the archivist made an examination of the Heiner material, but there is no evidence that her examination revealed to her the existence of any child abuse allegations.....

"Hindsight certainly proves in this case that the records should not have been destroyed. However, the process of authorising the destruction of records is one of risk management. Although archivists endeavour to acquit this serious responsibility with the utmost care and professionalism, the process is inherently imperfect.....The sheer volume of material that archivists are called upon to consider means that detailed examination of records during appraisal is simply not feasible. As a result, mistakes are inevitable....."

Here are the elements of a reply which could instead have been constructed:

(1) We agree (and are prepared to state publicly) that these records should not have been destroyed in the circumstances and that, accordingly, in our opinion, the appraisal decision by Queensland State Archives was wrong.

(2) Although government archivists endeavour to acquit their responsibilities with the utmost care and professionalism, the sheer volume of material that archivists are called upon to consider means that detailed examination of records during appraisal is simply not feasible. We recognise. however. that procedures can be put in place to minimise the risk. The Society is in receipt of an expert report prepared by one of our members which makes specific recommendations arising out of this case for ways to minimise the risk. We will be issuing a further public statement of professional opinion endorsing these recommendations.

(3) There is no evidence that the Archivist's examination revealed to her the existence of any child abuse allegations. In view of that, we are not prepared to say that the appraisal was flawed on the grounds that she knowingly gave her approval for the destruction of material which ought not have been destroyed. We are, however, prepared to state that destruction of the allegations concerning treatment of inmates which we now know to have been part of the Heiner documents should not have been approved. We will state further that, in our opinion, the haste with which the appraisal was conducted was not conducive to a more satisfactory outcome.

(4) It is clear from the Morris/Howard Report, however, that the Archivist on this occasion was alerted to the potential relevance of this material in possible litigation, so the need for careful scrutiny from this point of view was greater than normal. We are prepared to state publicly that in the circumstances of this appraisal it was reasonable to have expected the Archivist to have taken especial care to locate, examine, and evaluate the nature of such material and to have considered withholding her approval to allow time for potential litigants to pursue their claims in a court of law.

This hypothetical reply is based on a view that the records of allegations of abuse should not have been destroyed. I have never said that because I do not believe an archivist should express such an opinion without having seen the material, but ASA Council seems to have had no hesitation in forming that view and expressing it to Lindeberg so I have incorporated it into the hypothetical reply.

1999, March 5: Heiner in Parliament (again)

The Queenslanders were at it again last night. The Opposition (Beanland) moved to set up an independent Inquiry. Their leader (Borbidge) said the issue is "not going to go away". The Premier (Beattie) moved an amendment exonerating the Goss Labor Government and his own and argued that the Forde Inquiry represented an appropriate response. An independent member (Cunningham) refuted Beattie's argument by pointing out that the Forde Inquiry was not investigating the Heiner Affair at all because it was outside their terms of reference!. We got a mention in one of the Opposition speeches (Grice).

The motion to set up an Inquiry and condemn the Goss Government was effectively defeated when the Beattie amendment was passed on party lines. You can find it all at

http://www.parliament.qld.gov.au:81/hansard.htm
Refer to **DOCUMENT G.**

1999, March 18: ASA Position Statement on the Heiner Affair

Title: ***ASA Position Statement on The Heiner Affair***
The following Position Statement has been approved by the Council of the Australian Society of Archivists and will today be distributed to selected media outlets.
Adrian Cunningham
ASA President
Refer to **EXHIBIT FOUR**

1999, March 18: COFSTA Position on Heiner

Title: ***COFSTA letter on Heiner***
Dear aus-archivists
With the permission of Ian Pearce, I am happy to post the text of the letter sent to me from COFSTA in relation to the latest ASA Statement on the Heiner affair...
Adrian Cunningham
Refer to **EXHIBIT FIVE**.

1999, March 31: Heiner on Sunday (again)

Last night I saw the tape of the "Sunday" follow-up on Heiner. The allegation now is that the Heiner disposals were not (as I had previously supposed) a one-off event but rather an instance of systematic cover-up involving unauthorised destruction of Queensland official records.

There were, you will recall, three Heiner disposals. The first was a destruction ordered by the Goss Cabinet and approved by the State Archivist. The second and third (one involving a shredding and the other involving a hand over of documents to a union) did not, so far as we know, involve Cabinet or the Archivist. I supposed (and said so in my 1996 Analysis) that the first Heiner disposal was the act of a new and inexperienced Government which didn't know how to properly handle aborted inquiries or the orderly destruction of official records. It is now possible that it was the work of a new and inexperienced Government which didn't know how to properly handle a cover up.

What made the first Heiner disposal unusual, in other words, was that for the first and only time silly politicians who didn't know any better involved the Crown Solicitor and the State Archivist. The ordinary method (it is now being suggested) was to shred them quietly out the back.

The Affair now involves three kinds of "abuse" –

(1) abuse of children in State institutions;
(2) abuse of documents which were being disposed of improperly;
(3) abuse of process which made unauthorised disposal a tool to cover up child abuse.

Premier Beattie continues to say child abuse is the only issue and that concern with abuse of documents and abuse of process is "paranoia". He will not admit that child abuse is only a symptom of the corruption. It is abuse of documents and abuse of process which is the real corruption and root cause of child abuse because they permit and nurture the cover up which allows and encourages systemic child abuse to occur. Accountable process involving proper regulation of documentation prevents it. When child abuse is the work not of an individual, but of a system, then it becomes impossible to confine an investigation of that abuse to the corruption of the individuals who abuse children. It becomes necessary to consider the corruption of the system which enables them to do it and which covers up their wrong doing.

Confusingly, Beattie also argues that anyone with "evidence" can go to the Forde Inquiry and be heard. But he must know that Forde has already ruled that Heiner is outside her terms of reference. If the gullible Forde continues to support the Beattie Government's line that separates investigation of child abuse (the symptom) from the abuse of documents and the abuse of process (the cause) then the results of her Inquiry will be worthless.

But, having ruled Heiner out of bounds, Forde will be hard put to admit any evidence of similar systematic abuse of documents or abuse of process leading to a cover up of the child abuse she is allegedly investigating. Forde might escape this conundrum by choosing to admit the second and third Heiner disposals (not involving Cabinet or the Archivist) while continuing to refuse to admit the first (which did).

But on what basis?

Perhaps on the argument that the second and third Heiner disposals were self-evidently part of a systematic regime of cover up which she can't ignore while the first Heiner disposal was self-evidently a product of a new Government's ineptitude which is outside her brief.

After all, Beattie and Warner keep on claiming that in 1990 Cabinet didn't know what the Heiner documents contained. This claim is now called into question by the second revelation on last Sunday's programme. Ann Warner was the Family Services Minister responsible for halting the Heiner Inquiry in early 1990. She says the reasons prompting the National Government to set Heiner up in the first place (while Goss and Warner were still in Opposition) remained a mystery to her. It turns out, owever, that while she was still in Opposition in late 1989, it was she (Ann Warner) who first leaked to the press the staff allegations of child abuse at John Oxley Centre which became the subject of Heiner's investigation. Does this mean Warner's leak was responsible for setting up the Heiner Inquiry which she herself closed down when she got into Government? How can they still claim they didn't know what was in the documents?

The claim now being put forward that the Heiner disposals were a part of a systematic process of cover-up connects the alleged cover ups inevitably to the first Heiner disposal if Cabinet was aware of the contents of the Heiner documents.

The other defence being used by Beattie to exonerate his colleagues in the Goss Government is the argument that they acted on the Crown Solicitor's "advice" that the documents should be destroyed. The Crown Solicitor did no such thing. Crown Sol advised that Heiner and his informants did not have absolute privilege and immunity from prosecution and that destruction could not occur without the Archivist's approval or, in any case, after legal proceedings were commenced. He did not offer an opinion on whether or not the documents should be destroyed and even advised that an action against Heiner or informants was unlikely to succeed. The decision to destroy lay with politicians and bureaucrats and they were in no reasonable sense of the phrase "acting on legal advice". It was not for Crown Sol to say whether or not the records should be destroyed (only whether or not they could be) and Crown Sol did not, as Beattie is now trying to make out, advise that they should be. Put most simply, it is possible to argue that the Goss Cabinet was "acting on legal advice" when they decided that the Heiner documents could be destroyed. It is simply not true for Beattie or anyone else to say they were "acting on legal advice" when they decided that they should be destroyed.

What are the issues for recordkeepers? I suggest these -

(1) Was there routine destruction of documents by Dept of Family Services unauthorised by State Archives?
(2) Are there grounds to suppose that documents were destroyed (with or without authorisation by the State Archivcist) as part of a systematic attempt within DFS to cover up the existence of child abuse and other malpractice?
(3) If there was systematic cover up involving unauthorised document destruction, is it open to conclude that the abuses now being investigated by Forde were permitted and/or aggravated by the cover ups?
(4) If so, how can the abuses now being investigated by Forde be remedied without doing something to prevent future cover ups involving unauthorized destruction of documents?
(5) If there was systematic cover up involving unauthorised document destruction, who within DFS authorised the destructions and who knew?

(6) If there was systematic cover up involving unauthorised document destruction, who outside of DFS knew and what did they do about it? Note : the second Sunday programme identifies another agency which acknowledged that something was probably wrong inside the State juvenile system but said they could not do anything because there wasn't an "audit trail".
(7) If there was systematic cover up involving unauthorised document destruction, why wasn't action taken to stop it under the Libraries and Archives Act? What needs to be done to ensure that violations of that Act cannot occur in future with impunity?

1999, April 29: COFTSA and Heiner

The April edition of the ASA Bulletin has only just reached these shores bearing the COFSTA Commentary on the ASA Position Statement concerning Heiner. The COFSTA Commentary wasn't put up on the list - maybe it should be now for the benefit of those listers who don't get the Bulletin.

This posting will see me in the (recently) unfamiliar guise of a defender of the ASA's actions! How the wheel turns.

It seems that the government archivists of Australia are determined to pursue their ill-judged 1997 attempt (refer list archive for April 1997) to defend one of their own. Whether the COFSTA folk like it or not, the Heiner Affair has now become a by-word both in Australia and internationally for a failure in recordkeeping accountability and as an exemplar of archival failure too. Very few archivists I have discussed this with are prepared to say there was nothing fishy about the Cabinet request to Lee MacGregor to destroy the results of Noel Heiner's investigation into abuse at the John Oxley Centre or that it is acceptable for her to have completed an appraisal on a complex body of papers and tapes on the same day she was asked to conduct it.

There are important lessons to be learned from Heiner. But they can't be grasped unless we are first prepared to admit that something went wrong. That head-in-the-sand attitude impedes us from learning from our mistakes. It's fair enough to say that Lee MacGregor didn't have the benefit of that learning when she had to act at less than 24 hours notice in 1990. It's quite a different matter to be ignoring those lessons in 1999.

COFSTA can judge for itself the wisdom of continuing to defend the indefensible. But they must not be allowed to get away with the claim that only they are competent to judge what constitutes professionally and socially acceptable standards for appraisal procedures within government. Within the profession, it is a legitimate area for discussion (yes, and for disagreement too). Socially, the claim that professional expertise is beyond lay criticism and can be unresponsive to social demands is futile (if nothing else) in this day and age.

On this occasion COFSTA defends the Queensland appraisal obliquely by describing as "misguided" two specific criticisms in the ASA Statement of 18 March 1999.

They say that the kind of "ad hoc" appraisal condemned by the ASA Statement was (and still is) usual in government archives programmes in Australia and that speed (which they claim is efficiency) is a good thing and the norm to which they aspire.

Their argument is: "Look, this is what we do, therefore it must be correct procedure. How can you criticise what is common practice in all government archives? You don't know what you're talking about."

The response to this sort of nonsense has to be equally direct: "Yes, we know that's what you do. You shouldn't be doing it that way. Heiner demonstrates perfectly the flawed nature of what you're doing. Stop it at once."

If all the COFSTA folk were saying was: "This is time-honoured practice. We realise now (as a result, inter alia, of the lessons learned from Heiner) that it is wrong. But it will take time to re-engineer appraisal methods and the problem can't be fixed over night." there could be no objection to their letter. Like Ian Pearce and the other chief executives responsible for government archives in Australia, I am now

responsible for an archives appraisal programme very heavily dependent on ad hoc appraisals. I can certainly sympathise with the view that this process can't be abandoned just like that or re-engineered quickly or easily and I am conscious that I am almost daily approving appraisals of the flawed kind that was used in Heiner - but this doesn't stop me learning the lessons of Heiner.

The COFSTA letter doesn't say anything like that. Like the Bourbons they have learned nothing and forgotten nothing.

They say that there is nothing to be learned from Heiner because the archives system in Queensland in 1990 worked well and did nothing wrong. Everything worked then just as it works now and what could be more reassuring than that? This is how things were, are now, and ever shall be. It's what we all do, don't you worry about that. Why, what more proof do you need that there's nothing amiss than this universal expression of self-satisfaction from the seven of us? What's more we'll go on doing it because we know better than you what's needed to do a good appraisal.

The stakes in admitting that the Heiner appraisal was flawed have now been raised considerably. Every Government archives programme in Australia is now on record as supporting and defending those appraisal techniques which a critical appreciation of Heiner condemns as inadequate and which some of us would now argue are demonstrably shonky - on the basis of the emerging professional reconsideration of appraisal technique and by the example of instances such as Heiner.

The refusal of COFSTA to admit that the Heiner appraisal is flawed on the grounds solely that it was done using procedures still employed by them in every other government archives programme simply means that the flaws in Heiner are common to every government archives programme. The work of identifying solutions to the flaws Heiner demonstrates is, therefore, that much more urgent and important. All that the COFSTA Commentary reveals is an inability or an unwillingness to learn and move on.

<<Gerard Calilhanna: … With respect to the letter of Ian Pearce (COFSTA) 18/3/99 posted by Adrian Cunningham last Thursday 29/4/99 I think he believes that essentially nothing ought change as a result of the Heiner affair, given his attack on "crucial parts" of the ASA statement (18/3/99). To reduce "the availability of a relevant disposal authority for every appraisal decision" to an aspiration and dismiss its relevance to NOW is a remark that recalls to mind the tactics of Sir Humphrey Appleby. Surely the Heiner affair demands that the adherence to principles in a "specific disposal schedule" be a safeguard against such a disaster occurring again? Should there now NOT be a disposal schedule of some sort to help guard against a similar future calamity?
Ian Pearce is misguided when he places professionalism and efficiency against "the usual orderly process of appraisal", thus being dismissive of the latter, which is intended to ensure that such professionalism and efficiency is maintained. Political pressure imposed in order to obtain a hurried disposal of official records OUGHT to be an immediate cause for suspicion, causing the recordkeeping professional to at least query why this needs to be done and make follow up enquiries about it. By following the ASA's guidelines the likelihood of another Heiner affair happening again will be assuredly reduced.>>

Since the COFSTA bench-mark for efficiency is haste and several days have gone by since my last posting, I assume I'm not going to get a reply. If it's OK to do the Heiner appraisal on the same day, they would surely have responded by now if they were ever going to.

Here then are some further thoughts (the result of week-end ruminations) on the COFSTA Commentary.

From this point on, Adrian and the ASA are on their own. I agree with COFSTA to this extent : it is not true that the only good appraisal is a schedule-based appraisal (cf. McKemmish/Hurley, "First write your disposal schedule..."). If Ian is correct and this is what AS4390 says, then AS4390 should be changed at the first opportunity. It's wrong.

What, then, could we do to apply the lessons of Heiner - assuming you agree there's a problem there to be fixed. Some of the suggestions below are not new. We introduced at least two of them (nos. 2 and 5) in one form or another at the PRO Victoria during my time there as Keeper and I assume they're still being kept up. No doubt, some of them are already employed in other COFSTA institutions.

In my 1996 "Appreciation" I stated that the most important lesson for archivists to learn from Heiner was that we needed to avoid ad-hoc appraisal decisions. What was needed in Queensland in 1990 was a set of rules developed in advance of the particular case which would have produced (and which did in fact produce) an outcome which could have been predicted before the Cabinet request for approval to destroy was ever received. Assuming we now admit that the outcome in the Heiner appraisal was wrong (do we admit that, or is COFSTA still trying to argue the toss?) some of these rules would have prevented the destruction being authorised even if they didn't prevent it being carried out.

Goodness knows, we stress often enough that good recordkeeping is about having boring, ordinary, routine procedures for the "normal" conduct of business. Well, I fancy that rule might apply to the appraisal archivist too. Eh?

In other words, the guarantee of integrity in the appraisal process is a method of certifying that the outcome in an appraisal is in accordance with general considerations or business rules, to avoid the suspicion of cover-up, caprice, whatever. That way, no suggestion could be made that improper considerations were taken into account, Government would be prevented from obtaining permission to destroy outside a set of ordinary procedures (lessening the appearance and, to some extent, the possibility of hanky panky), and the basis for the disposal would be better documented.

If pressed, most appraisal archivists would probably say that such rules are applied - in the form of their accumulated wisdom and experience, reformulated as an outcome in each appraisal. Well, why not document them?

Some of this is achieved, in part, by a disposal schedule - but that's not the only way or, necessarily, the best. The lesson, once you admit the Heiner appraisal was bad, is that we need to get away from unpredictable, ad hoc appraisal decisions which leave no reliable record of the reasons for the decision made - regardless of whether or not those decisions are taken under a schedule. It's not enough for us to be satisfied that we act properly, we have to be able to demonstrate to others that we did. Isn't that one of the functional requirements too? Why shouldn't it apply to documenting our own business?

Has anyone tried to apply AS4390 to our own business process : appraisal? Perhaps the educators could put their students onto that as a class exercise. I'm sure the results would be of interest. And, I suspect, a little chilling. (If the exercise is done and the results aren't chilling, by the way, it could be because AS4390 is a bit weak in providing implementable rules on the making of full and accurate records, which I've suspected for some time.)

Whether this guarantee of predictablility is embodied in a "schedule" or the result of applying an already documented Rule-Base each time we enter a darkened cellar to perform the mumbo jumbo that makes up an ad hoc appraisal is neither here nor there.

I'm sure COFSTA doesn't mean to say that they're too busy doing practical and efficient work to be bothered with accountability mechanisms. If, contrary to all expectations, that's what they are saying, let them respond to this challenge and say what they think about these appraisal techniques which could be learned (by those who were teachable) from Heiner and used to at least hinder such a thing happening again :

(1) Caveat on Documents Subject to Legal Proceedings

Place a caveat on every instrument of disposal authorisation to the effect that the authorisation does not apply to any records which the agency seeking/implementing the authority has reason to believe may be required in evidence in a judicial proceeding. The effect of that would be to deny any agency use of archival authorisation where destruction is being contemplated contrary to the provisions of s.129 of the Queensland Criminal Code. It would not then have been necessary for QSA to have conducted its own investigation to find this out, the onus would have been back on Cabinet and the Family Services

Department. The wording here is derived from the Queensland code. It could be varied in each jurisdiction to reflect the relevant Crimes Act.

Let COFSTA explain precisely why this would not be practical.

Let them say precisely how it would be inefficient.

(2) Caveat on Documents Subject to Access Request

Place a caveat on every instrument of disposal authorisation to the effect that the authorisation does not apply to any records which are subject to a request for access until such time as all access requests have been dealt with and replied to and any avenues of appeal have been exhausted. The effect of that would be to have denied the Queensland Cabinet authority to destroy the Heiner documents even if QSA was ignorant of Peter Coyne's request to see them.

Let COFSTA explain precisely why this would not be practical.

Let them say precisely how it would be inefficient.

(3) Establish a Rule-Base of Precedents

Document the decision in each new appraisal in a Precedents Register and make the outcome & reasoning used in the precedent case the basis for applying uniform rules to similar cases in future. Make each new instrument of appraisal refer explicitly to the Precedents Register. The effect would be to develop an growing body of rules which would determine the outcome of future cases in a way consistent with the outcome of similar previous cases - making appraisal outcomes rule-based and predictable and removing the appearance of ad-hoccery and whimsy. This would be scheduling as we go. A different kind of schedule, to be sure, but a schedule all the same.

Let COFSTA explain precisely why this would not be practical.

Let them say precisely how it would be inefficient.

(4) Establish a Rule-Base Embodying Experience

Establish rules based on learnings from archival disasters such as Heiner which come to our attention. For example, we can all learn now that it would be useful to have a rule requiring the retention of records of terminated inquiries for at least a reasonable period (to allow the dust to settle). The effect of this too would be to develop an growing body of rules which would determine the outcome of future cases in a way consistent with the outcome of similar previous cases. If we had learned the lessons of Heiner we could all have introduced such an assurance into our systems as far back as 1996 (when I first suggested this) and could, as a profession, been in a position to say for the last 3 years that we have taken steps to ensure that Heiner could never happen again.

Let COFSTA explain precisely why this would not be practical.

Let them say precisely how it would be inefficient.

(5) Introduce a Quality Assurance Regime for all Appraisals

Use the developing Rule-Base to design and keep up-dated a questionnaire or check-list which agency must fill in to reassure us that disposal of the records being appraised will not violate any of the requirements set out. If they refuse, deny them the approval. This would force the agency (would have forced the Queensland Cabinet) to come clean or lie in writing. Such a procedure would have put beyond doubt what the Archivist knew in 1990 and denied the egregious Beattie the excuse he is now trying to peddle that the Goss ministers did not know what the documents contained. The Archivist would not then have consented to a disposal request being pit to her by people who didn't even know what the records were. Her procedures would have compelled them to find out!

Let COFSTA explain precisely why this would not be practical.

Let them say precisely how it would be inefficient.

(6) Require Archivists to Document the Reasons for their Decisions and the Factors they Considered

This is just ordinary good practice, really, but in my experience while ad hoc appraisals are good at documenting what was disposed of, by whom, and when, they are not good at documenting why. This is not so much true in New Zealand, by the way, where the National Archives documents its appraisal decisions much more fully than I'm used to in Australia (I can't take credit for it, it's the system I inherited). We should develop a standard for ourselves - never mind developing standards for others to comply with, for once in a way - which would set out the minimum requirements for a government archives in documenting the reasoning which went into an approval. Under FOI we would now know on what basis Lee McGregor made her 1990 decision.

Let COFSTA explain precisely why this would not be practical.

Let them say precisely how it would be inefficient.

These are, of course, minor reforms to the existing, essentially ad hoc, system. Just tinkering around the edges of the problem. They are well short of the full bodied re-engineering of appraisal some of us think is necessary. I will not anticipate here all the arguments I am planning to use in an article entitled "Macro Appraisal and the Problem of Certainty" but we can, I think, do much better - especially using the newly emerging appraisal techniques (to augment, not to displace, what was good in the ad hoc system) and the benefits of automation.

Only those of us, however, who are capable of benefiting from experience and admitting our mistakes.

1999, July 29: Heiner in Parliament (again)

Last Wednesday the Queensland Parliament debated the Forde Report into Child Abuse at Queensland State institutions.

One of the central figures in the Heiner Case, Kevin Lindeberg, sought several times to get Forde to investigate Heiner. The argument being, in effect, that the Heiner shredding was but one example of climate of bureaucratic and political cover-up which allowed the abuses investigated by Forde to occur in the first place and that if the bureaucratic and political evils were not also investigated and remedied then no other findings could be valid and no other recommendations effective.

Forde consistently refused to investigate this because she claimed it was outside her terms of reference (set for her by the Beattie Labor Government). The Beattie Government sits on a knife-edge in the Queensland Parliament, relying on the vote of the independent Member for Nicklin.

The issue of the link between the Forde recommendations (which are being supported in Queensland across party lines) and the unresolved "Heiner" issues, including the allegations of systematic cover-up and records tampering (which are being hotly disputed between the Beattie Labor Government and the Opposition parties) was again raised.

The flavour of the debate (which can be found in full on the Queensland Parliamentary site) is indicated by the following extract:

Refer to **DOCUMENT H**

1999, October 8: ASA Position on Heiner

Title: ***ASA letter re the Heiner Affair***

Dear aus-archivists

Today I faxed the following letter to Commissioner Julie Dick of the Qld Office of the Parliamentary Criminal Justice Commissioner.

https://www.asap.unimelb.edu.au/asa/aus-archivists/maillist.html#04047

Adrian Cunningham
President, Australian Society of Archivists
Refer to **EXHIBIT SIX**.

1999. November 2: Lindeberg Petition tabled in Qld Parliament

Title: ***Heiner - Lindeberg petition tabled in Qld Parliament***

Dear aus-archivists
I am forwarding on the following information for those who may have an interest in it.
Adrian Cunningham
Refer to **DOCUMENT I**.

2001, August 22: Heiner in the Senate

Dear aus-archivists
Please see attached an extract from Hansard of a statement made to the Senate by Senator Harris (Democrat) on the Heiner Affair.
Adrian Cunningham

Attachment: AdjHeiner.doc *Description:* MS-Word document
Refer to **DOCUMENT J**

I need to correct a mistake I made in my previous posting. Senator Harris is of course not a Democrat, but a member of the One Nation party.

Sorry for this.

The original posting was made at the suggestion of Kevin Lindeberg - kevlindy@stargate.net.au

2001, November 5: The Heiner Affair – Startling New Evidence Bursts on the Scene

<<Kevin Lindeberg: The following is an extract from *The Courier-Mail's* webpage for Saturday 3 November 2001. This lead story on Page 3 is by journalist Bruce Grundy, former Associate Professor of the Department of Journalism at the University of Queensland and former editor of *The Weekend Independent* which carried forward the extraordinary series dubbed *Shreddergate* for many years.>>

Refer to **DOCUMENT K**

The Queensland Government's defence in Heiner always hinged on their argument that they were acting as honest broker in a spat between officers and staff of the John Oxley Centre, that the Cabinet decision to destroy the records was taken for honest and innocent reasons, and that there was no plausible reason for the Government to hide anything when they successfully sought the Queensland Archivist's permission to destroy records of the Heiner Inquiry.

This defence, advanced by the Goss/Beattie Labor Governments, has always been an invitation to their critics to develop a plausible alternative theory for why the Goss Government wanted to have the records destroyed. The purpose in developing an alternative theory is not to say what is so, merely to establish the falsehood of the Government's claim that no other explanation besides theirs is possible.

One alternative theory is that the Goss Government was in cahoots with unions representing staff at this and other centres, and with the bureaucats responsible for those institutions, to cover up a can of worms which nobody then wanted to open : viz. systemic inmate abuses of the kind subsequently exposed by the Forde Inquiry (10 years later). In other words, that Governments, unions, and bureaucrats knew about the abuses, that they were determined to keep it quiet, and that they destroyed the Heiner records in furtherance of that policy. However, Forde refused to investigate Heiner, claiming it was outside the terms of reference set for her by the Labor Government.

Under the theory consistently advanced by the Goss/Beattie Governments, there is no connection between Heiner and the Forde Inqury into abuses of inmates at Queensland institutions. Under the alternative theory of a cover-up, there was every reason for Forde to have investigated Heiner because

it was (it could be argued) an example of the kind of systemic denial which enabled the abuses Forde was investigating to occur in the first place.

The Heiner Inquiry was originally sparked by allegations of inmate abuse made by Labor itself during an election campaign while it was in Opposition. It was dropped by them once they were elected to power. New light is thrown upon this alternative theory of a cover-up by Bruce Grundy's report in last Saturday's Courier Mail posted by Kevin Lindeberg. See it (for the next few days) at the Courier Mail archive for 3 Nov :

http://www.thecouriermail.news.com.au/

The Courier Mail article is already documenting conflicting claims about who said or knew or did what in relation to an alleged rape at John Oxley in the lead up to Heiner. Who wants to take a bet with me that the official records relating to this incident will now be found to be unhelpful, flawed or "missing"? It is, of course, common to ridicule conspiracy theories based on the absence of evidence. But when our procedures responsible for maintaining the integrity of the official record have already been shown to be flawed, as unquestionably they have been in the Heiner Affair, an absence of evidence (while not a tell-tale sign) can no longer be trusted as the basis for disbelief. Even if there was no conspiracy in the Heiner Affair, the Queensland Government's actions should be condemned for having taken that assurance away from us.

<<… it seems to me that there are enough examples of equally if not more deplorable destructions of evidence of mis-governance somewhat, or at least variously, to the south of the Brisbane Line, that might require equal attention, if pursued with adequate vigour.>>

2001, November 12: The Heiner Affair – Even More Damning Revelations

<<Kevin Lindeberg: The following is an extract from Page 2 of *The Courier-Mail* of 8 November 2001>>

Refer to **DOCUMENT L**

> **"MINISTERIAL STATEMENT Qeensland Parliament Thursday, 8 November, 2001:**
> **John Oxley Youth Detention Centre; Rape Allegations**
>
> Hon. J. C. SPENCE (Mount Gravatt'ALP) (Minister for Families and Minister for Aboriginal and Torres Strait Islander Policy and Minister for Disability Services) (10.08 a.m.), by leave: Recently allegations of the alleged rape of a 14-year-old girl at the John Oxley Youth Detention Centre in the mid to late 1980s have been aired in the media. Such allegations are obviously distressing and traumatic and we take them very seriously.
>
> Upon hearing of these allegations, I immediately ordered the Misconduct Unit of the Department of Families to interview any staff associated with the allegations. I also ordered an immediate search of files by senior officers and referred the issues to both the CJC and the Queensland police.
>
> As I said, these are serious allegations, and they are treated very seriously by this government. Late yesterday senior officers informed me that a file relating to these allegations had been found. That file has been given to both the Queensland police and the CJC. Allegations of this nature are best taken out of the political arena and left to the appropriate investigating bodies. In this case, the allegations have been referred to the Queensland police and the CJC has been asked to investigate whether there has been any official misconduct by staff. They are the appropriate bodies to examine such material, and I repeat that this government is determined to have such allegations fully and thoroughly investigated by the appropriate bodies."

It appears that the Queensland Government is now attempting to focus the debate entirely onto the 12-year old rape allegations and away from the alleged cover-up. If the rape allegations have been on a departmental file for over 12 years why haven't they been referred for investigation until now? What is different now, that hasn't been the case over the last 12 years? Is it that we now have indications of what at least some part of the Heiner's investigation dealt with?

The Courier Mail report of 8 November suggests that Heiner knew and was asking about the alleged rape now under investigation. Politically, the investigation of 12 year old rape allegations will be less damaging

to the Beattie Government than the revelation that the Goss Government ordered the destruction of records of an investigation which uncovered them in 1990 – a destruction which Beattie and his colleagues have consistently defended.

As late as last week, Premier Beattie was still claiming that the Goss Government's destruction of Noel Heiner's records of investigation into the John Oxley Centre had itself been thoroughly investigated without result. The Beattie Government (amongst whom some Goss ministers still sit) is determined to keep separate the question of the destruction of those documents and the question of what the documents were about. Yet, as Senator Woodley has said, the earlier inquiries into the Heiner shredding had no idea what the records were about. They didn't know because they weren't told.

If the Beattie Government takes the rape allegations "very seriously" (as stated by Minister Spence) why do they not take allegations of a Government cover-up equally seriously. If there was a cover-up, then the climate of denial which the cover-up typifies was what made possible the abuses subsequently uncovered by the Forde Inquiry. You can't be concerned about the symptoms of a disease if you don't care about its causes.

Good recordkeeping may seem like a cold and inhuman thing when discussing someone's pain and suffering. But we know that falsification of the record is the first defence of regimes who perpetuate abuses by trying to hide them from democratic scrutiny. If Governments can get away with falsifying the record, they can get away with anything.

<<Rick Barry: Looked at from a different light, I'm sure Chris will agree, recordkeeping is a very good and warm and very human-oriented thing because among its most solemn principal purposes is the protection of human rights. If there was ever a case of violation of human rights, this is it -- the rights of incarcerated youth to protection from being physically violated; the rights of Kevin Lindeberg to his continued employment as a union officer and later as a reluctant whistleblower; the rights of all Australians to government accountability. And, not the least, the rights of humans everywhere to fully expect the inviolability of public records. We need not be shy about drawing attention to these rights even as we rightfully focus on those of the rights of individuals most directly victimized.>>

2001, November 18: The Heiner Affair – Victim's Parents Question CJC's Findings

CJC completes investigation of alleged rape cover-up

16 November 2001

The Criminal Justice Commission has completed investigations into claims of a cover-up of an alleged rape of a 14 year old female resident of the John Oxley Detention Centre in 1988.

The investigation was undertaken by the CJC in keeping with its legislative obligations, after the issue was raised in State Parliament by the Minister for Families and Disability Services Hon. Judy Spence following media reports of the allegations.

The media reports suggested that the matter had been 'swept under the carpet' and 'hushed up' by staff of the Detention Centre at the time.

Ms Spence told Parliament she had ordered an immediate search of files by senior departmental officers and had referred the rape allegations to the Queensland Police for investigation.

Ms Spence also announced she had asked the CJC to investigate whether there was any official misconduct by Family Services staff in the way the issue was dealt with at the time.

CJC investigators have since examined Department of Family Services records from 1988 which show that the allegations were referred to the police at that time.

The CJC has also obtained and examined relevant police notebooks and diaries which further confirm this fact.

CJC investigators also inspected medical records confirming that the girl was examined by a paediatrician at the time, at the request of the police.

The CJC has now written to both the Police Commissioner Mr Atkinson and the Director-General of the Families Department Mr Frank Peach, advising that there is no reasonable basis to suspect any official misconduct by any departmental staff in respect of their duty to report the alleged rape of the girl.

The CJC has provided copies of the of the material it has examined to Queensland police.

Refer to **DOCUMENT M** for response from victim's parents.

2001, November 19: The Heiner Affair – CJC Media Release on Latest Revelations

Recent press coverage of an alleged rape at the John Oxley Centre in 1988 with links to the Heiner Shredding ordered by the Queensland Cabinet have led to renewed discussion of "cover-up" which purport to be the subject of the CJC Media Release. Mr Beattie will be hoping that the CJC's attempt to dismiss these by reporting that the original allegations were investigated by police will succeed. It needs to be understood, however, that the "cover-up" referred to in relation to Heiner has nothing to do with a police investigation of an alleged rape. It has, rather, to do with the suggestion that politicians, bureaucrats, and staff unions were covering up evidence of widespread abuse of inmates in Queensland institutions of the kind that the Forde Inquiry later established to be the case.

We are not talking here about a "cover-up" of an alleged rape. What we are talking about is a suggested cover-up of the failure to properly deal (at a systemic level) with this and similar instances by the Queensland Government and its instruments - including the CJC itself in its subsequent investigation of the Heiner Shredding. The CJC has been widely (and justly) criticised for its approach to Heiner, so the CJC has its own reasons for wanting the cover-up which its press release discredits to be the former and the not the latter. Indeed, the CJC could not now credibly investigate allegations of a cover-up of systemic abuse in the Heiner Shredding.

A police investigation of the alleged rape can only determine whether or not there is sufficient evidence to prosecute perpetrators of a crime (if they are identifiable). A failure to prosecute for rape does not mean the rape did not happen. Abuses without redress are the worst kind. The victim here was not only denied the possibility of justice, she was apparently denied any response by the system designed to protect her and others and to ensure that what happened to her did not happen again. In other words, the failure of the Queensland system to protect inmates from abuse (later shown by Forde to have been widespread) and possible cover-up of this administrative failure are the issues which neither Beattie nor the CJC is addressing.

The issue is not : where is the file and the evidence of police investigation of the alleged rape? The ssue is : where is the file and the evidence of the administration's response to the alleged rape, its conclusion whether or not a rape occurred (regardless of whether or not anyone could be criminally prosecuted for it) and the evidence that the administration did anything to correct the abuses which allowed the rape to happen? The denial - in the CJC Release - that there was a "cover-up" on the grounds that police found no basis for prosecuting any of the rapists, does not mean that the police investigation cleared the Queensland authorities of all blame. They couldn't, the police weren't competent to do so.

A police investigation is not concerned with the liability of those with a duty of care to prevent such things happening to the inmates of State institutions. Insufficient evidence to prosecute rapists is not an excuse for a department which fails to protect those in its care from rape and neglects to reform the abuses which allow rapes to happen.

Bruce Grundy has unearthed evidence that this kind of allegation was part of Heiner's investigation (well after the decision not to prosecute in this case). We knew that all along anyway because inmate abuse was the basis of Ann Warner's 1990 allegations which led to Heiner's appointment. Investigation by police in 1988 and failure to prosecute (long before Heiner was appointed) is not inconsistent with systemic

cover-up of the failure by the Queensland Government to do anything about this and similar instances. It was that systemic failure, not this particular rape, which (it is suggested) was being covered up by the Goss Cabinet in 1990. The fact we didn't find out about the 1988 police investigation until now from a file "found" last week suggest that the rape itself, if not covered up, was at least well below the radar. It was an incident whose existence might well have been uncovered in Heiner's report.

However, Heiner was not conducting a criminal investigation. It was not his job to review the police investigation. His scope was wider than any police investigation and might well have gone to the systemic cover up of abuse later documented by Forde. Heiner's report, if completed, may have uncovered failures of polticians, management and staff, not just allegations of criminal behaviour of the inmates.

A policy of political and administrative cover-up would not have been focussed primarily on protecting rapists from criminal prosecution. A policy of political and administrative cover-up would have been focussed on preventing exposure of maladministration by politicians, management, and staff. Maladministration by politicians, management, and staff is not the subject of police investigations or of criminal prosecutions. If the Goss Government was subscribing to such a policy, it would therefore still have had an improper motive for destroying the Heiner documents. The fact that a police investigation in 1988 did not lead to a criminal prosecution of rapists in a particular case does not bear on the theory that the destruction of the Heiner documents was the result of a policy of systematically covering up maladministration by politicians, administrators, and staff unions.

The Beattie Government is successfully focussing attention on what happened to the girl in 1988 and away from the question of whether the Heiner destruction by the Goss Cabinet was an example of systematic official cover-up of the maladministration which allowed such incidents (whether prosecutable or not) to occur.

2001, November 20: The Heiner Affair – "nothing was done"

Today's Courier Mail carries more allegations of abuse at the John Oxley Centre in 1988, in relation to which the victim claims "nothing was done".

No doubt, if this was now referred to the CJC, they would again find that it was all adequately investigated at the time.

But still, "nothing was done".

That about sums it all up really.

All these investigations that Mr Beattie is so proud of - police, Heiner, CJC, the Senate - but there was the good old Queensland machine making sure that "nothing was done".

Read all about it at http://www.thecouriermail.news.com.au/
under the title "Smokes-for-sex trade claim" by Bruce Grundy In More State News

2001, December 5: The Heiner Affair – A Former JOYC Youth Worker Speaks Out

<<Kevin Lindeberg: This phone-interview took place on *ABC-Radio* (612 4QR) on 7 November 2001 between *ABC* presenter Steve Austin and a former John Oxley Youth Detention Centre Youth Worker called 'Michael.' …The following day journalist Bruce Grundy revealed in *The Courier-Mail* that Mr Noel Heiner also knew about the incident and asked questions about it during the course of his inquiry - and that gathered evidence was subsequently shredded on the orders of the Queensland Government on 5 March 1990.>>

Refer to **DOCUMENT N**

Kevin is too modest to point out that he approached the Forde Inquiry about Heiner and was told that the Terms of Reference given to them by the Beattie Government did not allow Forde to investigate Heiner.

This same Beattie Government's attitude now appears to be that "this matter has all been dealt with by the Forde Inquiry". Ditto the CJC.

But "this matter" is not the abuse per se (which was indeed dealt with by Forde). It is the cover-up of abuse by politicians and bureaucrats, a cover-up which allowed the abuse to occur until the smell became so bad they had to appoint Forde to something about it.

But they didn't allow Forde to do something about uncovering official corruption which allowed the abuse to occur in the first place.

As the man says, "I think it has all been pushed under the carpet."

The CJC, by the way, is about to go out of business. As of 1 January, it mergers with the Queensland Crime Commission to form a new body called the Crime & Misconduct Commission. I suppose this means that their outrageous statement to the Australian Senate that none of this was any business of the Archivist will now go forever unrecanted and unrepudiated.

The ASA Council may wish to consider issuing a media release marking the CJC's passing by expressing the profession's regrets that the CJC never saw fit to repudiate that view.

2001, December 7: Queensland Affairs

<<Annabel Lloyd: re Chris Hurley's suggestion about a media release over demise of the CJC - State Archives is currently working very hard behind the scenes to try and get the archives legislation to cabinet and parliament before the end of the year (briefing back benchers etc.) so all other issues aside, now would not be good time to making public statements about qld political affairs! … When you are up for COFSTA in March Stephen, there maybe more news and it would be opportune to speak to Janet then - at this stage this information is for council only>>
<<my apologies in my haste I sent a message to the wrong list this morning - fortunately nothing defamatory in it - but please ignore!>>

"All other issues aside", you can justify anything.

Archivists sometimes over-estimate the importance of new legislation and new buildings. But, hey, those things sometimes pass for achievement.

Annabel Lloyd, in a mis-posting to her fellow ASA Council members, begs them to remain mute on "other issues" for the sake (as she sees it) of not imperilling new legislation in Queensland. It should be noted, however, that most of the recordkeeping irregularities in Heiner could have been dealt with under the existing legislation if it had been properly respected, administered, and enforced. New legislation for what purpose? New legislation will not substitute for an absence of will to act correctly.

In order to persuade her colleagues that new legislation is worth sacrificing "other issues" for, Annabel Lloyd would need to show not only that new legislation is imminent, but also that it will be accompanied by a new will to apply it.

How likely is that?

Which brings us to "other issues".

Let no one suppose that repudiation of the soon-to-be-defunct CJC's stated position on the role of the State Archivist (viz. she has "no business" in disposal other than to identify historically interesting stuff) is old news. That statement was part of the continuing denial of a cover-up of systemic abuse in State institutions later exposed by Forde and Grundy. Like Watergate, there were two evils - the crime and the failure to do anything about the crime except cover it up. The Queensland State Archives became part of the same process of denial by agreeing to the destruction of the some Heiner documents and by failing to deal effectively with other disposals to which it did not consent.

That process of denial is being continued even now, in 2001. The Beattie Government is still refusing to acknowledge that there is an issue of corruption involving its predecessor - the Goss Cabinet's decision to get rid of the evidence. The decision to destroy the documents was made in 1990. The denial that it was a cover-up has been made within the last month - aided and abetted by the CJC. The Beattie

Government is doing this by claiming it has all been investigated. Their tactic is to divert attention away from the failure of politicians and bureaucrats to remedy the abuses (which has not been investigated) and onto the abuses themselves (which now have).

How likely is it that this same Beattie Government will now pass new archives law with a will to ensure these evils, which they are perpetuating to this day, will not recur?

Tough call.

Overseas subscribers to the list (unfamiliar with the arcania of the Australian archival scene) may wish to know who the worthies are who must now decide whether or not to heed Annabel's plea to remain silent.

They are : Stephen Yorke (President); Barbara van Bronswijk (Vice-President); Robyn Eastley (Secretary); Clive Smith (Treasurer); Andrew Wilson (Managing Editor); Colleen McEwan (Councillor); Danielle Wickman (Councillor); Catherine Robinson (Councillor); Annabel Lloyd (Councillor); George Smith (Councillor).

The ASA disgraced itself over Heiner. With the exception of the Media Release issued in Adrian Cunningham's time (in circumstances where it could hardly be decently avoided) it has shuffled, dragged the chain, and maintained its silence. This contrasts with the alacrity with which we have pounced on other recordkeeping transgressions. Why?

A plausible explanation lies in the fact that in Heiner one of our own - the Queensland State Archives - comes out badly. Is it that we didn't want to hurt the feelings of colleagues? Is it that we had nothing to gain from exposing our own shortcomings?

The Lloyd email lends more than a little colour to this explanation. What it amounts to is this : don't take a principled stand you might otherwise contemplate because our own vested interest in new Queensland legislation would be imperilled.

Council might well have rejected my suggestion of a Media Release on grounds that the issue was stale (the Beattie line). This would have been plausible denial. But the Lloyd email has lifted the veil on one strand in the thread of their thinking. And lo, it's not about that at all. It's about sacrificing principle to expediency. It's going to make denial a lot less plausible. Thanks Annabel.

We will watch with interest how Annabel's colleagues respond. If they agree with her, the ASA's credibility on similar issues in the future will (in my view) become even more compromised than it already is.

Oh, and by the way, Stephen, while your up there in March, you might want to have a go at persuading COFSTA to rescind its motion of congratulation to a former Queensland State Archivist. on escaping prosecution over Heiner.

Keepers of the Flame, indeed!

<<Ross Harrison-Snow: … it is easy to believe that the whole affair is more significant than it actually is … generally it is not an issue occupying the public mind … I am not saying that we cannot learn something from these events, or purported events, but there is also something to be learnt from a human trait to flog a dead horse, or at very least a very sick one ... Advice was sought on the disposal of a very small quantity of records and that advice acted upon. End of story … Any misdoings within the Oxley Centre, or at a higher level of State Government, is a matter of general public concern, not an archival issue …>>
<<Stephen Yorke:…I refer to the postings to this List of 6 & 7 December 2001 concerning the Heiner Affair. More specifically, the postings by Chris Hurley and the posting by Annabel Lloyd which had been intended for the closed List of the ASA Council. These postings, inter alia, gave rise to complaint about the Council's actions on the Heiner affair … I am now responding to the List on behalf of Council …>>

Refer to **DOCUMENT O**

Stephen Yorke states (on behalf of the ASA Council presumably) that - “it should be said that the Society's concerns were with the destruction of the records of the original Inquiry and whether that destruction was legally authorised. Second, the stated views of various Queensland authorities on the proper role and powers of the State Archivist. These views were in some instances rejected and criticised in others.” When someone wants to duck an issue, they put up a straw man to deal with so they don't have to deal with the real thing.

1. Legality of the First Destruction

No one has ever doubted that the first destruction was "legal" insofar as archives law was concerned. That was the point, for heaven's sake: to remove the legal obstacle as identified by the Crown Solicitor by getting the State Archivist's consent to the destruction. They sought the Archivist's consent to make "legal" what they were doing. The question is not whether it was legal, but was it right?

The issue of professional ethics involved (legality, indeed!) was whether, given what we now know of the nature of Heiner's inquiries and the iniquities which lay behind the issues he was investigating, any archival authority could, in good conscience, have acceded to such a demand within 24 hours of receiving it. The second issue was whether any professional association in good standing, knowing what we now know, could fail - as the ASA has consistently failed - to condemn that kind of professional behavior. Maybe not at first. We didn't know then what we know now, but at some stage in the intervening period a point was reached (difficult to know when, I agree) when we needed to say that the professional behavior here was not up to scratch.

Subsequent investigation by competent authority discovered that, in their anxiety to bury Heiner, the Queensland authorities disposed of two other batches of Heiner records without archival authority. But Stephen Yorke is only interested in the first destruction and whether that was legal. I know the first destruction was legal (under archives law) so does he. That's why it's easy for him to deal only with that issue now, though happily the other disposals were dealt with (I believe) more responsibly by ASA's statements.

There is another legal issue which does not directly concern us- viz.whether it was 'legal", even with the Archivist's consent, to destroy records which the Crown knew were being sought by a citizen in pursuit of judicial redress. That's not our professional issue, I concede. But it does bear on the wider professional issue of what precautions an archives should take to avoid being hoodwinked into giving legal sanction to a Government engaged in such hanky panky. We need to learn about that by studying what happened in Heiner.

Unless you first concede that what happened here was professionally wrong (instead of fixating on legalities) we archivists can't learn from Heiner. You can't learn from a professional mistake if you're unwilling to admit one was made.

2. The Stated Views of Some Queensland Authorities ....

This is a bit rich. I pressed the ASA for years to issue a statement on these "views" (presumably Stephen means those of the CJC before the second Senate Inquiry, since he is too refined to restate or footnote them here). Eventually, a rebuttal was issued, far too late to do any good. But, better late than never. That statement by the CJC was on the public record - it was in the Hansard report of evidence before a Senate Committee. During the more than 2 years that statement was on the record prior to June 1997, ASA avoided making any comment on anything. ASA councillors and others came onto this list (the emails are still there in the list archive for all to read) justifying not having made a statement. What then prompted the decision to make a statement two years too late? Stephen would have us believe it was the measured, considered outcome of sober reflection. Rubbish. By that stage the rest of the sewage was leaking out and Heiner was becoming worse and worse with each revelation. Going back to a clearly outrageous statement by CJC, already on the record for over two years, was by then the least the ASA Council do.

The issue now, which (you will not have failed to notice) Stephen simply ignores altogether is whether, on the eve of the demise of the CJC, it is worth restating (publicly, not just amongst ourselves, Stephen) that this as yet unrepudiated and unrescinded view of the CJC stands condemned by professional opinion.

3. Role of Council

All this guff about the relationship between Council and the membership I find simply baffling. If Council is guided by membership opinion and membership has never passed a motion on Heiner, why did they issue a statement at all? If Council acts for us and leads the profession without waiting for a plebiscite on every issue that comes up (as I think they should - lead, that is, not wait) what is the point of blathering on about what the membership has or hasn't said or done?

PS : Yes, I was wrong, ASA did issue more than one statement. Like their latest, they tend to reaffirm rather than respond to anything in particular.

PPS : I agree absolutely that what this issue is really about is the proper role of a professional society in public affairs. It's a pity Stephen didn't deal with this issue instead of simply alluding to it.

PPPS. This is not the place to justify my view that ASA has disgraced itself in Heiner. For one thing, we are still learning how bad it really was. But it is on my list of articles to write. Now, I wonder who'll publish it? By the way, Stephen et al., I hope those emails you pass around amongst yourselves on "the closed List of the ASA Council" are still being deposited amongst the Society's archives.

2002, January 9: Heiner Again – A Bear's View

Well, the New Year has come and gone and with it the end of the CJC. No Royal Commission was established in the 17 days between Stephen Yorke's ultimatum of 13 December and 31 December, so Stephen, Barbara, Robyn, Clive, Andrew, Colleen, Danielle, Catherine, Annabel, and George never had to screw up their courage and say something after all. In the unlikely event that another Royal Commission had been established, its terms of reference probably wouldn't have let in the Heiner Shredding anyway – the Forde Commission's ToR's were, after all, written by Beattie & Co to keep it out. Over several years of obfuscation, delay, and avoidance, successive Councils have come up with a variety of explanations for not dealing appropriately with Heiner but this one - making the establishment of a Royal Commission (which Council can be reasonably sure will never be set up) the condition precedent for taking any further action - is the most ingenious and, if I may say so, the most contemptible.

But enough of me.

While I was in Christchurch recently, I made the acquaintance of 3 new bears who have consented to come and live with me. Their names are Bluey, Honeypot, and Mr Patches. Wanting a fresh opinion on all of this, I have sought their views. Honeypot is at this time stuck in one and is unable to give the matter his undivided attention. Bluey is a bear of great circumspection and wants to see more of the Council at work before casting his judgement. He has, however, authorised me to say that, in his opinion, the man Yorke does not appear in a good light on this showing. Mr Patches is clear in his mind as to his view. No adept at the keyboard (it's a question of paws) he has asked me to make this posting for him.

Dear Aus-Archivists,

I have had certain matters placed before me, including recent emails from your List dealing with the Heiner Affair. It is indeed a complicated matter. My colleague Athol Tallboys is preparing a monograph on the subject with the working title "Heiner for Dummies!". He will be sending complimentary copies to members of your Council.

Now we bears like things to be kept as simple as possible. A warm snug place, adequate nourishment, and a simple line of consecutive thought is all we ask. But I digress.

In this matter, it seems to me your Council has got itself into a muddle. I ask myself: what, basically, is all this fuss about? Manifestly, it is about my friend Hurley's suggestion that your Council make a public expression of regret concerning lack of action by the Queensland CJC while it was still worth doing and your Council's refusal to take up that suggestion. Very well, let us concentrate on those issues.

This Affair goes back to an investigation by Noel Heiner in 1989/90 into the operation of the John Oxley Youth Centre in Queensland. It now appears that Heiner's investigation dealt with examples of inmate abuse of a kind which subsequently became notorious in the Forde Royal Commission. In early 1990, the Goss Labor Government closed down the Inquiry and ordered all its records destroyed. This was done with the consent of the Queensland Archivist. It is accepted that the destruction was ordered to prevent access to the records. Some years later the Queensland Criminal Justice Commission testified before a Senate Committee that the Archivist had no role to play to deciding whether or not to approve the destruction of the records other than to determine their historical value. In other words, the Archivist had "no business" preventing the Government from destroying records in order to prevent access once she had decided on their historical value. Your Council (after some hesitation) issued a denunciation of this position and reiterated it. On 31 December last, the CJC was abolished and your Council refused to make this the occasion for making a public expression of regret that the CJC had never acknowledged the ASA's denunciation or withdrawn its statement to the Senate.

Now, there are clearly two different things here for you archivists to deal with.

The first is the public interest issue concerning the actions of the Goss Government and subsequent Governments as they bear (if you will excuse the expression) on the abuse of inmates in State institutions and official attempts to cover-up these abuses. This issue is not just for archivists. But archivists have an interest in it because documents (and the destruction of documents) are part of this story. I am advised that there are many such "affairs" and that your profession sometimes makes public comment on them.

It is the second issue, however, which makes the Heiner Affair of such especial importance to you archivists. Unlike most such cases, where archivists and archives laws are simply ignored and treated as being of no consequence, the Heiner Affair is one in which the archives authority was itself involved and open to criticism that it was party to a cover-up and behaved inappropriately. Moreover, a discussion of the role of the Archivist when undertaking an appraisal and the legitimate considerations she may take into account became part of the subsequent controversy. This second issue is one to test your professional mettle.

Clearly, it is this second issue which makes Heiner an essentially different kind of challenge for you. Mostly, such cases involve your having to remind society that if proper recordkeeping practices were followed, the evil effects of such scandals could be mitigated. Here, the lawfully mandated procedures were in fact followed to the letter explicitly to obtain the Archivist's consent for the evil in hand and to make it "lawful" under archives law. The Archivist necessarily became an accomplice in what was being done. In view of this and of what subsequently became known about the nature of the Heiner Inquiry, it became impossible to separate the lawfulness of the appraisal from its propriety. This raises issues concerning the proper role of the archives authority not, as is usually the case, when it is side-lined and made nought of, but in the much more difficult circumstance when it is used to legitimise what occurs (when that, arguably, should have been prevented by the intervention of the Archivist) and when the Archivist is invited to become a party to the deed. It also raises issues of your own credibility - for, if you show reluctance in dealing with a case where the integrity of one of your own institutions is at stake, how can you then expect to be taken seriously when you try to deal with those where it is not?

The questions for your Council to consider were:

1. Is it in fact a matter for regret that the CJC did not respond to your earlier Council's condemnation or withdraw their remarks?
2. If so, should the current Council have said so publicly on the eve of the CJC's demise?

Now, as to the first question, the current Council has said nothing directly. They have affirmed this Council's endorsement of the earlier condemnation. There seems no reason to suppose, therefore, that they don't regret the CJC's lack of response. A reasonable bear would assume they do.

The only question remaining, then, is this: why not say so?

One reason was given by the unfortunate Annabel Lloyd who (in a misposting to the List) suggested that to say so publicly would jeopardise impending new archives legislation in Queensland. In a subsequent posting, my friend Hurley asks whether the proposed legislation does in fact represent an advance on existing legislation such that this appeal to self-interest should succeed. A bear would reject such utilitarian arguments out of hand and say to you that no new legislation could be worth such a price since the hands into which it was given (on the evidence of the argument advanced by the hapless Lloyd) could not be trusted to make any good use of it even it were flawless in its design.

The reason actually given by Mr Yorke on behalf of your Council was, however, quite different. It amounted to saying that no further comment by the ASA would be appropriate unless and until a Royal Commission had been established. Now, this is a mighty leap. Bruin logic will not stretch so far.

There is nothing that the establishment of a Royal Commission would add to the situation - even if its Terms of Reference included your issues, which does not seem very likely. No new information would be supplied and no new occasion to speak out would arise. If there was good reason to regret the lack of response from the CJC and no other reason not to say so, it escapes this bear's understanding why the lack of a Royal Commission was seen as an obstacle to doing so.

If this becomes the bench mark for comment on public issues by the ASA think what it will mean. The prospect is raised of professional outrage and commentary being bottled up for years on issue after issue while you wait around for someone to set up a Royal Commission to hear from your representatives. Terrible things might occur but the sound of the archivists' voice would not be heard in the land because the Queen had yet to be prevailed upon to give her blessing to a formal investigation.

No, no. This will not do, archivists. I urge you to reconsider your position. It's not such a bold step. Speak out about things that concern you. Keep it simple, and keep it consistent. You may do some good, you may not. Your Council seems to think that you should speak out only on someone else's terms. A bear would say that this is not what being professional is all about. In this bear's view, the difference between a job and a profession is that a profession is something you do on your own terms, a job is something you do on someone else's.

Yours sincerely,
Mr Patches (a bear)
posted on his behalf by his friend
Chris Hurley
who wishes you all the best for 2002.

2002, April 12: Court Decision and Shades of Heiner

<<Report posted by Steve Stefan: Australia's biggest tobacco company destroyed thousands of internal documents to deliberately subvert court processes and to deny Melbourne lung cancer patient Rolah McCabe a fair trial, the Victorian Supreme Court found yesterday. Mrs McCabe, 51, who has only months to live, was yesterday awarded $700,000 in damages. Justice Geoffrey Eames said British American Tobacco Australia Services and its lawyers, Clayton Utz, destroyed the documents so that they would not have to be produced in health-related court cases … >>

<<Dani Wickman: ASA Council has released the following statement to the media this afternoon: Tobacco Decision Is Timely Warning on Recordkeeping … ASA President Stephen Yorke today said that the case was an important lesson to companies about their recordkeeping policies. "It is important that companies have sensible retention and destruction policies …>>

https://www.asap.unimelb.edu.au/asa/aus-archivists/maillist.html#04047

<<Bruce Smith: Can I ask you not to use the subject "$700,000 win to smoker after evidence destroyed " in postings concerning the tabacco/smoking court case. Many subscribers to the list are not receiving the postings as they are being filtered out by ant-spamming software.>> Bruce didn't say what heading we should use.

Here in Sydney, I have only had access to that discredited and unreliable rag the Sydney Morning Herald (which, this week, I have the pleasure of reading in print). The lead story begins : "Australia's biggest tobacco company destroyed thousands of internal documents so they would not have to be produced in health-related court cases, the Victorian Supreme Court has found."

This was, of course, a key concern also in Heiner. The Queensland Government too destroyed documents for that very same purpose. This is not just my opinion, it was the conclusion of investigators at the Qld CJC, a competent investigative body (as sworn to a Senate Committee by the man Barnes, the one who thought Archives were only concerned with history).

RMAA has already issued a press release. No doubt the ASA Council (following its recent posture on Heiner) will want to await the setting up of a Royal Commission before doing anything that rash. Indeed, in the light of that decision, it is hard to see how this Council could speak out on this. But, perhaps they are capable of anything.

The Victorian case is reported in sufficient detail to satisfy the scruples of all but the most fastidious amongst us. So the rest of us can keep on analysing it for all it's worth.

The basis of the judgement is that the intention of the company(ies) was to subvert discovery by all plaintiffs, not just this one, and the judge ruled that the jury find in plaintiffs favour without the necessity of proving liability - on that basis alone. The case will no doubt be appealed, and it will be interesting to see if this judgement stands.

Those who have not been pursuing a policy of obfuscation and avoidance on Heiner will recall that the Qld Govt defence was that destruction of documents (official or private) was lawful (regardless of the likelihood of legal action) up to the point at which a plaintiff actually commenced proceedings in court. This position would never have stood under American law and was disputed even under (less satisfactory) Australian law. (Notwithstanding their position, the Qld authorities took great care to keep the intending plaintiff, Coyne, and his lawyers ignorant of the Archives-approved destruction for a considerable time after the deed was done).

This judge has gone much further than I would have imagined any Australian court would feel able to do in deciding when it is naughty to destroy documents which might be needed in court. He has based his ruling on a history of records management procedures apparently unrelated to the case in hand. The company(ies) introduced orderly document culling procedures in a series of steps BEFORE this plaintiff took any action or indicated any intention to. Justice Eames said: "I am ... entirely satisfied that the primary purpose of the development of the new policy in 1985 and subsequently was to provide a means of destroying documents under the cover of an apparently innocent house-keeping arrangement".

Phew!

Mind you, this is only the ratty old SMH, but it is in direct quotes. The company is not found liable because it sought to prejudice the course of justice in this particular case, but because it was held to have perverted the course of justice in relation to all potential litigants.

It's a pity that this ASA Council is unable to take public positions on matters like this outside of the formal cover of a Royal Commission. Here is meaty stuff indeed for a less contemplative professional organisation. Ah, well. At least we still have the RMAA.

Those listers who think they have a duty to their organisation to destroy documents for the purpose of frustrating litigation should think twice. The American principle is that organisations found to have done this may have an adverse inference taken against them. In short, you can end up worse off than when

you started. This seems to have been an ingredient in the judgement here. If so, it will represent a most significant development in Australian law relating to records.

##

Not surprisingly, British American Tobacco (BAT) is resorting to the Goss defence (as practiced in Heiner) : denying that there was anything illegal in destroying documents to prevent litigation.

Today's Weekend Australian (for a change) quotes a spokesman (Scott Hailstone) for BAT :

Mr Hailstone confirmed documents had been destroyed, but said this was in line with the company policy of "document retention". It had occurred before litigation was filed by Mrs McCabe. "We didn't know anything was going to be filed against us so we've acted perfectly within the law," he said.

This is almost word for word the defence mounted by the Goss Government in Heiner. It was legal for us to destroy the Heiner records up to the time Coyne filed in court (they said) - which he never did once they got rid of the stuff.

The only difference is that Goss & Co knew Coyne's identity and knew he was contemplating an action.

Judge Eames found that the purpose of BAT's "retention" policy was to deprive all intending litigants of the documents they needed. It didn't matter, he said, that Mrs McCabe hadn't filed, BAT's action was intended to subvert the rights of any litigant (her included).

Otherwise the key issue here is the same in both Heiner and BAT : when exactly (having regard to likely or impending legal proceedings) does document "retention" become obstruction of justice?

As this case works its way through the appeals process, some fascinating recordkeeping issues are going to arise.

2002, April 24: Heiner Affair, etc.

Such bitterness surrounds Heiner that it is now almost impossible to state the “facts” (as some have asked for) without generating further controversy. This controversy has itself become an obstacle to an appropriate professional response. Such a response must clearly begin with an intelligent analysis of the problem. And we don't have to wait for a Royal Commission to be set up to do that! If that analysis does not happen, there can be no hope of our deciding what (if anything) can or should be done in similar circumstances.

Here, for what it is worth, is the summary I provided for Canadian colleagues in Winnipeg last year. They too could not have been expected to know much about it. I did my best to state the “facts” in a way which could not be disputed, but I don’t suppose this will satisfy everyone.

1. Staff at a youth corrections facility made allegations against their boss (Peter Coyne).
2. Retired magistrate, Noel Heiner, began to investigate.
3. Coyne said he’d been defamed and denied natural justice.
4. He wanted to know what he’d been accused of.
5. His lawyers sought access to Heiner’s records to institute proceedings.
6. The Queensland Cabinet decided to destroy the records rather than release them.
7. It was later revealed that they knew Coyne wanted them ...
8. ... and that they intended to obstruct him by destroying them.
9. In any other circumstances, this would be a criminal conspiracy to obstruct justice.
10. In this case, however, they had legal advice that they could lawfully do so.
11. But .....
12. The same legal advice said that the State Archivist had to give her consent.
13. The Archivist’s consent was sought and obtained within 24 hours.

I would now add to this summary:

We have also become aware that what was going on at the centre included inmate abuse of the kind subsequently exposed (years later) by the Forde Inquiry into sexual (and other) abuse in Queensland institutions and at least one witness claims that these matters were the subject of Heiner's inquiries.

An unanswered question lying on the table is this : would abuses in Queensland institutions have been exposed sooner if the Heiner records had been revealed instead of stiffled? If the answer is "yes", then seven years of unnecessary abuse continued in Queensland institutions until Forde put a stop to them.

Kevin Lindeberg was Coyne's union representative who was sacked when he refused to participate in the cover up. Two unions were involved : one representing Coyne and one representing other staff. By that stage all other parties (politcians, bureaucrats, and both unions) were pursuing a policy of not rocking the boat. Kevin continued to rock the boat.

For some time, a policy of not rocking the boat was also pursued by our profession.

Amongst the many issues raised for recordkeepers are :

1. When does "pending" legal action prevent the destruction of relevant records?
2. Does a Government Archivist appraise records for "historical value" only (as argued by Queensland) or take into account other "short term" reasons for retention? Should the "short term" interests of those outside Government (e.g. public) be considered?
3. How can Government Archivists appraise records to protect third party interests in "short term" retention if they are not in possession of the facts of a particular case and not competent to decide issues outside their province (e.g. legal issues such as "pendency")?
4. What flaws does Heiner show up in our traditional approach to appraisal and how may these be remedied?
5. Should appraisal be evaluation-based, rule-based, some combination, or on some other basis altogether?

Some people on this and the RMAA list seem to believe these larger questions are for Governments only. The recent BAT judgement shows that issue 1 applies across both public and private sectors. I happen to believe that the issues apply almost irrespective of this divide.

Almost all appraisal boils down to "dispose if ..." or "dispose unless ...". Technically, the appraisal process (if done at all) involves documenting the list of conditions which qualify those statements and applying those conditions in particular circumstances. The statutory requirement for government departments to obtain the consent of an archives authority is simply one of those conditions and analgous to the arrangements any private enterprise would have to make which has corporate-wide disposal issues over and above the business needs of individual business units within the corporation.

Those issues, for any corporation, can be internal or external to the corporation - and can even be statutory. Appraisal methodologies (provided they are founded on an analysis of the functionality involved and not simply the peculiarities of traditional intra-governmental disposal practices) will be largely the same in both public and private enterprise. Examples of statutory requirements affecting a disposal policy would be : Companies Act, Crimes Act, Privacy Act, Tax Acts (for private corporations which are also public companies); Records Act, Crimes Act, Privacy Act, Finance Acts (for government agencies). A corporate wide disposal policy (incorporating these and other issues) is no different from a government-wide disposal policy (incorporating these and other issues).

Of course, we don't have government-wide disposal policies either and this too is a failing which (I believe) is well illustrated by Heiner (for those who are prepared to admit there was a problem). Too often we think that "appraisal" is the mumbo jumbo rituals we government archivists are accustomed to engage in on a case by case basis when records are offered up for evaluation (and schedules, to anticipate one response to this, even the so-called functional schedules, are just another kind of mumbo jumbo). What Heiner demonstrates (for those who are prepared to admit there was a problem) is how inadequate

traditional approaches to appraisal were (and still, for the most part, are) in meeting the needs which that case demonstrates. The importance of the case for us (at least, for those of us who are prepared to admit there was a problem) is the opportunity it gives to identify systemic improvements to make so our professonal practices and procedures are better able to prevent that kind of thing happening again.

The importance of Kevin Lindeberg's postings to this list is that they are evidence that he, an outsider, has (in my opinion and to our shame) given more serious thought to appraisal issues arising out of that case than we have.

##########

I have been rebuked and humbly make the following corrections to my earlier posting.

1. It wasn't the Aherne Government, it was Ahern.
2. But it wasn't them either because Ahern was himself ousted in September (1989) during the turmoil leading up to the December election.

The exact sequence of events was :

a) Fitzgerald drops bombshells on the National Government of Jo Bjelke-Petersen
b) Jo was ousted by Ahern, who became new National Premier
c) Ahern was then ousted by Cooper (Sep 1989) who became National Premier in his turn
d) Labor candidate Warner makes allegations public (1 Oct 1989)
e) Heiner Inquiry was established by Cooper National Government (23 Oct 1989)
f) Election (2 Dec 1989) of Goss Labor Government (incl Warner)
g) Coyne asks for copies of complaints (14 & 18 Dec 1989)
h) Crown Solicitor confirms legality of Heiner's appointment (18 Jan 1990)
i) Coyne's lawyers serve notice on Government seeking access to records (8 Feb 1990)
j) Cabinet terminates Heiner Inquiry (12 Feb 1990)
k) Staff at the John Oxley Centre are told the Crown will accept "full responsibility" for all legal claims (13 Feb 1990)
l) Cabinet decides to seek urgent approval from Archivist for destruction (19 Feb 1990)
m) Archivist is asked for and gives approval same day (23 Feb 1990)
n) Minister Warner seeks and obtains Cabinet agreement to destroy (27 Feb 1990)

<<Elizabeth Wheeler: As archivists we are concerned with context. Chris has presented the facts, but the following is further contextual information which fits somewhere around nos1-13 of Chris' list >>- I knew it would not be possible to avoid dispute over the "facts".

Elizabeth Wheeler states : "After much publicity, the government of the day set up a judicial enquiry and appointed Noel Heiner to head the proceedings. It was set up in the last weeks of a chaotic, dying government which had been in for many years, 196?-1989." and "In Dec 1989 a new government was voted in. It stopped the enquiry, apparently because the judicial enquiry headed by Noel Heiner had not been properly constituted, meaning that witnesses would (possibly) not be protected in terms of libel or defamation action."

There wasn't much publicity, but there was some. The outgoing Ahern Government, discredited by the Fitzgerald Royal Commission, was spooked into setting up the Heiner Inquiry by allegations of abuse in the centre Coyne managed (John Oxley Youth Centre). The allegations came from Coyne's staff, but they were made public by a Labor Opposition candidate using them as a stick to beat the dying Ahern Government (The Sunday Sun, 1 October, 1989) - one Ann Warner. The newspaper reports her as saying she had firsthand knowledge that children were being handcuffed to fences and sedated. In December, she was elected and became, just two months after making her allegations, Minister responsible for the John Oxley Youth Centre and a Member-Of-The-Cabinet-Trying-To-Shut-Down-The-Inquiry-She-Herself-Had-Called-For.

The fact that Heiner was set up in response to allegations about abuse at John Oxley made by the Goss Labor Opposition is important in understanding why their later claims that the Goss Cabinet didn't know Heiner was dealing with inmate abuse is important. They couldn't not have known. They made the

allegations themselves. Years later, as the story started to unravel, they said that they would never have destroyed the records if they'd known what Heiner was about. In a television interview, one of them let slip that they had known that Heiner was about inmate abuse, but he was quickly silenced and issued a hurried recantation.

The fact that the Inquiry didn't give immunity to witnesses was given out as the pretext for shutting it down. But this has always been implausible. A perfectly robust Crown privilege defence would certainly have protected the witnesses and (in any case) the Goss government assured centre staff that the Government would pay.

The alternative hypothesis is that inmate abuse had been going on for years in Queensland (as subsequently established by Forde) and that there was a system of corrupt cover-up going on involving politicians, bureaucrats, and unions. In the heat of the election campaign, the cat got out of the bag. Then, with Goss & Co safely in power, all the vested interests reverted to type and did what they had to do to put kitty back in the sack. Goss owed the unions and the unions had as much to fear from exposure as the bureaucrats because if abuse was going on (as we now know it was) it was their members who had been doing it.

We can't prove this hypothesis, but it is at least as plausible an explanation of what went on as the "context" Elizabeth Wheeler tries place upon the "facts". Elizabeth Wheeler's "context" is in fact the script for the first line of defence used by the Goss Government years ago to defend its actions when they first came into question. It became a threadbare defence as more facts leaked out in subsequent years and we learnt more about who knew what and when. A fundamental plank in that defence, now being repeated here by Wheeler, is that the Goss Cabinet never knew what Heiner was investigating. Their hands were clean. That proposition was blown out of the water when it was revealed that Warner herself was responsible for the original allegations of inmate abuse that prompted the setting up of Heiner in the first place. Wheeler has no excuse for not knowing the 'who knew what and when' of subsequent events - it's all on the public record. Much of it is already on the archive of this list.

<<Steve Stuckey: Rick, thanks so much for your helpful message … I am especially encouraged by your exhortation of members to continue to put their feet in the water (indeed, jump right in) and not be deterred by intemperate and demeaning language used so unprofessionally whenever someone posts to this list without having totally immersed themselves (pun intended!) in the very complicated legal issue that Heiner is. There has been, unfortunately, yet another example of such language posted this very day. It is sad to see, but we must not let it detract us from continuing this very important debate and examination of what we want to be as a profession.>>

<<John Lovejoy: … One point I haven't seen discussed is the possibility that there was an issue of the separation of powers. I do realise that we are talking about Queensland, where this doctrine is not often understood, not the least by one very (in)famous ex-Premier. If the Heiner inquiry had some sort of judicial status (and I dont know if it did or not), then it might be legally inappropriate for the administration to impose any requirements on anything produced. Of course, there is still the issue of (alleged) interference by the Executive arm of government to be resolved in this line of thinking.>> I think it is common ground that Heiner was not conducting a judicial inquiry in the accepted sense. It was, however, lawfully constituted and properly undertaken (see earlier post). Nor, so far as I know, has anyone ever suggested that separation of powers was at stake.

Indeed, the legal advice upon which the Goss Cabinet ultimately relied insisted that they were under an obligation to obtain the Archivist's consent before proceeding to destroy the records because they were "public records" within the meaning of the Act then in force. The new Queensland Act, by the way, means that a government could ultimately destroy records without the Archivist's concurrence, by overturning the Archivist's objections on appeal at the request of an agency.

If anything, the issue in Heiner was one of statutory independence. It was accepted that the Government was legally unable (under the old Act) to destroy public records without the consent of the Archivist. Some professional questions are:

1. in what circumstances was that consent sought and obtained?
2. was it reasonable for the Archivist to have exercised her discretion this way in that case?
3. what flaws in ordinary government disposal procedures does this case reveal?
4. what can be done to change ordinary government disposal procedures to prevent it happening again?

You can't (in my opinion) deal very well with any of this if you try to dissociate consideration of the issues from consideration of the case. Intelligent discussion of the issues means coming up with solutions to problems. You must first agree what the problem is. You can't talk about an answer, if you haven't agreed what the question is.

I just can't see that a theoretical; discussion around 3 & 4 (what can be done to improve government disposal practices) while it might be useful is anything like a consideration of the question (what can be done, in the light of Heiner, to improve government disposal practices).

In order to discuss it theoretically, you would have to pose hypothetical problems and then solve them. In order to discuss it in the light of Heiner, you first have to agree what the problems are which Heiner illustrates (that means, unavoidably, having a view on "who shot Fred?"). That is what we have always been unable to do.

The difference between a case-based examination and a theoretical discussion is (assuming we first agreed what the problem was in Heiner) we could take suggested changes to government disposal practice back to the Heiner Case and reasonably ask : would these changes, if in operation, have prevented the evils we identified in that case?

2003, May 28: Heiner in Parliament

Australia's Governor-General (Peter Hollingworth) has just resigned (inter alia) over allegations that he failed to deal properly with allegations of sexual abuse in the Church when he was Archbishop of Brisbane. These allegations were contained in a Church Report tabled in Parliament by the Beattie Government, so that, under the cloak of parliamentary privilege, they could be publicly aired. It was only a matter of time before the inconsistency between this action and the treatment of the Heiner records (allegedly destroyed because they did not have the protection of privilege) was raised. On May 13 it was:

> Mr Springborg (Southern Downs – NPA) (Leader of the Opposition) (11:30 a.m.) : On 1 May 2003, the Premier came into parliament and tabled a report of an inquiry that had been conducted on behalf of the Anglican Church into allegations of child sexual abuse in its schools … We had a report that was prepared by the Anglican Church … there was potentially defamatory material obtained. Without some form of legal privilege, it would have been impossible for that report to have seen the light of day … I supported the Premier's action, but I want to speak … about the precedent … I refer to the foundation of [the] Heiner Inquiry in the late 1980s. Some very serious allegations were made in relation to the abuse of children who were in the care of the State … evidence was collected that contained very sensitive issues of alleged abuse and sexual abuse against those children who were in a state institution … serious allegations of abuse and sexual abuse of children in the John Oxley Centre were made and they have never been resolved properly in any way whatsoever. That evidence was pulped … That happened because some of the allegations related to trade unionists with links to the Labor Party … on the one hand we had the Premier tabling the Anglican Church report, which I supported, and on the other hand a report relating to the alleged sexual abuse of children in a state institution was shredded. That is an inconsistency …

In his reply, Premier Beattie has now used the Queensland State Archivist's consent for the destruction of Heiner's records not merely as an act of necessary permission, but as a justification for the Government's action. From our point of view this represents a significant shift in the unravelling of the Affair. The Government has now acknowledged (I believe for the first time) that, in relation to issues of governance - the treatment of records exposing inmate abuse in state institutions - and not just to issues of "historical significance", the Archivist had a role to play in determining whether or not the records could be "lawfully" destroyed. The actions of the Archivist are now being used by the Beattie Government to justify the Goss Government's actions in 1990.

https://www.asap.unimelb.edu.au/asa/aus-archivists/maillist.html#04047

> 14 May, 2003: Hon. P. D. Beattie (Brisbane Central – ALP) (Premier and Minister for Trade) (9:30 a.m.) : … the destruction was under the terms of section 55 of the Libraries and Archives Act of 1988. It was done under an Act of Parliament. It was not done without some authority, it was done on Crown Law advice under an act of parliament …
>
> ***corruptissima re publica plurimae leges***[1]
>
> ***I never wonder to see men wicked, but I often wonder to see them not ashamed.*** **(Swift)**

Finis

EPILOGUE: What happened next

> *The long day wanes: the slow moon climbs: the deep Moans round with many voices.*
> *Come, my friends, 'T is not too late to seek a newer world.*
> *Push off, and sitting well in order smite The sounding furrows;*
> *for my purpose holds To sail beyond the sunset, and the baths*
> *Of all the western stars, until I die.*
>
> Ulysses

At this point this narrative breaks off (thankfully, anyone who has stayed the course thus far may think). It is fitting that this thread should end, as it began, in disputation and acerbity. With the Second Statement and its subsequent condemnation of the QCJC [in the Final Statement], ASA had finally reached a responsible and not too shabby position. You might suppose that was the end of the story. Alas, no! The Affair continued to raise headlines and ASA Council was unable to hold the line – eventually reaching the absurd conclusion that it would say nothing further unless a Royal Commission was established.

Some of what followed dates from the "challenging years" and the "lost years" of the aus-archivist listserv archives and is now consigned to oblivion. In any case, those events are better covered in my later published writings (including my paper to the 2004 ASA Conference which they tried disgracefully to suppress). In response to those who sought to trash my reputation by saying I had become a "crank" on the subject of Heiner, I can say that most of these later interventions were by invitation and not on my own initiative. Also, giving the lie to those claiming I'd been flogging a dead horse and had nothing further to say, after 2001 I turned my attention to another aspect of the Affair. The professional controversy had begun in disputation over claims made by outsiders concerning the Archivist's role in the Heiner appraisal. At the outset, no one from within (including me) appeared to be in any doubt about what that role was. The question at issue was how our shared professional view of it applied in the instant case.

But as time passed and confusion grew it became clear that there was no professional agreement on the archivist's role after all. How can this be, I began to ask myself? How can we have launched into such ferocious debate over whether or not the Archivist had done the right thing if we didn't agree about what her proper role and function was? What professional canons did Lee McGregor have, I asked, to guide her in this situation? How could I or anyone else react so violently to Barnes' testimony as a misrepresentation of her proper role and function when we hadn't, as a profession, clearly articulated what that role and function was? I looked in vain for codes of professional behaviour fitting this situation that were not generalized, self-serving, and ambiguous and I came to the uncomfortable conclusion that effectively she didn't have any (and it seemed that her fellow government archivists didn't want there to be any). That became a dominant theme in my writings on archival accountability in which Heiner was merely the starting point and a point of reference:

- The Evolving Role of Government Archives in Democratic Societies (2001)
- Recordkeeping, document destruction, and the law (Heiner, Enron, and McCabe) (2002)
- Records & the Public Interest: the "Heiner Affair" in Queensland, Australia (2002)

[1] The more numerous the laws, the more corrupt the government. Tacitus *Annals* III, 27

https://www.asap.unimelb.edu.au/asa/aus-archivists/maillist.html#04047

- The Role of the Archives in Protecting the Record from Political Pressure (2003)
  » Political Pressure and the Archival Record Revisited (2003)
- Ethical Dilemmas in Records Management (2004)
- Archivists and Accountability (2004)
  » Archivists and Accountability – Postcript (2006)
- Recordkeeping and Accountability (2005)

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EXHIBIT ONE: The ASA's Response to my Appreciation **16/17 February 1996**

A S A

Australian Society of Archivists

24 March 1996

Chris Hurley
PO Box 1073
South Melbourne
VIC 3205

Dear Chris

REOPENING OF THE HEINER ENQUIRY IMBROGLIO

I am a sorry it has taken me so long to get back to you about this matter, and the other two matters (the ACA Privacy Principles and the ACPM Committee) about which I shall also write to you today. I shall take refuge in the traditional but alas valid excuse of pressure of work in my day job.

The ASA Council considered your paper on the Heiner matter at our meeting in Adelaide on 16 and 17 February. As you know from our discussion prior to the meeting, it was my intention to have the matter referred to a committee of Council plus yourself, to finalise a document that could be used as a public statement or submission to some review body, by the ASA on the matter (and on the principles involved).

However the Council decided against taking such a step. There was a clear majority view that: the paper as it stood was too narrowly based and that, in effect, you were too close to the issue and might not have looked at all the evidence. Council also agreed that I should write and encourage you to write an article for *Archives & Manuscripts* about the Heiner Case. Lastly, Council noted the apparent willingness of the incoming government in Queensland to reopen the matter, but without actually agreeing to respond if this opportunity comes up.

If you have any questions for me about this, please telephone.

With best wishes

Yours sincerely

Mark Stevens

Mark Stevens
PRESIDENT

https://www.asap.unimelb.edu.au/asa/aus-archivists/maillist.html#04047

EXHIBIT TWO: The ICA's Refusal to Consider the Matter 21 May 1997

TO : Mr Kevin LINDEBERG
FROM : Mr Charles KECSKEMETI
DATE : Paris, 21 May 1997
Our ref. : CK.NF - 97/482
RE :SHREDDING OF THE HEINER INQUIRY DOCUMENTS

Dear Mr Lindeberg,

ICA feels honoured to be considered by you as the competent forum for protecting the ethical standards of the archival profession worldwide.

The archival ethical angle highlighted in the Declaration raises fundamental issues such as the relations between archivists and the authorities they are attached to or the rules governing the disposition of public records, which are certainly worth being considered by the international professional community.

It is nevertheless clear that the case of the shredding of the Heiner Inquiry Documents comes under Australian public or perhaps civil law and therefore the discussion of the archival professional and ethical issues connected with the case could make no contribution to respond to the complaint of Mr Coyne.

ICA as an international non governmental organisation is not a supranational authority placed above the governments and courts of individual countries, nor a jury of honour entitled to blame individual archivists.

We have to act according to our terms of reference and in the respect of the rules of international cooperation.

By this same mail, I am consulting

Mr George NICHOLS, Director General, Australian Archives, P.O. Box 34, DICKSON ACT 2602, Australia Fax : 61 6 257 7564 - Tel : 61 6 209 3670 - e.mail : GNICHOLS@AA.GOV.AU, member of the Executive Committee of the ICA
Ms Anne-Marie SCHWIRTLICH, National Director, Access and Information Services, Australian Archives, P.O. Box 34, DICKSON ACT 2617, Australia Fax : 61 6 209 3447 - Tel : 61 6 209 3900 - e.mail : AMS@AA.GOV.AU , member of the ICA Committee on Legal Matters
and the President of the Australian Society of Archivists (Ms Kathryn DAN, President, Australian Society of Archivists, CANBERRA ACT 2600, Australia, Fax : 61 6 2735081 - Tel : 61 6 2621607 - e.mail : KDAN@NLA.GOV.AU)

on the follow up to be given by ICA to the submission of the Lindeberg Declaration.

Pending the advice of our Australian colleagues, no formal ICA action will be undertaken. I am requesting Mr John McDonald to abstain from placing the Lindeberg Declaration on the agenda of the meeting of the Committee on electronic and other current records to be held in The Hague next June.

I shall keep you informed on further developments.

With high regards.
Yours Sincerely,
Charles KECSKEMETI
Secretary General

CC. : Mr WANG Gang, President of the ICA
Mr John McDONALD, Chairman of the ICA Committee on Electronic and other Current Records
Mr George NICHOLS, Director General, Australian Archives
Ms Anne-Marie SCHWIRTLICH, Member of the ICA Committee on Archival Legal Matters
Ms Kathryn DAN, President of the Australian Society of Archivists

https://www.asap.unimelb.edu.au/asa/aus-archivists/maillist.html#04047

EXHIBIT THREE: The ASA's Statement (the First Statement) 18 June 1997

THE 'HEINER AFFAIR'
- A PUBLIC STATEMENT BY THE AUSTRALIAN SOCIETY OF ARCHIVISTS

BACKGROUND

The public unfolding of the complex sequence of events known as the 'Heiner Affair' has been reported and reviewed in the press (especially the Weekend Independent) and in Queensland Government (Morris & Howard 1996) and Senate (Select Committee on Unresolved Whistleblower Cases 1995) reports. It will not be repeated here. The ASA presents this public statement within the full context of the events of the Heiner Affair as they have unfolded since 1989.

THE INTEGRITY OF THE PUBLIC RECORD

The operation of a free and democratic society depends upon the maintenance of the integrity of the public record. Public records are a key source of information about government actions and decisions. They provide essential evidence of the exercise of public trust by public officials. This in turn helps ensure public accountability and protection of the rights of citizens.

In recent years there have been a number of instances of serious disregard for the integrity of public records in Australia. Some examples include those highlighted by 'W.A. Inc.' Royal Commission, the 1994 destruction of Special Branch records in New South Wales and the so-called 'Heiner Affair' in Queensland. This trend is a matter of profound concern to the Australian Society of Archivists (ASA) and should also be of the gravest concern to society as a whole.

Archivists, as impartial and independent professionals, play a vital role in defending the integrity of public records. Cases such as the Heiner Affair highlight the fact that government archivists need statutory independence such as that afforded the Auditor-General.

The greatest threat to the integrity of the public record is the unwarranted destruction of important documents. The ASA strongly asserts that records should only be destroyed when an archivist reaches a professional decision that the financial costs of preserving and maintaining access to the records are not justified by their estimated ongoing utility, value and significance. In other words, records should only be destroyed when they are no longer required for the purposes of individual, corporate or societal accountability and reference. The process of disposal and destruction of public records should be orderly. It should be guided by established administrative procedures which in turn are based upon internationally recognised archival principles.

THE 'HEINER AFFAIR'

The 'Heiner Affair' has revealed serious shortcomings in the management of public records in Queensland at that time. A number of significant details relating to the case have only come to public attention in recent months, most particularly with the release of a report to the Queensland Government of an investigation into the affair by barristers Anthony Morris QC and Edward Howard. It is the view of the ASA that these revelations have strengthened the case for new archival legislation within that State.

The Morris/Howard report reveals details of the case which are deeply disturbing to the archival profession in Australia. The report reproduces a letter from the Queensland Cabinet Secretary to the Queensland State Archivist dated 23 February 1990, which requested the Archivist's approval for the destruction of the records in question.

The ASA notes the conclusions of the Morris/Howard report which state that the disposal authorisation issued by the State Archivist in response to this letter was made in apparent ignorance of the fact that the records were likely to be required for future legal proceedings. This deliberate withholding of vital information necessary for a fully informed disposal decision is inexcusable. The ASA strenuously asserts that archivists should not be treated as 'rubber stamps' by governments wishing to rid

themselves of potentially embarrassing records. Records creators and managers must make available to the archivist all pertinent information relating to the ongoing legal/administrative significance of records subject to disposal determinations.

The ASA also wishes to place on record its absolute rejection of the argument which the Queensland Criminal Justice Commission placed before the Senate Select Committee on Unresolved Whistleblower Cases in 1995, to wit that archivists should only consider the historical significance of records when reaching a disposal decision. There are a wide variety of factors which might inform a decision to retain or destroy a particular set of records. These factors include, but are not limited to, the value of the records as evidence of financial affairs and obligations and the value of the records as evidence relating to citizen's rights. Any indication that records are likely to be required in future legal proceedings should, by itself, be sufficient justification to warrant the retention of the records in question.

The Australian Society of Archivists calls upon the Queensland Government to enact legislation which guarantees the future independence of the State Archivist, including protection from political interference, in order to ensure the integrity of the public record in that State.

The ASA has adopted a general position paper on the destruction of records. The position paper, which is available upon request, underpins all of the comments in this statement. For further information please contact Kathryn Dan, President, ASA (ph: (06) 2621607; fax: (06) 2735081).

EXHIBIT FOUR: The ASA's Statement (the Second Statement) 18 March 1999

AUSTRALIAN SOCIETY OF ARCHIVISTS INC
THE 'HEINER AFFAIR' - A POSITION STATEMENT
18 MARCH 1999

BACKGROUND

The public unfolding of the complex sequence of events known as the 'Heiner Affair' has been reported and reviewed in the press (especially the *Weekend Independent*) and in Queensland Government (Morris & Howard 1996) and Senate (Select Committee on Unresolved Whistleblower Cases 1995) reports. In addition, the Acting Chief Archivist of New Zealand, Chris Hurley, has prepared a detailed analysis of the Heiner Affair from an archival perspective. This report, entitled "The Shredding of the Heiner Documents: an appreciation" can be found on the Internet at http://www.caldeson.com/RIMOS/heiner.html. In June 1997 the Australian Society of Archivists (ASA) issued a public statement on some aspects of the Heiner Affair. The 1997 statement is attached as an appendix to this position paper. More recently the case received national media coverage when Channel 9's Sunday Program aired a feature on the affair.

Since 1997 there have been a number of further developments in the Heiner Affair. Most particularly, during 1998 it was revealed that the evidence which was collected by the aborted Heiner inquiry and which was subsequently destroyed included allegations of inmate abuse at the John Oxley Youth Centre during the late 1980s. These and other allegations led to the establishment of the Forde inquiry into allegations of child abuse in Queensland Government institutions. In light of these developments the ASA has decided to issue a position statement that updates and expands upon its 1997 public statement.

The Australian Society of Archivists has been closely monitoring developments in the Heiner affair for many years. It has a particular interest in promoting the cause of good recordkeeping and professional archival best practice. As a notable example of failed recordkeeping, the Heiner affair compels the ASA to take a strong public position on the recordkeeping issues that the case has highlighted.

Aspects of the Heiner Affair which are of most concern to archivists have to do with making and keeping a full and accurate record of the conduct of government business and the basis on which

government archivists give their consent to destruction of official records. In 1990, Queensland's Cabinet requested the consent of the State Archivist for the destruction of records compiled by Noel Heiner during his 1989 investigation of the John Oxley Youth Centre. Unbeknown to the archivist, access to the records was being sought in relation to legal claims arising out of the investigation. The question arose whether the State Archivist should have prevented the destruction to protect an intending litigant's right to pursue his claim in court. In the course of the 1995 Senate Inquiry, the Queensland Criminal Justice Commission, under attack for its handling of the case, claimed that these matters were not the State Archivist's concern. Our 1997 Statement was issued in large part to refute that claim.

THE DECISION BY THE QUEENSLAND STATE ARCHIVES TO APPROVE THE DESTRUCTION OF THE HEINER DOCUMENTS

The ASA's 1997 Statement on the Heiner Affair criticised the Queensland Government for:

- political interference in the processes of appraisal and disposal of public records, processes that should be the responsibility of an independent archival authority;
- withholding from the Archivist the knowledge that the documents in question were required for foreshadowed legal proceedings; and
- asserting that the Archivist should only consider the historical value of records when making a decision about the retention or disposal of public records.

The ASA stands by these criticisms, but now wishes to add to its earlier comments on the specific merits of the disposal decision and the lessons that can be learned from the experience.

This case highlights the difficulties associated with determining whether to retain or dispose of public records. It is neither possible nor desirable to retain every single document created in the course of public administration. One of the most important responsibilities, therefore, of government archivists is to determine which public records should be retained, which should be destroyed and when.

Although government archivists endeavour to acquit this responsibility with the utmost care and professionalism, the sheer volume of material that archivists are called upon to consider means that detailed examination of records during appraisal is simply not feasible. In view of this, it is accepted professional practice for archivists to assess the significance of the function which the records document, rather than pass judgement on the individual documents themselves. While hindsight will always reveal examples of incorrect appraisal decisions, archivists should endeavour to minimise the risks involved by instituting and observing appraisal policies and procedures that are consistent with international professional best practice.

In relation to the Heiner case, it is the view of the ASA that, while the Archivist acted in good faith, nevertheless the appraisal of the documents did not conform to these standards of best practice and, hence, was not conducive to a more satisfactory outcome. Firstly, the ad hoc nature of the disposal ruling highlights the fact that it was made in the absence of a relevant pre-existing records disposal authority. Such ad hoc appraisal decisions were and still are not uncommon in State government archives. It is, however, the view of the ASA that nowadays, in accord with the 1996 Australian Records Management Standard (AS 4390, Part 5 - Appraisal and Disposal), as far as possible all appraisal rulings should be made with reference to records disposal authorities. Secondly, and more importantly, the speed with which the Heiner appraisal was conducted suggests that there was a departure from the usual orderly processes of appraisal that should occur in government archives.

In view of subsequent revelations which have led to the establishment of the Forde Inquiry, the continued relevance of the Heiner documents can now be seen in relation to allegations of a systemic failure in the management of the State's institutions and the treatment of those who were placed in their charge. There have been many examples in Australia of systemic failure within government

(Queensland's own Fitzgerald Inquiry being notable amongst other revelations). Almost always, as Fitzgerald himself found, a recordkeeping failure of some kind is involved. At best, records are badly kept and fail to provide the basis for internal review and reform or external scrutiny and audit of imperfect systems. At worst, records were tampered with or destroyed to obscure evidence of mismanagement or misdeeds. Where allegations of mismanagement and abuse cannot be sustained, good recordkeeping is the most reliable assurance the public can have that government systems are working properly.

In relation to the Heiner case, the State Archivist has stated unequivocally that her assessment of the records did not reveal to her the existence of any inmate abuse allegations. In view of that, we are not prepared to say that the appraisal was flawed on the grounds that she knowingly gave her approval for the destruction of material which ought not to have been destroyed. Based on what we now know we are, however, prepared to state that the records containing allegations concerning treatment of inmates which were part of the Heiner documents should not have been destroyed. It is clear from the Morris/Howard Report that the Archivist was alerted to the arguably defamatory nature of some of the Heiner documents, so the need for careful scrutiny from this point of view was greater than normal.

It is the view of the ASA that it is not unreasonable to conclude that political pressure was, at the very least, a contributing factor to the faulty appraisal processes that were observed in the case of the Heiner documents. The Queensland Cabinet requested the State Archivist to give her approval for the destruction of the records within 24 hours. Such a request from Cabinet is highly likely to have caused a departure from the more orderly and considered appraisal procedures which the community has a right to expect from government archives.

THE LESSONS LEARNT

The Heiner affair highlights two fundamental truths about which the ASA is emphatic:

1. That government archivists are key agents of public accountability and that, as such, they must have an adequate charter including statutory independence from political or any other improper interference in the discharge of their duties and responsibilities. Successive Queensland Governments have failed to enact the new archives legislation proposed by the Electoral and Administrative Reform Commission (EARC) following upon Fitzgerald's findings. The ASA reiterates its earlier demand that the Queensland Government enact legislation which guarantees the role and future independence of the State Archivist in order to help ensure the integrity of the public record in that State.

2. That government archivists must at all times endeavour to observe professional appraisal and disposal practices and procedures governed by an orderly regime of records disposal authorities and that, in particular, archivists should strongly resist any pressure to make hasty and/or ad hoc appraisal decisions.

For further information please contact Adrian Cunningham on 02/6212-3988.

APPENDIX
THE 'HEINER AFFAIR' - A PUBLIC STATEMENT BY THE AUSTRALIAN SOCIETY OF ARCHIVISTS [June 1997]

BACKGROUND

The public unfolding of the complex sequence of events known as the 'Heiner Affair' has been reported and reviewed in the press (especially the Weekend Independent) and in Queensland Government (Morris & Howard1996) and Senate (Select Committee on Unresolved Whistleblower Cases1995) reports. It will not be repeated here. The ASA presents this public statement within the full context of the events of the Heiner Affair as they have unfolded since 1989.

THE INTEGRITY OF THE PUBLIC RECORD

The operation of a free and democratic society depends upon the maintenance of the integrity of the public record. Public records are a key source of information about government actions and decisions. They provide essential evidence of the exercise of public trust by public officials. This in turn helps ensure public accountability and protection of the rights of citizens.

In recent years there have been a number of instances of serious disregard for the integrity of public records in Australia. Some examples include those highlighted by 'W.A. Inc.' Royal Commission, the1994 destruction of Special Branch records in New South Wales and the so-called 'Heiner Affair' in Queensland. This trend is a matter of profound concern to the Australian Society of Archivists (ASA) and should also be of the gravest concern to society as a whole.

Archivists, as impartial and independent professionals, play a vital role in defending the integrity of public records. Cases such as the Heiner Affair highlight the fact that government archivists need statutory independence such as that afforded the Auditor-General.

The greatest threat to the integrity of the public record is the unwarranted destruction of important documents. The ASA strongly asserts that records should only be destroyed when an archivist reaches a professional decision that the financial costs of preserving and maintaining access to the records are not justified by their estimated ongoing utility, value and significance. In other words, records should only be destroyed when they are no longer required for the purposes of individual, corporate or societal accountability and reference. The process of disposal and destruction of public records should be orderly. It should be guided by established administrative procedures which in turn are based upon internationally recognised archival principles.

THE 'HEINER AFFAIR'

'The 'Heiner Affair' has revealed serious shortcomings in the management of public records in Queensland at that time. A number of significant details relating to the case have only come to public attention in recent months, most particularly with the release of a report to the Queensland Government of an investigation into the affair by barristers Anthony Morris QC and Edward Howard. It is the view of the ASA that these revelations have strengthened the case for new archival legislation within that State.

The Morris/Howard report reveals details of the case which are deeply disturbing to the archival profession in Australia. The report reproduces a letter from the Queensland Cabinet Secretary to the Queensland State Archivist dated 23 February 1990, which requested the Archivist's approval for the destruction of the records in question. The ASA notes the conclusions of the Morris/Howard report which state that the disposal authorisation issued by the State Archivist in response to this letter was made in apparent ignorance of the fact that the records were likely to be required for future legal proceedings. This deliberate withholding of vital information necessary for a fully informed disposal decision is inexcusable. The ASA strenuously asserts that archivists should not be treated as 'rubber stamps' by governments wishing to rid themselves of potentially embarrassing records. Records creators and managers must make available to the archivist all pertinent information relating to the ongoing legal/administrative significance of records subject to disposal determinations.

The ASA also wishes to place on record its absolute rejection of the argument which the Queensland Criminal Justice Commission placed before the Senate Select Committee on Unresolved Whistleblower Cases in 1995,to wit that archivists should only consider the historical significance of records when reaching a disposal decision. There are a wide variety of factors which might inform a decision to retain or destroy a particular set of records. These factors include, but are not limited to, the value of the records as evidence of financial affairs and obligations and the value of the records as evidence relating to citizen's rights. Any indication that records are likely to be required in future legal proceedings should, by itself, be sufficient justification to warrant the retention of the records in question.

https://www.asap.unimelb.edu.au/asa/aus-archivists/maillist.html#04047

The Australian Society of Archivists calls upon the Queensland Government to enact legislation which guarantees the future independence of the State Archivist, including protection from political interference, in order to ensure the integrity of the public record in that State.

EXHIBIT FIVE: The Government Archivists' Dissent 18 March 1999

18 March 1999

Mr Adrian Cunningham
President
Australian Society of Archivists
C/- National Archives of Australia
P O Box 7425
Canberra Mail Centre
CANBERRA ACT 2610

Dear Adrian,

The Council of Federal, State and Territory Archives acknowledges the difficult position of the Australian Society of Archivists in the matter of the so called 'Heiner Affair'.

However, as the chief executives responsible for government archives in this country we must disagree with crucial parts of your statement, despite your most recent revisions.

While the Society's Statement acknowledges that "the sheer volume of material that archivists are called upon to consider means that detailed examination of records during appraisal is simply not feasible", and concedes the advantage of hindsight, it is still misguided in its two specific criticisms.

Appraisal decisions made without reference to a specific disposal schedule (termed ad hoc in the Statement) are a regular part of the operations of government archives in Australia. The availability of a relevant disposal authority for every appraisal decision is certainly an aspiration , particularly since the release of AS 4390 in 1996. But it is not the reality now. Certainly it was not the reality in 1990. And it is simply wrong to suggest that valid appraisal decisions cannot be made without specific disposal authorities.

The second criticism, of the speed at which the appraisal decision was made, reveals a lack of familiarity with the reality of the workings of governments. At times speed is required and it can be achieved without affecting the quality of the appraisal decision. The implication that promptness in itself, that "departure from the usual orderly process of appraisal", is an indication of failure and compromise of professional standards in the face of political pressure, is a curious criticism. Is it not possible for a good government archivist to be both professional and efficient?

We request that you make the views of the Council of Federal, State and Territory Archives on this matter known to your members.

Yours sincerely,

Ian Pearce
Convenor

EXHIBIT SIX: The ASA's Criticism of the Queensland CJC's Conduct 8 October 1999

8 October 1999

Commissioner Julie Dick SC
Office of the Parliamentary Criminal Justice Commissioner
Parliament House
George Street

BRISBANE QLD 4000
(fax: 07/3234-0268)

Dear Commissioner Dick

It has been brought to the attention of the Australian Society of Archivists (ASA) that you are currently reviewing evidence presented at the Connolly/Ryan Inquiry into the Queensland Criminal Justice Commission (CJC), with a view to determining whether any matter therein justifies referral for further investigation on the grounds of suspected misconduct by the CJC.

One of the matters canvassed by the Connolly/Ryan Inquiry was the so-called 'Heiner Affair', which involved the shredding of records gathered in evidence presented to the inquiry conducted by Noel Heiner into the operation of the John Oxley Youth Detention Centre.

The circumstances of the Heiner Affair are not only of tremendous interest to the archival profession, they are also of critical importance to the operation of a just and democratic society in Queensland. The operation of a free and democratic society depends upon the maintenance of the integrity of the public record. Public records are a key source of information about government actions and decisions. They provide essential evidence of the exercise of public trust by public officials. This in turn helps ensure public accountability and protection of the rights of citizens.

As key agents of democratic accountability, it is vital that institutions such as the Criminal Justice Commission and the Queensland State Archives (QSA) are seen to be acting impartially and independently of the government of the day. It is our view that some of the actions and inactions of the CJC in relation to the Heiner Affair have seriously impaired the public's faith in the independence and effectiveness of both the CJC and the QSA.

Specifically, there are two matters in relation to the CJC's actions and public statements in relation to the Heiner affair that, in our view, warrant referral for further investigation.

First, there is the CJC's inaction in pursuing the unauthorised records disposal actions of 22 and 23 May 1990 relating to portions of the Heiner records. These actions were highlighted in the Morris/Howard report of 1996. In respect of these actions, it has been established that certain public officials specifically rejected advice telling them that prior approval from the State Archivist was required before records disposal could proceed. The CJC has never considered this matter, and yet in its submission to EARC in November 1991, it said this on page 5:

"Should archives legislation explicitly provide that, in addition to, or as an alternative to, the commission of a criminal offence, a public servant who fails to comply with a requirement of archives legislation commits a disciplinary offence?

The CJC believes that it is essential to establish firmly in the minds of all public servants the importance of complying with the requirements of archive legislation, and therefore any steps that can be taken to strengthen the remedies for failure to do so should be taken.

Undoubtedly there will be occasions when it is more appropriate to deal with a failure to comply on the basis of it being a criminal offence, whilst at other times the incident would be more appropriately dealt with as a disciplinary matter. The two should be alternatives."

Second, there is the matter of the CJC's publicly stated views on the role of the State Archivist in relation to determining the retention or otherwise of public records.

The evidence is that the CJC has adopted a contradictory position in this matter (that is, it has not acted in compliance with section 22 of the Criminal Justice Act 1989). On 26 November 1991, it put the following views to the Electoral and Administrative Review Commission's Issue Paper No 16 "Archives Legislation" [Submission 13] concerning the archivist's role in archives and public record management.

In response to the following question, the CJC said (page 4):

"When authorising disposal of public records should the Archives have regard to the present needs of accountability or concentrate only on future historical research needs? If so, what person or body should be responsible for ensuring that government agencies properly create, maintain, use and preserve public records, and how should this be done?

It is noted that EARC in the Issues Paper refer to the CJC as one of the bodies that is impeded in carrying out its functions by poor record keeping and the unauthorised or unlawful destruction of records. The experience of the Fitzgerald Commission and those of the CJC clearly establish this.

For reasons that relate to its functions, the CJC certainly supports the view that the Archives should have regard to the present needs of accountability, i.e. "the audit purpose." Maintenance of proper records and records systems assist in ensuring public bodies act responsibly and public officials act within the law.

It would seem to the CJC that the responsibility for record management is appropriately an archival function, and concentration of all matters connected with archives in one body enhances the abilities of that body to effectively achieve its overall purposes. Therefore, the CJC believes that the Queensland State Archives (or however the body is called) should have the responsibility for ensuring that government agencies create, maintain, use and preserve public records."

Unquestionably the "audit purpose" (which the CJC plainly always knew about)
must encompass taking into account "legal and administrative" values as applies in the Heiner matter. In direct contradiction to its earlier public position, on 23 February 1995, before the Senate Select Committee of Unresolved Whistleblower Cases, Mr Barnes (speaking with the full authority of the CJC) said this at page 108 Senate Hansard:

"The archivist's duty is to preserve documents which may be of historical public interest; her duty is not to preserve documents which other people may want to access for some personal or private reason. She has a duty to protect documents that will reflect the history of the State."

The ASA has publicly rejected this view of the role of the State Archivist. I refer you to the attachment to this letter for a copy of our public statements on this matter.

It is the view of the ASA that the combination of the CJC's inaction in relation to investigating the unauthorised Heiner records disposal actions and its deliberately misleading and contradictory statements to the Senate on the role of the State Archivist together represent a *prima facie* case of serious misconduct that warrants referral for further investigation.

The Heiner case has been a running sore in the Queensland body politic for too long now. The fact that the citizens of Queensland have waited almost ten years and have not yet secured an adequate resolution of the circumstances surrounding the Heiner affair reflect poorly on the manner in which the CJC has acquitted its role as public watchdog. The public is entitled to know whether the standards applied in the Heiner Affair are still operating in the Department of Families, Youth and Community Care and other government agencies, including the CJC itself.

The ASA calls upon the Queensland Parliamentary Criminal Justice Committee to appoint a special prosecutor with sufficient powers to investigate the actions and inactions of the CJC and others in relation to the Heiner affair and to launch prosecutions (where necessary) against any officials who may be implicated as a result of these investigations.

Yours sincerely

Adrian Cunningham
President

https://www.asap.unimelb.edu.au/asa/aus-archivists/maillist.html#04047

DOCUMENT A: Morris/Howard Report tabled in Queensland Parliament 10 October 1996

Statement to the Queensland Parliament regarding the Morris/Howard report tabled in the State Parliament on 10 October 1996:

In May this year, Cabinet approved the briefing of Mr Morris, QC, and Mr Howard to provide advice to me as to whether it would be in the public interest to hold an inquiry into two well-known whistleblower cases. I now table that report.

The first matter concerned allegations by Mr Kevin Lindeberg that: one, the decision of the then Queensland Cabinet on 5 March 1990 to destroy records of interview and related material gathered by retired Stipendiary Magistrate, Mr Noel Heiner, in the course of an inquiry into the John Oxley Youth Centre, Wacol, and its manager, Mr Peter Coyne, in late 1989 and early 1990, was illegal; and, two, the payment of a redundancy package to Mr Peter Coyne, in the sum of $27,190 was illegal.

The two barristers have now presented their report. It was considered this morning by the Cabinet, and it is now being tabled and made available to all interested members of the community. Both of these issues have been the subject of lengthy debate both inside this Chamber and in the press. They have also been the subject of a report by the Senate Select Committee on Unresolved Whistleblower Cases.

Much has been said one way or the other, and it was the Government's desire to allow, for the first time, independent legal officers not connected with any agency of the Government or the Crown in any capacity to review all the documentary evidence and provide me with independent advice. In summary, the barristers have advised that the Harris and Reynolds allegations not be the subject of any further inquiry or investigation. In reaching this conclusion, the position of the Director of Public Prosecutions, Mr Royce Miller, has been clarified. Suffice it to say, I am advised that throughout Mr Miller acted properly and the advice he tendered was professional and correct.

However, it is the Heiner shredding controversy about which I have been most surprised. In essence, the barristers have found that it is open to conclude that there was a deliberate and calculated strategy employed by officers of the Department of Family Services to deny Mr Coyne and others access to documents required for potential legal proceedings which they had a legal entitlement to access and to destroy those documents so that the legal proceedings could not succeed.

To quote the barristers

> "It is open to conclude that other people involved in the destruction of the Heiner documents were well aware that they may be required in a judicial proceeding, and sought their destruction for the very purpose of preventing their being used in evidence in judicial proceedings."

Moreover, the barristers have uncovered evidence which they believe shows that it is open to conclude that officers of the then department deliberately lied and misrepresented to the lawyers acting for Mr Coyne and a trade union the existence of relevant documents. In this context, it is important to quote the following extract from the report

"We are of the view that it is open to conclude that responses to correspondence from Mr Coyne and his solicitors was deliberately delayed until the documents were destroyed, and it may even be concluded that particular items of correspondence were intended to obfuscate the true state of affairs. Those considerations are relevant in the present context, as possibly supporting a conclusion that Departmental officers acted with deliberate stealth and lack of candour so as to achieve the destruction of the Heiner documents before proceedings were instituted, thereby supporting a possible conclusion that their destruction occurred with intent thereby to prevent the Heiner documents from being used in evidence."

The barristers then deal with what they refer to as the "smoking gun", namely the photocopies of statements originally sent to the department in October 1989 by the Queensland State Service Union which led to the establishment of the Heiner inquiry. These photocopies were returned to the

department by the Crown Solicitor in April 1990. These documents were sought by both the solicitors for Mr Coyne and the Queensland Teachers Union. On 22 May 1990, the director-general of the department wrote to these persons, informing them that the department did not have in its possession or control any documents of the kind which those parties had sought on behalf of their respective clients or members. In fact, the department did have these documents, and in a hand written notation uncovered on the files by the barristers, it appears they were destroyed the very next day.

On this point the barristers state that in their view it is highly relevant that the then director-general

> ". . . misrepresented the true position to Mr Coyne's solicitors (as well as to his Union, the POA) by letters of 22 May 1990, falsely asserting that the Department 'does not have in its possession or control any documents in the nature of complaints leading to the investigation', whereas the true position was that the Department retained photocopies of the statements 'in the nature of complaints leading to the investigation', which were not in fact destroyed until the next day."

The barristers have advised that it is open to conclude that an officer or officers of the then Department of Family Services may have breached sections 129, 132 or 140 of the Criminal Code for destroying the Heiner documents and the photocopies of the material forwarded by the Queensland State Service Union. Breaches of section 55 of the Libraries and Archives Act and section 92 of the Criminal Code are also referred to.

In addition, the barristers believe that it is open to conclude that " official misconduct", within the meaning of sections 31 and 32 of the Criminal Justice Act, was committed by an officer or officers of the department in denying to Mr Coyne his lawful right to obtain copies of documents, in returning original documents to the State Service Union and destroying the photocopies of those documents.

There is then a second limb to this disturbing episode. Mr Coyne was paid out in February 1991 in the sum of $27,190. The barristers conclude that this payment was illegal and involved the commission of an offence under section 204 of the Criminal Code by the then Minister and an officer or officers of the Department of Family Services. As the barristers say

> ". . . the real issue of concern is not the fact that the payment 'was technically unauthorised under the Act', but the fact that the payment appears to have been made principally to buy Mr Coyne's silence."

Even more damning comments are contained in paragraph 59 of this section, which honourable members and others can read for themselves.

The barristers quote legal advice given to the department by the then Crown Solicitor of 3 June 1993 informing the director-general that this payment was illegal and that only by validating legislation could the illegality be cured. But what troubles me greatly is the conclusion reached by the barristers that

> "It cannot be supposed that anyone seriously imagined, for a moment, that the sum of $27,190 represented an amount to which Mr Coyne was entitled on the basis of his remuneration arrangements with the Department."

The barristers suggest that there was an ulterior motive in giving Coyne this sum, and point to the fact that he had to sign a deed of settlement preventing him from raising "the issue of his removal from the John Oxley Youth Centre with the media, industrial unions or the State Industrial Commission", preventing him contacting "any member of the staff of the Department to discuss the matter" and preventing him addressing the matter as "the subject of any authorized biography, autobiography or any published article".

Amongst a number of the points made in this report is the suggestion that it is open to be concluded that the persons who negotiated and paid this sum committed conduct which constituted or involved a breach of the trust placed in them by reason of their holding those appointments. To quote from the report

> "We believe that the public of Queensland are entitled to expect, and do expect, that individuals who hold the public purse strings especially Ministers of the Crown, and senior public servants

> will not take their personal interests into account in disbursing the taxpayers' money. In our view, it is open to conclude that the personal interests of individuals involved in making the payment to Mr Coyne specifically, their personal interests in preventing public discussion of disclosure of matters which are politically and personally embarrassing constituted a substantial motivation in respect of the payments to Mr Coyne."

In short, the barristers have advised that it could be concluded that the payment was not calculated on the basis of sums Mr Coyne was legally entitled to, but instead constituted, in common parlance, hush money.

Also, it is evident from this report that the Leader of the Opposition refused permission to allow the barristers to peruse the relevant Cabinet decisions of the previous Government that led to the destruction of the Heiner documents. That was his right but, as the barristers point out, it meant that they were not able to reach a considered view on this aspect of this sorry affair. They point out that this was a factor and no doubt not a small factor in their recommending that a public inquiry now be held.

As the barristers point out in their report

> "Mr Beattie's decision has had the consequence that we are unable to resolve the question whether members of State Cabinet may have committed criminal offences, or may have committed 'official misconduct' within the meaning of the Criminal Justice Act by their participation in the decision to destroy the Heiner documents. The objective facts are well established: State Cabinet did resolve on 5 March 1990 to destroy the Heiner documents. What is not established and what Mr Beattie's decision has prevented us from establishing is whether members of State Cabinet may have known, at the relevant time, that judicial proceedings were then being threatened by Mr Coyne and his representatives and whether Cabinet members may have intended, at the time, that the destruction of the Heiner documents would prevent their being used in evidence in such proceedings. As matters stand that issue can only be resolved by a public inquiry which has access to relevant Cabinet documents and which can take testimony from members of State Cabinet who participated in that decision on 5 March 1990."

In summary, for the first time we now can see this matter in almost totality, and what we see is a troubling picture of public administration in post-Fitzgerald Queensland. We see the unfolding of a series of events which it is now open to conclude were designed to prevent people, whose reputations had been slurred, from defending themselves in the courts, and then to and I quote the barristers "buy . . . the silence" of one of the persons whose personal and professional career was destroyed. In short, we see a deeply disturbing tapestry of apparent deceit and misinformation, of the abuse of power and of subsequent half-baked investigations. Once again, the barristers highlight what an amateur job the CJC did in investigating this. I draw the Leader of the Opposition's attention to comments directed to him and Mr Clair in this report. I suggest he reads them carefully.

For the information of the House, I will read one final quote from the report which is relevant in this regard

> "Whilst we are of the view that the events which occurred between January 1990 and February 1991 involved very grave and serious matters, we are even more concerned that those matters have remained successfully covered up for so many years. In what is commonly referred to as the 'post-Fitzgerald era', there are many people in our community who feel a measure of confidence that serious misconduct by senior public officials cannot go undetected. Even the Criminal Justice Commission's strongest supporters like Mr Clair and Mr Beattie, must have cause to reconsider their confidence in the exhaustiveness to say nothing as to the independence of the Commission's investigation into this matter."

The barristers have recommended that a public inquiry be held.

The Attorney-General and Minister for Justice

Opposition members interjected.

https://www.asap.unimelb.edu.au/asa/aus-archivists/maillist.html#04047

DOCUMENT B: Draft Notice of Motion to 1997 ASA AGM 24 July 1997

AUSTRALIAN SOCIETY OF ARCHIVISTS
Annual General Meeting, Adelaide, 24 July 1997

NOTICE OF MOTION : LEE McGREGOR AND THE HEINER AFFAIR

Proposed : That the Australian Society of Archivists supports the actions of the Queensland State Archivist in the matter of the Heiner Inquiry records and expresses its support for the State Archivist and for the findings of the Morris Report that the State Archivist acted in accordance with the Libraries and Archives Act 1988.

Statement in Support :

Background : In 1990, records being sought in legal action about to be undertaken by Peter Coyne against the Queensland Government were destroyed by direction of the Cabinet and with the approval of the State Archivist (who was apparently kept ignorant of the proposed legal proceedings and of Cabinet's reasons for wanting to be rid of them). The Government's action was later investigated by the Queensland Criminal Justice Commission (QCJC) which dismissed claims of impropriety.

Subsequently, QCJC defended the Government and its own investigation to a Senate Committee of Inquiry into the shredding on the grounds, inter alia, that the Archivist had no role other than to assess the "historical" importance of the records.

An independent inquiry set up by the Queensland Government last year discovered (the Morris/Howard Report) that there had subsequently been a second (unauthorised) disposal and that it was open to conclude that criminal charges could be laid in respect of both matters. This finding was put before the Queensland Director of Public Prosecutions. Another inquiry was set up to look into the role of the QCJC.

Early this year, after prolonged delay, Kevin Lindeberg, one of the principals in the case, obtained documents under FOI disclosing that legal advice from the Queensland Crown Solicitor was given beforehand that the second disposal would be unlawful without the Archivist's approval. It went ahead anyway and claims were later made that it was done "on legal advice". It also appears that the Crown Solicitor (despite his own earlier advice that unauthorised disposal would be unlawful) was party to the drafting of letters telling people that the records no longer existed on departmental files.

It needs to be understood that there are two standards of "corruption" emerging in Australia. Corruption can occur as result of action which opens the perpetrator to either criminal or disciplinary action. The narrower (criminal) test is usually applied to high officials and politicians because they are deemed not to be subject to a disciplinary regime. It is not yet settled whether professional discipline (e.g. for lawyers, doctors, ? and archivists) establishes a test for misconduct sufficient to meet the second arm of the corruption definition.

This motion is identical to one passed by the Council of Federal, State and Territory Archives (COFSTA) in December 1996 and should be supported by those who reject the arguments advanced by Chris Hurley on the aus-archivists ListServ on 21 April 1997. Hurley's arguments are set out (with minor omissions) below.

[Here will be included extracts from my aus-archivists posting of 21 April, 1997].

In the same issue of the ASA Bulletin (Feb, 1997) in which the COFSTA motion was reported, ASA President Dan stated : "Before this discussion [on the aus-archivists' Listserv 16-21 March, 1997] there has been little in the way of views or reaction from the membership...I think it is safe to say that Council would be interested in hearing what people think."

We (the proposer and seconder of this motion) have no doubt that the way the Australian archives community expresses itself on the Heiner Affair will be a defining moment. If things stay as they are, people may say that the COFSTA motion represents what we think or that the failure to respond to President Dan's challenge means that we repudiate the COFSTA action. We believe the worst outcome would be a charge that we have no opinion.

This is the opportunity for the membership to take up President Dan's invitation and place the ASA's position on record - now and for posterity - so others can know what it is we stand for. We urge all archivists who support the COFSTA position to vote for this motion in order to remove any doubt that it expresses a view which is supported by a majority in the wider archives community.

DOCUMENT C: Queensland DPP advises against laying charges 11 June 1997

Last year the Attorney General and Minister for Justice, Mr Beanland, sought advice from the Director of Public Prosecutions on a number of issues raised in the Morris Howard report on the Heiner shredding affair.

Premier Rob Borbidge said today he had been briefed on the advice provided by the DPP to the Attorney General.

The Premier said the Director had advised against charges being laid against any person under either section 132 of the Criminal Code, which relates to conspiracy to defeat the course of justice, or under section 140, which relates to attempts to pervert the course of justice.

The Director also advised that the time limitation for commencement of any proceedings under the Libraries and Archives Act had, in any event, elapsed.

Mr Borbidge said the Director had advised there was one matter relative to which a charge could, theoretically, be laid under section 92 of the Criminal Code which deals with abuse of office.

But the Director had concluded his advice by stating that: "Very considerable time has been expended by a good many people in the pursuit of the truth regarding the Heiner matter. One has to wonder whether the public interest requires further exploration or whether it is now time to put the matter to rest once and for all".

Mr Borbidge said the Government had accepted the Director's advice, and no prosecutions would be launched as a result of his report.

Further information: Frank Jackson (07) 3225 1479. A/H (07) 3369 8085 Mobile 0419 711139.

End of Press Release

DOCUMENT D: Confidence Motion in Queensland Parliament (debates) 30 July 1998

"Mr FELDMAN (Caboolture ONP) (Leader of the One Nation Party) (12.24 p.m.): In October 1996, a distinguished QC and an equally distinguished barrister- at- law released a detailed 219 page report into allegations of high- level corruption in Queensland which happened in the post-Fitzgerald era. In their conclusion, the eminent gentlemen called for a public inquiry in the national interest to investigate the serious allegations raised by a Mr Kevin Lindeberg. This is also the report that has been pigeonholed by previous governments and, until the Premier comes clean on his intentions, it may very well be pigeonholed by this Government as well.

Shame, shame and shame!

Shreddergate is that notorious decision by Ministers of the Crown in the Goss Labor Government to shred evidence required for trial and, in doing so, to deprive people before the courts of natural justice, to indirectly - I repeat - "indirectly" cover up child abuse in Government institutions and to pervert the course of justice in Queensland.

I move the following amendment to the motion by adding after the Opposition's amendment "Furthermore to remove the cloud of uncertainty and the taint of possible illegality hanging over the heads of current Government Ministers, being [Mackenroth, Hamill, Gibbs, Braddy and Wells], arising from the findings of the report to the Honourable the Premier of Queensland and the Queensland Cabinet of the investigation into allegations by Mr Kevin Lindeberg, under the terms of reference granted on 7 May 1996 by State Cabinet to Mr Morris, QC, and Mr Howard of counsel by The Premier in his capacity as leader of the party in power when the Goss Cabinet of the same party met on 5 March 1990, and authorised the shredding of the Heiner documents, immediately authorising the release of all relevant Cabinet papers and documents pertaining to such destruction (the privilege documents); and tabling those documents immediately with the Speaker of Parliament."

Shreddergate has contaminated every arm of Government and set tongues wagging in every corner of the Public Service, and since exposed by the Courier- Mail set most Queenslanders' tongues wagging in anger and disbelief. Shreddergate is a cancer of systemic corruption that dates back to 5 March 1990. .... There is hardly a more serious breach of public trust in the recent history of public administration.

Shreddergate also involves the proper and impartial protection of records. One must question the part played in this affair by our super watchdog, the Criminal Justice Commission. We are told that not once since 1990 has the CJC spoken to the key witness at the State Archives. The Australian Society of Archivists has gone public to reject totally the CJC's position, and with good cause. The Australian Society of Archivists has no axe to grind; it seeks only to uphold the professional reputation of its members. I ask: can we in this Chamber do differently? That is a serious question. Can we in this Chamber do differently?

Senator Woodley told the Commonwealth Senate in May 1997 that Shreddergate threatened our Government's accountability and democracy and the administration of justice. This is what he said, and I commend it to the House "The issue at stake is essentially a simple one, but one of great importance. If the Crown or the State, through its statutory keeper of public records, cannot be relied on to impartially and independently protect public records from destruction when those records are known to be required or foreshadowed in court proceedings or when it is known that they are the subject of a legally enforceable access statute, the due administration of justice is gravely imperilled."

According to the evidence, the State Archivist could have broken the chain of systemic corruption as early as May 1990. By remaining silent, the Archivist became party to the cover-up and the shredding of child abuse evidence.

We have fresh evidence that the Archivist also allowed child abuse evidence to be shredded.

The scandal also touches the police, the Audit Office, the Office of the Information Commissioner, the Director of Public Prosecutions and others. We call for the Cabinet documents because the system cannot be trusted any more. The Office of Public Prosecutions looked at the Morris/ Howard report and concluded that it was not in the public interest to pursue the matter. We might well ask, "Whose public interest?" It certainly was not in the interest of the public that we know the 438,000 or so electors who voted for us. At the same time, the same office pursued a railway worker for allegedly taking home shampoo samples and soaps, and it did so in the public interest.

Shame, shame and shame!

That case went back 20 years and was thrown out of court because the worker had come by the articles legally. There is a huge credibility gap in the administration of justice in Queensland.

We urge this House to support the amendment to the motion in order to root out the villains in public office and wipe away the tears of those afflicted and victimised by a system gone mad."

Government members interject.

"Mr NELSON (Tablelands - ONP) 12.40p.m.: One Nation will move an amendment to the motion of confidence for many reasons. ..... Should the elected Government of this great State shrink from questions that have been asked for the last nine years, or should it provide these documents as, in the name of fairness, all Queenslanders would demand? ..... How many people from different walks of life are affected by this shameful state of affairs public servants, prison officers, unionists, the members of our own Police service? Shreddergate reaches into every facet of Queensland public life. ..... I say: let all the good members of this Assembly do something to address this festering sore that continues to besmirch the good name of this great State... .... The Heiner documents we ask for are an obvious example of Government non-compliance.

In Shreddergate can be found all the ingredients upon which a democratic society is based. .... Another principle corroded in Shreddergate is the proper and impartial protection of public records something experienced first- hand by One Nation members taking up their offices for the first time. The complaint about the shredding has been with the CJC since late 1990. The CJC is the so- called impartial super watchdog organization and, according to the records, it has never not once spoken to the State Archivist. I ask: why not when she is a key witness? The CJC, the Government's champion of justice in this great State, has so misrepresented and twisted the role of the State Archivist for its own purposes to reach a finding of no official misconduct in the shredding that the impartial and respected Australian Society of Archivists has been forced to come out publicly and totally reject the CJC's position. The CJC's misrepresentation of the Archivist's role has enraged the world community of archivists and, may I add, with good cause. It is madness to suggest that a State Archivist anywhere, let alone in the great State of Queensland, can lawfully approve the destruction of public records, especially when she knows that they are required for court, that they are the subject of an access statute, or that they contain evidence of suspected child abuse. It puts her above the courts and it makes her a danger to the due administration of justice.

This great State is now a pariah State in how it manages its public records.

That is totally unacceptable. On hard evidence, we have a rogue Archivist on our hands and no-one in authority, until now, seems to give a damn. We do! ..... The Australian Society of Archivists does not have a political axe to grind. It is not anyone's tool in this affair. I must say that it is no- one's fool, either. It seeks no political advantage, it is entirely independent and it speaks with absolute authority in its field. It seeks merely to uphold its profession's important role in a democratic society. We in this Chamber can do no less.

According to the evidence, had the Archivist done her job properly and impartially, she could have broken this chain of systemic corruption as early as May 1990. But she did not. She remained silent and became party to the cover- up. She is still allowing her statutory role to be critically misrepresented by the CJC without one murmur of public protest, whilst on the Internet she allows her State Archives work colleagues to condemn the CJC's position on their archivists' mail service line. If it were not so serious we would consider it a sick joke. ..... The fresh evidence that the Archivist also allowed evidence of suspected child abuse to be shredded only heightens our concerns.

The Beattie Government cannot hide behind any claim that the CJC has investigated the shredding thoroughly and impartially. To do so would amount to an attack on the intelligence of the honourable members of this Assembly. The Heiner inquiry was no spat between public servants. The CJC's handling of this affair is quite scandalous. ..... However, it still has the audacity and the gall to pretend that its findings have substance. The performance of senior CJC officers has been a travesty of justice. ..... As far as One Nation is concerned, Shreddergate plainly puts the CJC's future in the dock."

……..

(extracts from speech concerning Heiner Inquiry)

Hon. P. D. BEATTIE (Brisbane Central ALP) (Premier) (2.41 a. m.), in reply: I offer my sincere thanks to all members for their contributions to the debate on this motion. Although I did not agree with a number

of the speeches nor with the tone of others, it is important that I acknowledge, I respect and I defend the right of members to express their views, and I thank them for their contributions.

I will deal with a number of specific matters later. Firstly, in relation to the amendments proposed to the original motion, we on this side of the House will oppose the amendment proposed by the member for Caboolture. I will come back to the reason for that very shortly. I might say that the views of the member for Caboolture and supported by the member for Tablelands and others, and I say this with the greatest respect, were based on rumour, innuendo and shallow media reports. In my view, One Nation is being manipulated by disaffected people pursuing a 10- year- old vendetta between outside individuals. I think that it is unfortunate that, in its first contribution to the debate in this House, we saw One Nation getting into the gutter in attacking a number of Ministers in a way that I believe was simply unhelpful to the sound running of a decent Parliament. I say, and I do this in the kindest possible way, that it is absolutely essential that, if we are going to run a decent Parliament, when members raise issues they should at least have the decency to test them and, I believe, should not make wild allegations that simply are totally unsubstantiated. I will come to the detail of that very shortly.

I move to the other issue that is important, and that is the Heiner matter. I am going to deal with this Heiner matter in some detail because the One Nation members have been duped. I say this with some degree of respect because I understand, being the new players on the block, some of the old hands who have been around are going to try to take advantage of them. I say to the member for Caboolture that, in good faith, I am going to go through this matter stage by stage, step by step and explain exactly what the position is.

In 1989, the then National Party Government established the Heiner inquiry into management issues raised by the union representing staff of the John Oxley Youth Centre. Because the previous National Party Government had not properly constituted the inquiry, there was no legal protection for Mr. Heiner or the witnesses who were giving evidence. In other words, the inquiry was improperly established by a previous Government. The National Party Government got it wrong. That is a fact. There is no argument about it. None of the people briefing the One Nation members will argue about that.

That is fact one. On that basis, the Crown Solicitor advised that the investigation should not continue and that the documentation should be referred to the State Archivist for destruction, because the inquiry was wrongly established and because there was no legal protection for witnesses who gave evidence before the inquiry.

Following careful consideration of these issues over three Cabinet meetings and on the basis of advice from the Crown solicitor, the Goss Government authorised the destruction of material collected by Mr Heiner. In February 1995, the then Attorney-General, Dean Wells, made a statement to the Queensland Parliament at which time he tabled copies of advice from the Crown Solicitor. Nothing was hidden. The legal advice is on the record of this Parliament. Let us go back. On 5 March 1990 Cabinet was informed that representations had been received from a solicitor representing certain staff at the centre. At that time, no formal legal proceedings had been instituted, nor was any legal action subsequently instituted.

Never!

No legal action at any time. Never! At all times

Cabinet acted in complete good faith to protect the whistleblowers involved in this case. This was about protecting the whistleblowers. These whistleblowers were given no legal protection whatsoever by the previous National Party Government in the way in which the inquiry was established. All relevant legal advices from the Crown Solicitor to the Goss Government were tabled in this Parliament in February 1995 and provided to the Senate inquiry into unresolved whistleblower cases. Subsequently, considerable further information was given to the Senate inquiry.There was no cover- up and there has never been a cover- up. This matter has wasted hundreds of thousands of dollars of public money. This

matter has been the subject of inquiries, and members should listen to this, by two Senate select committees. At least twice a Senate privileges committee has considered the matter; the Criminal Justice Commission has; the Parliamentary Criminal Justice Committee has; EARC has; the Auditor-General has looked at it twice; the Connolly/ Ryan inquiry has; and, more recently, this matter was the subject of a report by Tony Morris and Mr Edward Howard. The matters they raised were referred to the Director of Public Prosecutions.

On the advice of the Director of Public Prosecutions, the coalition Government decided to take no further action. So nothing could have been more thoroughly investigated. How much longer are we going to waste thousands of dollars on this business? The Parliamentary Criminal Justice Commissioner now has custody of the Connolly/ Ryan records.

An Opposition member interjected.

Mr BEATTIE: Wait a minute. It is not finished. The Parliamentary Criminal Justice Commissioner now has custody of the Connolly/ Ryan records to see whether further investigation is required. The process is ongoing, notwithstanding all these investigations. Yet again, I am prepared to table the same documents for the information of the Parliament so that those unfounded and mischievous allegations can be dismissed once and for all.

I have discussed this matter with the Independent member for Nicklin. I promised him accountability. I promised him that I would have an open Government. As a result of that discussion with Peter Wellington, I have promised him that tonight I will table the Cabinet documents in the Parliament. I will table them because of the commitment I gave to the Independent member for Nicklin. Those Cabinet documents confirm exactly what I have told Peter Wellington privately, and they will now confirm to all the world exactly what the case is. I go one step further and I table all these relevant Cabinet

documents, because when they are examined the people of Queensland can see the precise advice on which Cabinet acted. The chair of the recent Senate committee of inquiry concluded this, "In respect to the shredding of the Heiner documents I do not believe there is any evidence of a political conspiracy on behalf of the government. A newly elected government was confronted with a problem created during the term of the previous administration. The government sought advice through the correct channels and, irrespective of whether the advice was correct or not, it acted upon the advice that was given." That is clearly not a party political person from our side of the fence. It is clear that an independent Senate chairman reached that conclusion. What I am doing today in tabling these documents is unprecedented, but I want to make clear that I do this to fulfil a commitment I gave to Peter Wellington and I do it because, as far as I am concerned, my Government is entitled to start on a clean sheet.

I will not regard this as a precedent. I have previously refused to release these documents because I am totally committed to the principle of Cabinet confidentiality, and I am not going to do this again. I am doing this for the two reasons I gave. First, this motion being debated tonight is the most important motion that my Government will ever have to debate. This is the motion establishing my Government's credentials. Therefore, I am not prepared to allow that establishment of confidence to be in any way impaired. The second commitment is what I said to Peter Wellington when I met him and when I corresponded with him. I promised accountability and I will fulfil that promise by tabling these documents. I want to make it clear: this is not a precedent and I will stick to the principle in which I believe very strongly and passionately, that is, Cabinet confidentiality.

I believe that the member for Nicklin was right in his speech today, which was an excellent speech, when he said that the real enemy is unemployment. That is what we ought to be talking about. We ought to be talking about the things that can improve and change people's lives. That is what we ought to be doing, not playing senseless games and wasting taxpayers' money. Of course I feel angry that we waste our time on these matters.

First of all, as one of the Cabinet documents indicates, the destruction was under the terms of section 55 of the Libraries and Archives Act of 1988. It was done under an Act of Parliament. It was not done without some authority; it was done on Crown law advice under an Act of Parliament. Let us look at what I am tabling. I am tabling Cabinet submissions Nos 100, 117 and 160. I table them for the information of the House. They were the three Cabinet meetings at which these matters were discussed. On 21 February 1995 in a ministerial statement on the Senate Select Committee on Unresolved Whistleblower Cases, the then Attorney-General, Dean Wells, outlined a lot more of the details. Because I have limited time tonight, I table that statement as well and I urge members to read it. It is an excellent statement that explains more detail than I have.

In addition to that, I also table the following documents: a copy of a letter to the Acting Director- General of the Department of Family Services and Aboriginal and Islander Affairs from the Crown Solicitor dated 18 January 1990; a copy of a letter to the Acting Director- General, Department of Family Services and Aboriginal and Islander Affairs from the Crown Solicitor dated 19 January 1990; a copy of a letter to the Acting Director-General, Department of Family Services and Aboriginal and Islander Affairs from the Crown Solicitor dated 23 January 1990; a copy of a letter to the Acting Secretary to Cabinet from the Crown Solicitor dated 16 February 1990; and a letter from the then Acting Cabinet Secretary to the State Archivist seeking permission to destroy all documents obtained by Heiner during the inquiry. Mr Speaker, you have got the lot. Now there is no excuse for this nonsense to continue. I will refer to a couple of aspects of these documents so that they are on the record of this Parliament. Let us look at the Crown law advice provided on 18 January 1990, signed by K. M. O'Shea, the Crown Solicitor. What did he say to this? This is the Crown law advice. He said,

"Mr Heiner was not appointed by the Governor in Council to conduct this inquiry which, of course, means that the Commissions of Inquiry Act 1954- 1989 has no application to the inquiry."

In other words, people were not protected. He went on; "The effect of this is that Mr Heiner cannot subpoena witnesses or examine them on oath nor can he subpoena documents in the possession of any person."

So in other words, no- one had any protection. The whole inquiry was flawed. That is Crown law advice, not my opinion. Let us move on to what else was said. In a letter from Crown law on 23 January 1990, again signed by K. M. O'Shea, he says, "I do not see any difficulty in destruction of the material supplied to Mr Heiner, naturally any material removed from official files should be returned to those files but the tape recordings of interviews had with people or any notes or drafts made by Mr Heiner should I suggest be destroyed."

That is Crown law's advice. They are not my words; they are from Crown law. I table these documents. The record speaks for itself. Honourable members can read all these other documents. As far as I am concerned, this Government is not going to waste one more cent on this personal vendetta that exists between private individuals.

Enough is enough. It is over."

DOCUMENT E: Cabinet documents tabled in Queensland Parliament 30 July 1998

Copies of Documents tabled in Queensland Parliament last Thursday :
CABINET SECRETARIAT OFFICIAL COPY
RESTRICTED CABINET MINUTE
Brisbane 5 March 1990
Decision No 00162
Submission No 00160
TITLE Material gathered by Mr N J Heiner during the course of his investigation into certain matters at the John Oxley Youth Centre

CABINET DECIDED That following advice from the State Archivist and the Crown Solicitor the material gathered by Mr N J Heiner during his investigation into certain matters at the John Oxley Youth Centre be handed to the State Archivist for destruction under the terms of section 55 of the Libraries and Archives Act 1988.
CIRCULATION: Department of the Premier, Economic and Trade Development and copy to Premier.
Treasury Department and copy to Minister.
Department of Family Services and Aboriginal and Islander Affairs and copy to Minister.
Department of the Attorney-General and copy to Minister.
All other Ministers for perusal and return.
CERTIFIED TRUE COPY Signed Stuart Tait Acting Secretary to Cabinet.
OFFICIAL STAMP.

CABINET-IN-CONFIDENCE
SECURITY CLASSIFICATION "B"
CABINET SUBMISSION SUBMISSION NO 00160
COVER SHEET COPY NO 20
TITLE: Material gathered by Mr N J Heiner during the course of his investigation into certain matters at the John Oxley Youth Centre.
MINISTER: Minister for Family Services and Aboroiginal and Islander Affairs.
PUPOSE/ISSUES: Cabinet would be aware that Mr N J Heiner was appointed by the former DIrector-General, Department of Family Services, to investigate and report on certain management matters relating to the John Oxley Youth Centre. After obtaining advice from the Crown Solicitor, the Acting Director-General decided to terminate the investigation conducted by Mr Heiner, as the basis for his appointment did not provide any statutory immunity from legal action for him or for informants to the investigation. During the course of his investigation, Mr Heiner gathered information of a potentially defamatory nature. In Submission No. 00100, a recommendation to destroy this material was deferred by Cabinet to enable other options to be explored.
OBJECTIVE OF SUBMISSION: Destruction of the material gathered by Mr Heiner in the course of his investigation would reduce the risk of legal action and provide protection for all involved in the investigation. However, the Crown Solicitor has advised that as the material is in the Crown's possession, it constitutes a "public record" for the purposes of the Libraries and Archives Act 1988. Therefore, the approval of the State Archivist must be obtained before such destruction can occur. The State Archivist has now given approval in writing for the destruction of these records in terms of section 55 of the abovementioned Act.
URGENCY: Speedy resolution of the matter will benefit all concerned and avert possible industrial unrest. Representations have been received from a solicitor representing certain staff members at the John Oxley Youth Centre. These representations have sought production of the material referred to in this Submission. However, to date, no formal legal action seeking production of the material has been instigated.
CONSULTATION: Crown Solicitor State Archivist
RESULTS OF CONSULTATION: Support the propsoed course of action recommended.
FINANCIAL CONSIDERATIONS: Nil.
PUBLIC PRESENTATION: Nil.
WHAT GENERAL OR SECTIONAL SUPPORT CAN BE EXPECTED? It is expected that the course of action will be acceptable to the majority of the parties involved.
WHAT CRITICISM IS ANTICIPATED AND HOW WILL IT BE ANSWERED? Some staff may be dissatisfied that their concerns have not been resolved. These complaints will be addressed individually through the grievance process established under the Public Service Management and Employment Act.
RECOMMENDATIONS: I recommend that the material gathered by Mr N J Heiner during his investigation be handed to the State Archivist for destruction under terms of section 55 of the Libraries and Archives Act 1988.

Signed Anne Warner Minister for Family Services and Aboriginal and Islander Affairs
27th February 1990.

DOCUMENT F: Extract from Debate in Queensland Parliament 25 August 1998

The debate included a demand that records showing which ministers were present at cabinet meetings in 1990 dealing with destruction of the Heiner documents should now be made public so that it can be established which members of that cabinet (some of whom are ministers in the present Government) were involved.

> "Hon. A. M. BLIGH (South Brisbane? ALP) (Minister for Families, Youth and Community Care and Minister for Disability Services) (6.46 p. m.): The motion before us tonight makes a series of very serious allegations serious allegations against five of my colleagues, serious allegations that do not bring forward one shred of evidence against these colleagues. It is time, as the Deputy Premier said, to call a spade a spade. This has not been debated on the facts; this is nothing more than a complicated, convoluted conspiracy theory a totally mad conspiracy theory. Far be it for me to ruin their grand conspiracy theory with some facts, but I feel I am bound to put them on the record here tonight.
>
> ".... It seems to me that, if one is going to have a conspiracy theory, one ought to do it properly. If one is going to have a conspiracy theory, one really should have a totally mad one. One should have one that is gloriously mad, one that is grandly, gloriously, barking mad and this one bears all the hallmarks of that. Not only have members opposite come in here and made repugnant and malicious personal slurs on five Ministers, they have made false and disgraceful attacks on current and former officers of my department. We do not mind so much. We have broad shoulders. We take a lot of flak and we will take a lot more. But who else has been dragged into this barking mad conspiracy? Who else is being accused of communism, paedophilia and criminal activity? None other than the Crown law office, the Audit Office, the Office of the Information Commissioner, the Director of Public Prosecutions, the Queensland Police Service,the Criminal Justice Commission and the Federal Senate! I am disappointed here tonight. I had hoped to hear the full extent of this conspiracy.
>
> "I was hoping that we would hear tonight of the involvement of the United Nations in this matter; that we would hear tonight about the involvement of the Vatican, the Pope and the entire Catholic Church around the world; that we would know tonight at last the truth about the involvement of the ABC in this; about how Bananas in Pyjamas have figured in this, and the role of the Wiggles in this matter. But no! What we have had tonight is further nonsense about documents and documents and documents.
>
> "While we are on the subject of documents, there is a lot of curiosity from One Nation members about the attendance register from Cabinet. I am going to let the One Nation members into a secret. Just so that they never know who is there and who makes these dastardly decisions, at the end of every Labor Cabinet meeting right throughout the Goss years and we have restored the tradition the Premier eats the attendance register. I say to the One Nation members: you will never get it. You can take us to the International Court of Justice and the attendance register will remain in the bowels of former Labor Premiers. It is part of the austerity drive; we do not get lunch."

Disposal by eating?

DOCUMENT G: Debates in Queensland Parliament 4 March 1999

Heiner Documents 4 Mar 1999

Mr BEANLAND (Indooroopilly? LP) (6 p. m.): I move? "That this House? (a) condemns the Goss Labor Government for destroying documents pertaining to the Heiner Inquiry and thereby covering up

evidence of child abuse and paedophilia within the Queensland juvenile justice system; (b) direct the Beattie Labor Government to establish an independent commission of inquiry, separate from the Forde Commission of Inquiry, to investigate the destruction of these documents and the subsequent allegations of former Labor Cabinet Minister, Mr Pat Comben, on Sunday, 21 February 1999, that goss Labor government ministers were aware these contained evidence of child abuse and paedophilia; and (c) calls on Ministers Mackenroth, Gibbs, Hamill, Braddy and Wells to make a full disclosure of their involvement in this matter, to this House."

.....

Hon. R. E. BORBIDGE (Surfers Paradise? NPA) (Leader of the Opposition) (6.11 p. m.): I second the motion moved by the honourable member for Indooroopilly and make this observation: this particular issue is not going to go away. Just when people think it is going to go away, there is another revelation, there is another indication, which continues what is a massive question mark over public administration in the State of Queensland. I want to go through some of the matters raised by my colleague and answer some of the interjections that were made by members on the Government benches.

.....

Hon. P. D. BEATTIE (Brisbane Central? ALP) (Premier) (6.18 p. m.): The bottom line to all this is very simple. There has been only one Government in the history of this State that has established a full and proper independent inquiry into child abuse, and it is my Government. The Forde inquiry has the opportunity and, in fact, is exercising that opportunity, to undertake a full investigation into child abuse in institutions. If it so wishes, and I understand that it is, it can examine child abuse allegations at the John Oxley Youth Detention Centre, which was the basis of this problem.

.....

Mrs LIZ CUNNINGHAM (Gladstone? IND) (6,26 p. m.): I rise to support the motion, although I have some concerns about some of the wording of it. An attempt earlier to amend it has not been successful. However, in an endeavour to clarify her perspective, I have spoken with the Minister for Family Services about the Heiner issue.

One of the things that is most characteristic of this whole issue is that it continues to arise not in a compact form but in a revealing form. Over the last four years of my involvement, more and more information has become available for consideration. The very fact that that is occurring indicates to me, and this is the only issue that is still of concern in my mind, that there will be a point in time when this issue must be put together and an independent person or an independent body must review the material and make a final decision. There must be a closure.

To achieve that result it is proposed that material will be aggregated in one specific area, that it will be examined by a person who is acceptable to all parties and that a final report will be given to allow this matter to either be laid to rest or those elements that are shown to be inappropriate can be dealt with.

Unless this is done, those involved, particularly Mr Lindeberg and Mr Coyne, will never reach closure of the event that has so disrupted their lives. Over the past years Mr Kevin Lindeberg has been in contact with almost all members of this House. Indeed, he has kept in regular contact with my office. In the interest of completeness, I seek leave to table a further document relating to this matter.

Leave granted.

Mrs LIZ CUNNINGHAM: This document is Mr Lindeberg's submission to the Forde inquiry. Before anyone becomes concerned that the tabling of the document may compromise the Forde inquiry, I will quote from the covering letter returned with Mr Lindeberg's submission from counsel assisting the inquiry. That letter reads: "While I understand your very real concern to have investigated the issues surrounding disposal of evidence gathered in the Heiner inquiry, I cannot agree that the circumstances of the shredding, as opposed to the underlying allegations of mistreatment of inmates at the John Oxley Youth Centre, fall within the Terms of Reference of this Inquiry. ... whilst the Inquiry is most anxious to

look at the substance of the allegations which gave rise to the Heiner Inquiry, it is not in a position to investigate the further issue of how witness statements obtained by it were disposed of.

I recognise that this means for you the frustration of being unable to ventilate the issues raised in your extensive and lucid submission; but to seek to address those issues in this Inquiry would entail on overstepping of its Terms of Reference.

As you will appreciate, that is something that the Inquiry simply cannot do."

... I commend the current Government because it has instituted investigations into child abuse, including John Oxley. It had to be done, it should have been done and it has been done. The kids are the most important people.

However, this matter, the dealing with the Heiner documents, remains like a festering sore. Unless we address it and clear the decks, it is going to remain as an impediment, not to any one side of Parliament but to all of us as parliamentarians. It goes beyond the function of this House. It goes into the function of the departments, and the very department upon which families in this State rely greatly, the Department of Families, and it affects families.

I have spoken with Mr Lindeberg. Those documents are tabled with his acknowledgment and approval. As I said, I am concerned about only one further matter, and that is the finalisation of the concerns that relate to the disposal of the documents; not to paedophilia, not to abuse in institutions but the disposal of the documentation. I think that it is in the best interests of this State to see this matter closed in an accountable, accurate and open manner. On that basis, I support a commission of inquiry.

.....

Mr GRICE (Broadwater? NPA) (6.35 p. m.): ..In the face of the evidence, it is quite overwhelming that the CJC never did its job thoroughly or impartially. That has never really been beyond dispute. It has admitted itself that it did not touch all the evidence and it did not search for all the evidence. It said that in the Senate inquiry. It just ran dead and then attempted to shoot the messenger.

I table a public statement from the Australian Society of Archivists in which it states that the society: "... also wishes to place on record its absolute rejection of the argument which the Queensland Criminal Justice Commission placed before the Senate Select Committee on Unresolved Whistleblower Cases in 1995."

It is common legal practice for solicitors to serve notice on the other party of their intention to commence court proceedings to resolve a matter. In this case, Mr Coyne's solicitors unquestionably served notice on the Government of his intention to gain access to the Heiner documents pursuant to a regulation and that if it was not granted out of court, it would be resolved in court. That notice was acknowledged as being in the system before the shredding. The Cabinet was told that solicitors were seeking access to the document when it ordered them destroyed. In other words, Mr Coyne was prepared to exercise his democratic right to have his day in court where a judge would decide the matter. His union supported him in what was a lawful endeavour.

Any ordinary citizen knows that one cannot shred material under those circumstances. Section 129 of the Criminal Code says that one cannot do that. But here is the rub. Here is how absurd the Government's and the CJC's position is: if it is legal to do what they did, why not shred every public record that might be required for court? Shred everything in sight! Why keep public records? Why not burn down the State Archives if one cannot keep within the law or if one wants to hide something?

.....

DOCUMENT H: Queensland Parliament debates Forde Report on Child Abuse 28 July 1999

Mr GRICE (Broadwater NPA) (6.37p.m.): I, too, would like to support the comments made tonight supporting the inquiry carried out by Mrs Forde. I think it was very well done considering the terms of

reference, the short time available and the budget that was provided. Considering those restrictions, she did an extremely good job.

The sadness of it all is that it was only necessary because of that famous old bugbear of the Labor Party that will continue to haunt them: the destruction of the Heiner documents. If that had come out and been assessed properly at that time, there would have been no cause for this debate, because those were the very instances that initiated that inquiry all that time ago. It was Ms Warner in Opposition who on Sunday, 1 October 1989 spoke about the very same incidents of abuse that Commissioner Forde examined nine years after the lot opposite shredded the evidence to cover it up.

There is one thing that people have to say about the Labor Party if they want some illegal activity covered up. One thing that I admire about the Labor Party is the way they stand together shoulder to shoulder to cover it up. If people want some shredding "illegal activity" to cover it up, call the Labor Party. If they want some child abuse covered up, call the Labor Party. If they want some sexual abuse, committed all those years ago that was investigated and looked at in the Heiner inquiry covered up, call the Labor Party; it is expert at it. Day after day that is becoming more apparent.

On 5 July, former Police Commissioner Newnham said quite clearly on ABC Radio that a substantial amount of evidence had been uncovered to show that the assertions were accurate. He said : "We had the Connolly/Ryan inquiry, which was quashed. Some evidence was produced before that to show that the CJC had not properly investigated those allegations and the CJC went so far as to say ... that had they conducted a full and proper investigation ... they might not have reached the premature conclusion that they did."

I now refer to the motion I moved, which was narrowly defeated by the sycophantic Premier's pet from Nicklin. Members of the other side may jump up and down about it, but we all saw former Minister Warner on the Nine network Sunday program, lying through her teeth. As I said in Opposition, she spoke about the very same incidents of abuse that were reported to the Heiner inquiry and ultimately illegally destroyed.

There are three things I would like those opposite to understand. We all have to pay taxes, we will all eventually die and all will eventually come out about the Heiner documents and that illegal destruction. It has been covered up over and over. Even the Courier-Mail is now stating the obvious. On 14 July 1999, in a feature article written by Mr Michael Ware, it was stated that the shredding and the cover-up have never

I repeat, never been thoroughly investigated. In other words, the Courier-Mail has called the Premier a

Distorter of the truth.

Members opposite should read the documents I tabled on 10 June. Premier Beattie stated that EARC investigated the shredding, but a former EARC commissioner, Mr Brian Hunter, has put it in writing that EARC never investigated the shredding. The Premier said that the police investigated it. There is now evidence coming from Assistant Commissioner Graham Williams, the head of the State Crime Operations Command, that the police never investigated the shredding. The evidence is stark and it comes out more and more all the time.

The 10 inquiries claimed by the Premier to have been held never took place. The motion I moved in this place was lost, as I said, only by the presence of the snivelling member for Nicklin, who saved the Labor Party and those Ministers then, as he did again today. I promise the Government that the issue of the Heiner inquiry will never go away. It will haunt those opposite. The day will come when the truth will be uncovered and those five Ministers will be in enough trouble to bring this Government down.

Mr MICKEL (Logan ALP) (6.42p.m.): Having heard the contribution of the honourable member for Broadwater, I can understand why motor racing drivers are forced to wear helmets.....

[… and so on....]

https://www.asap.unimelb.edu.au/asa/aus-archivists/maillist.html#04047

DOCUMENT I: ASA receives Lindeberg Petition — 2 November 1999

From: Kevin Lindeberg [mailto:kevlindy@netwise.net.au]
Sent: Monday, 1 November 1999 9:38
To: Adrian Cunningham
Subject: The Queensland Government's Response

Dear Adrian

Please find attached the response to my Petition from the Queensland Government following a Question Without Notice being put on the matter on 28 October 1999.

The 85-page Petition has been published to the world on
http://plato.itsc.adfa.edu.au/apr/lindy and/or
http://plato.itsc.adfa.edu.au/apr/satire.html

You might wish to access "About Kevin" and following the hyperlinks.

I am aware that the response to the Petition by Premier Beattie has outraged many people. It demonstrates his lack of concern for open and accountable government.

May I respectfully suggest that you might wish to mention this to your readers on the emaillist and include those webpages. Archivists interested in accessing a copy of the Petition (which includes a comprehensive coverage on the role of the archivist in the Heiner Affair) should contact Bills and Papers Section Queensland Parliament George Street Brisbane Qld 4000, or phone 07 3406 7111 and request a copy which will be posted free of charge.

Regards
Kevin

Attachment: HEINERPE.DOC
Description: MS-Word document

DOCUMENT J: Australian Senate debates the Affair — June/August 2001

SENATE HANSARD *28 JUNE 2001*

ADJOURNMENT: Whistleblowers: Heiner Case

Senator HARRIS (Queensland) (3.08 a.m.) —I seek an indication from the chamber whether all senators' adjournment speeches will be incorporated.

The PRESIDENT —It would be a matter of the speeches being shown in advance to the whips, and it may have been agreed or not have been agreed. I do not know. You have the call, Senator.

Senator HARRIS —I have seen no adjournment speeches, Madam President.

The PRESIDENT —You have the call to speak if you wish, Senator.

Senator HARRIS —I rise to table a grievance—dated 9 May 2001—this evening on behalf of Queenslander Mr Kevin Lindeberg and compiled by Mr Robert F. Greenwood QC, in respect of a charge that the Senate was gravely misled by the Queensland government and the Queensland Criminal Justice Commission when it took evidence in the Heiner affair in 1995 before the Senate Select Committee on Unresolved Whistleblower Cases chaired by Senator Shayne Murphy. The grievance is addressed to Senator Margaret Reid, President of the Senate. Honourable senators should know that, after considering the matter, the President declined to table it but she invited the interested parties, Messrs Lindeberg and Greenwood, to see if any senator would. After an approach and careful consideration, I have agreed to do so. Under normal circumstances I would respect the President's discretion but on this occasion, regretfully, I cannot.

The grievance does bring serious new evidence and critical insights into the notorious Heiner affair which I believe must be appropriately considered by this chamber. Disturbingly, it reveals for the first time that allegations of child abuse brought about the Heiner inquiry, and that the shredding unacceptably aided in covering up the abuse. This chamber knows that I, along with all other senators, have a longstanding interest in eradicating child abuse, no matter where it exists, who has engaged in it and who has covered it up.

To reiterate, the new evidence reveals what can be reasonably assumed to have been shredded, namely, evidence of abuse of children in that state run institution, and it throws a new and disturbing light on the thousands of dollars of public money paid by the Queensland government to a public servant to buy his silence about the child abuse and related matters. The critical evidence appears to have been deliberately withheld from the Senate at the time when it was considering the Heiner affair. Contempt may therefore have been committed. Given the time constraints, I seek leave to table the grievance and its attachments so this chamber may consider the content during the winter recess.

Leave not granted.

Senator HARRIS —It is my intention to speak more comprehensively, when the Senate resumes, on the grievance and how I believe its serious issues should be addressed by the Senate. To repeat: I have considered the grievance carefully; it is not done lightly. It is not a rehash of old material but a grievance which highlights new evidence and how this chamber may have been seriously misled when making findings in the Heiner affair. Left unaddressed, in the face of this new evidence, those findings may bring disrepute on the Senate and may let a serious possible contempt occur with impunity. I indicate to the Senate that at an appropriate time in the new session of parliament I will read into *Hansard* the documents which the opposition has declined to give leave to incorporate.

SENATE HANSARD *8 August 2001 P25783*

MATTERS OF PUBLIC INTEREST: Whistleblowers: Heiner Case

Senator HARRIS (Queensland) (1.14 p.m.) —I raise as a matter of public interest the grievance of Mr Kevin Lindeberg. I will quote from a document that was written to the President of the Senate by Greenwood QC. My references to the President will be in the context of reading from that document, Madam Acting Deputy President. I quote from the document written by Greenwood QC dated 9 May 2001, addressed to the Hon. Senator Margaret Reid, President of the Senate, Parliament House, Canberra:

RE: A MATTER OF MISLEADING THE SENATE IN RESPECT OF THE HEINER AFFAIR

We act for Mr Kevin Lindeberg of 11 Riley Drive, Capalaba, Queensland 4157.

We know that the Heiner Affair came before the Senate in 1994 and 1995 for the purpose of drawing lessons from the case to enhance the formulation of national whistleblower protection legislation. We understand that such legislation has not advanced to date, with a question concerning its current status recently raised by Queensland Senator Andrew Bartlett during the late-November 2000 Question Time to then Justice Minister the Hon Senator Amanda Vanstone.

In light of fresh and compelling evidence in the Dutney and Forde documents which provides a deeper understanding of the Heiner Affair, we have re-examined material placed before the Senate Select Committee on Unresolved Whistleblower Cases in 1995 and the Senate Committee of Privileges in 1996 and 1997/98 and their respective findings, and now suggest that it is open to conclude that:

(a) both Committees of the Senate were misled by both the Goss Queensland government and Criminal Justice Commission (CJC); and

(b) the findings of both Committees, in particular matters, are unsafe and cannot be allowed to stand; otherwise:

(i) the Senate will be brought into disrepute; and

(ii) an injustice will have been inflicted on our client, as a witness before the Senate, of such an unconscionable nature as to undermine public confidence in the workings of the Senate's committee system.

We acknowledge that certain evidence was put by Mr Lindeberg to the Senate Committee of Privileges in 1996 and 1997/98 that the CJC had misled the Senate, and, on both occasions, the CJC was found to be not in contempt because his complaint could not be sustained.

We submit, however, that both those findings are unsafe. We ask that the matter be revisited for reasons set out below.

Firstly, this grievance is lodged because of our discovery of new and compelling evidence which indicates that both the Goss Queensland Government and CJC ***knew existed <u>at all relevant times</u> but failed to reveal this evidence, or, with that state of knowledge, went on to knowingly mislead the Senate in a significant manner.***

In the case of the CJC, it failed to inform the relevant Senate Committees of its true state of knowledge in either oral and or written submissions when it had an obligation to do so.

This had the effect of:

(a) knowingly misleading those committees and their findings to prevent or attempt to prevent adverse findings being made against itself (the CJC) and others;

(b) causing a detriment to our client;

(c) bringing disrepute on the Senate by casting doubt over its respect for the rule of law and fundamental human rights, including the rights of children; and

(d) undermining the Australian Federal Government's commitment to relevant United Nations' Human Rights conventions and treaties e.g.:

- International Covenant of the Rights of the Child;
- International Covenant on Civil and Political Rights;
- The Right to Organise and Collective Bargaining.

Regarding the Goss Queensland Government, it withheld highly relevant evidence which had the effect of:

(a) knowingly misleading those committees and their subsequent findings to prevent adverse findings being made against the Goss Queensland Government;

(b) causing a detriment to our client;

(c) bringing disrepute on the Senate by casting doubt over its respect for the rule of law and fundamental human rights;

(d) undermining the Australian Federal Government's commitment to relevant United Nations' Human Right s Conventions and Treaties as mentioned above.

Our concern that the Senate may have been misled is shared by Queensland Senator John Woodley in his comments in *The Queensland Independent* October 2000 edition (See Attachment A).

Of particular relevance to this submission, Senator Woodley outlined his concerns in the aforementioned article:

(a) Senator Woodley was a member of a 1995 Senate inquiry into the shredding of the Heiner documents and said he was sure that the inquiry would have drawn different conclusions had

they seen the Dutney document (a fundamental component of our new evidence) “along with a number of others”.

(b) Senator Woodley said the subsequent Senate Privileges Committee inquiries also may have drawn different conclusions if the documents, including the Dutney memorandum, dated 1 March 1990, (See Attachment B) been revealed at relevant times.

In our opinion the Goss Queensland Government and CJC may be in breach of the *Parliamentary Privileges Act 1987 (C'wealth)*, which, in turn, if sustained, may warrant further investigation by an appropriate Federal agency to address obstruction of justice.

As to whether the matter should be reconsidered by a new Senate Select Committee or the Senate Committee of Privileges is something which the Senate must decide for itself as it rightfully protects its own privileges and immunities. Nevertheless, we respectfully submit that the Senate Committee of Privileges may be obliged, in the interests of procedural fairness, to recognise the existence of apprehended bias, given that our client placed certain new documents of a compelling nature before it in 1999 only to have it noted when we believe it warranted action. In other words, prejudgment towards further inaction may exist within that committee to our client's detriment, and procedural fairness may not be afforded to him.

Additional to the aforementioned fresh evidence, we have just accessed two Exhibits tabled at the Forde Commission of Inquiry into the Abuse of Children in Queensland Institutions in February 1999 by Counsel for Mr Coyne. They are identified as Exhibits 20 and 31 and copies are enclosed (as Attachments C and D respectively) with this grievance.

We submit that conclusions which can be reasonably drawn from their content add weight to our call that the Senate cannot leave matters as they stand.

We suggest that the conclusion reached by the Murphy Select Committee in its October 1995 report *The Public Interest Revisited* that the shredding was an *“...exercise in poor judgment”4* is inappropriate. We suggest that it brings disrepute on the Senate, especially in light of what we now know was the Goss Government's true state of knowledge at all relevant times concerning the legal status of the records in question, and what had been going on at the John Oxley Youth Detention Centre during and before the time the Heiner Inquiry sat.

It is simply untenable to permit the shredding of public documents containing evidence of alleged child abuse in a State-run institution and required for court action to be described by the Australian Senate solely in political terms while ignoring its legality or otherwise.

Our democracy requires that political decisions can or should be taken only within the framework of upholding and respecting the rule of law. In this regard, the Senate, as its view stands concerning certain conduct by Government and other public officials in the Heiner Affair, appears to suggest, on the Parliamentary record, that Executive decree can be placed above both legal considerations or consequences when arguably it is open to conclude that certain sections of the *Criminal Code (Qld)* may have been breached5 in respect of those same Cabinet and related decisions.

Such a notion is a danger to Australia's liberal Parliamentary democracy and the individual rights of all Australians enjoyed under our Constitution.

Forde Inquiry Exhibit 20, dated 7 April 1989, reveals *prima facie* admissions of the most serious kind concerning unlawful assaults against children held in the care of the State at Sir Leslie Wilson Youth Detention Centre and John Oxley Youth Detention Centre (JOYC). We submit that the submissions should have been thoroughly explored by the Forde Inquiry but they were not, even after the exhibit was tabled and when both Messrs Peter Coyne (former JOYC Manager) and Frederick Feige (Senior Youth Worker) were under Oath in the witness box during its February 1999 public hearings.

We submit that what makes Exhibit 30 so disturbing is that Mr Feige, to the best of our knowledge, still works at the Centre and continues to be paid from the public purse. He appears to have never been questioned over his submissions of possible unlawful assaults on children in care as set out by Mr Coyne. Left unaddressed, we suggest that Mr Feige has neither:

(a) been able to clear his name pursuant to procedural fairness principles in respect of himself;

(b) been able to allay departmental, public and court concern that his professional conduct concerning the care of children held in a State-run institution acceptable; nor has he

(c) been held to account for his actions if found to be true.

Forde Inquiry Exhibit 31 is a summary document prepared by Mr Coyne on 29 September 1988 for his departmental superiors. It reveals the calibre of the staff, according to his assessment, with whom he was required to run the John Oxley Youth Detention Centre. We acknowledge that it is his assessment alone and is therefore open to challenge by those affected pursuant to procedural fairness considerations.

As we now know that evidence such as this was withheld from the Senate, then it is reasonable to suggest that other incidents of alleged child abuse may remain hidden but the Senate was entitled to know about when considering the Heiner shredding and related matters.

We therefore suggest that:

(a) as Mr Coyne's findings are so serious against a set of criteria (e.g. Point 4: `does not verbally, physically or sexually abuse resident children') that it is reasonable to believe that as a responsible manager of this juvenile justice institution and aware of the employee rights under relevant law and awards, he would have been obliged to reach his conclusions by carefully considering and preserving documented supporting evidence so that if the Queensland Government decided to implement his recommendations it could defend any dismissal before any tribunal or court should an affected (sacked) Youth Worker wish to challenge his or her dismissal;

(b) it is incomprehensible and *prima facie* negligent that the Forde Inquiry, given its Terms of Reference, did not fully explore Mr Coyne's findings once his Exhibit was tabled, especially when it was known that at least one of the Youth Workers (and possibly more) continued to work with children at the Centre and gave sworn evidence to the Inquiry as a witness;

(c) it is unacceptable for such vital evidence, as the Dutney Memorandum and Exhibits 20 and 31*, always held* by the Queensland Government, to have been withheld from the Senate in 1995 by the Queensland Government for its own political ends;

I conclude my quotation from the document at this point and seek leave to have the remainder of the document incorporated in *Hansard*.

Leave not granted.

SENATE HANSARD *20 AUGUST 2001 P26003*

ADJOURNMENT: Whistleblowers: Heiner Case

Senator HARRIS (Queensland) (9.45 p.m.) —I rise in this adjournment debate to continue to read into *Hansard* the legal opinion of Greenwood QC. I continue from the previous debate and commence at item (d).

(d) other incidents of child abuse may exist and remain unaddressed;

and consequently, it may be open to conclude that the Queensland Government *knowingly* obstructed justice and obstructed the Murphy Select Committee from properly fulfilling its commission as set by the Senate in December 1994.

We are highlighting that there was knowledge within the Queensland Government and CJC in 1995 that what lay at the heart of the Heiner Inquiry was alleged misconduct of certain JOYC staff (and possibly others) engaging in suspected child abuse.

It is our strong view that the new evidence is so serious that it cannot be merely noted in 2001 but should be subjected to a fresh independent Senate examination.

For the benefit of the Senate, and prospective Federal whistleblower protective legislation, we have decided not to touch on every aspect of our concerns but to concentrate on the more substantial parts which go to supporting our position.

We submit that it is unconscionable conduct for any State or Federal Government, which claims to respect the rule of law and fundamental human rights to:

POINT 1:

knowingly order the destruction of public records containing evidence of the alleged abuse of children while in the care of the State or Commonwealth so that the evidence cannot be used, for whatever reason, in particular, holding public officials who were or may have engaged in such alleged misconduct to account (including their superiors who may have been aware of such conduct).

In this regard, there is evidence (yet to be fully explored by an appropriate body) suggesting that the Goss Government acted in an unconscionable and illegal manner when it knowingly destroyed relevant evidence for the purpose of affording protection to certain accountable Youth Workers and Mr Coyne over alleged offences of criminal assault against children (by whomsoever) placed in the John Oxley Youth Detention Centre by order of the courts or by statute. The law required that their known alleged misconduct be properly and impartially addressed.

POINT 2:

knowingly order the destruction of public records in its possession and known to be required as evidence for foreshadowed court proceedings for the purpose of preventing those records being used in those proceedings.

POINT 3:

deliberately withhold or conceal relevant information concerning the real status of public records during an appraisal process from its State or Federal Archivist in order to achieve its desire to have such records destroyed by using the archivist's deceptively obtained approval to destroy such records when knowing that access to them is being sought by a citizen pursuant to law.

POINT 4:

buy the permanent silence of any public official from the public purse in a Termination State or Federal government Deed of Settlement about known alleged abuse of children in a State-run institution for the rest of his or her life.

In this matter, the Deed of Settlement of 7 February 1991 used as the instrument to terminate Mr Coyne's employment specifically made such demands.

At the time this matter came before the Senate, it was not disclosed that the following form of words in the aforesaid Deed of Settlement *"...the events leading up to and surrounding his relocation from the John Oxley Youth Detention Centre*" was about or could be argued to cover incidents of alleged child abuse in the period before the Heiner Inquiry was established.

> Unquestionably the Goss Queensland Government knew that abuse of children was an issue of concern at the Centre. On 1 October 1989, the Hon Ann Warner, when Opposition spokesperson for Family Services, cited specific incidents of alleged child abuse in *The Sunday Sun* (1 October 1989 p 19), calling for the incidents to be investigated.
>
> These incidents led directly to the establishment of the Heiner Inquiry, but it seems that other grievances of a similar kind going back to 1988 may have been aired at the Inquiry.
>
> The drafting and use of such an instrument, coming from any government with the assistance of the Office of Crown Law, in effect, indirectly or directly authorises, or, at the very least, condones the abuse of children in State-run institutions.
>
> We suggest that any Minister/officer or agent of the State/Crown, who possessed knowledge of the nature of these alleged unlawful events which they then specifically required not to be broadcast by inserting prohibiting clauses in a State/Crown Deed of Settlement, would be acting outside the law, and would be engaging in prima facie abuse of office, obstruction of justice and misappropriation of public monies for an illegal purpose if public monies were to change hands as part of such a termination of employment arrangement. The facts show that former Minister the Hon Anne Warner and her then Director-General Ms Ruth Matchett possessed such knowledge when executing the February 1991 Coyne/State of Queensland Deed of Settlement.

In all these respects, the law is clear. It prohibits such conduct.

We also suggest that it is open to conclude that the contrived nature of Mr Coyne's so-called involuntary retrenchment pursuant to section 28 of the *Public Service Management and Employment Act 1988* may have knowingly breached *the Income Tax Assessment Act 1936* such was the Queensland Government's rush and desire to rid themselves of him, and consequently may invite Federal intervention at that level alone.

By way of additional evidence showing the contrived and *prima facie* illegal nature of Mr Coyne's retrenchment, on 7 February 1997, Solicitors and Notary John Katahanas & Company, acting for Mr Coyne, lodged Writ (No 1130 of 1997) in the Supreme Court of Queensland.

Mr Coyne claimed against the State of Queensland:

> (a) damages for breach of contract, (b) damages for wrongful termination of employment, (c) damages for breach of statutory duty, (d) damages for deceit, and (e) damages for negligence;

against Ms Ruth L Matchett:

> (a) damages for inducing breach of contract, (b) damages for breach of statutory duty, (c) damages for malfeasance in public office, (d) damages for termination of employment, (e) damages for deceit;

and against both Defendants:

> (a) interest on the moneys claimed in paragraphs (1) and (2) hereof pursuant to the provisions of section 47 of the *Supreme Court Act 1965*, (b) costs, (c) such further and other orders as may be just in the circumstances.

While Mr Coyne seems to have dropped the action after several months, we submit that the lodging of such a Writ in the Supreme Court of Queensland itself gives rise to the existence of suspected misconduct surrounding the manner in which his career was ended in February 1991. As far as we know, no out-of-court settlement was reached pursuant to the aforesaid Writ.

We request that this grievance be placed before the Senate as soon as possible for consideration. Should the Senate decide to revisit the matter, then we would be pleased to provide a more detailed submission

(supported by relevant case law), and, if necessary, to provide oral submissions, as would our client, Mr Kevin Lindeberg.

Yours sincerely

GREENWOOD QC

9 May 2001.

Madam President, I have risen to speak on this issue and read that QC's opinion into the *Hansard* because the Labor Party refused me leave to table it or incorporate it.

Hansard records that the former Democrat senator John Woodley spoke passionately on this matter. Senator Woodley said about the Heiner shredding:

***... it is totally unacceptable for any Australian government to send to the international community a signal that shredding public records to stop their use in court proceedings or to stop lawful access to them is acceptable conduct in our public and legal administration or in any aspect of public life at all. It brings our reputation as a nation governed by the rule of law into unacceptable disrepute**."*

I totally—100 per cent—support Senator Woodley's comments there and commend that the Senate accept Greenwood QC's legal opinion in the spirit that it has been read into *Hansard*, therefore accepting that the only way to assess whether the Senate has been misled or held in disrepute is to initiate an inquiry.

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DOCUMENT K: Allegations of Pack Rape at JOYC

THE COURIER-MAIL

Centre inmate, 14, pack raped

Bruce Grundy

3 November 2001

Page 3

A YOUNG Aboriginal woman has confirmed claims by several former staff members of a Brisbane youth detention centre that she was gang-raped while being held in the centre as a 14-year-old.

The woman, now in her mid-twenties, said she was gang-raped twice on a supervised outing from the John Oxley Youth Detention Centre in the late 1980s.

Former members of staff at the centre also have claimed the matter was "swept under the carpet" and "hushed up".

One former youth worker said if what had happened to the girl in question had happened to a white girl, "there would have been hell to pay".

The woman, who cannot be identified, said she was taken on a bus trip with a group of Aboriginal and white male inmates to an isolated spot in the country.

One staff member accompanied the inmates into the bush and left her with the boys. The woman said the boys demanded sex and started arguing about who would "go through her" first.

She said she told them to leave her alone but they forced her on to a large rock and raped her.

The woman said that what had happened to her on the first walk was repeated later in the day.

When contacted about the incident Families Department public servant Jeffery Manitzky, who was allegedly in charge of the excursion, said: "I'm not interested in talking about that."

Mr Manitzky then denied he was aware of the incident.

Karen Mersiades, who also supervised the excursion, said she would prefer not to comment.

"I know that the manager of the centre informed (the girl's) mother of the allegations, and she came in to the centre," she said.

Ms Mersiades said the mother decided not to pursue the matter because she had been told the boys involved were "indigenous".

Former leading criminal lawyer and Director of Public Prosecutions at the time of the incident, Des Sturgess QC, said "unless the story was incredible the outcome of the matter was not one for the mother to decide".

"That would be for the police to investigate and determine," Mr Sturgess said.

However, the girl's parents strenuously denied ever being told of the incident.

They said the first they had heard of it was when asked by *The Courier Mail* why they had decided not to take any action over the matter.

Peter Coyne, the then manager of John Oxley, said anyone with allegations about the abuse of children at the centre should take them to the Families Department, the police or the Criminal Justice Commission.

"I would encourage anyone with such allegations to do so," Mr Coyne said.

Former assistant manager of the centre, Jenny Foote, also declined to discuss the matter. She works in the Families Department.

The Courier-Mail has been told by former members of staff they had "no doubt" the matter of the gang rape had been raised with the 1989 Heiner inquiry into the John Oxley Centre.

Following the closing down of the inquiry the manager of the centre was paid more than $27,000 for "entitlements" and required to sign a secrecy agreement.

DOCUMENT L: Who Knew about the Rape Claim and When Did They Know it

THE COURIER-MAIL

Page 2 Thursday 8 November 2001

Journalist Bruce Grundy

INQUIRY BOSS 'KNEW OF RAPE CLAIM'

THE former Children's Court magistrate who conducted the aborted 1989 inquiry into the John Oxley Youth Detention Centre was told of claims that a 14-year-old Aboriginal girl in care was gang-raped.

But the inquiry by former magistrate Noel Heiner was terminated by the Goss government whose cabinet directed that all of Mr Heiner's materials be shredded in 1990.

Allegations that the centre's management knew of the rape, for that it had been covered up for 12 years, were raised in *The Courier-Mail* on Saturday.

A former centre youth worker said yesterday that he had been interviewed in 1989 by Mr Heiner, who had specifically asked about the rape.

He said the interview "was about Peter Coyne (the manager of the centre) basically" but the rape "was one of the incidents that came out."

When asked if he had volunteered information about the rape claim or had been questioned about it, the man said; "He (Mr Heiner) asked...he knew about it already."

The man said everyone in the centre knew about the rape allegation.

A former minister in the Goss cabinet, Pat Comben said on television in 1999 that "in broad terms" the cabinet had been aware that the shredded documents had contained information about child abuse.

The next day Mr Comben said that his comments had been taken out of context.

Mr Heiner declined to comment on the matter yesterday.

A move by Families Minister Judy Spence to refer the pack rape cover-up allegations to the Criminal Justice Commission for investigation was strenuously opposed yesterday by a Queensland member of a Senate select committee which examined the shredding of the Heiner documents.

Former Democrats senator John Woodley, a member of the 1995 Senate Select Committee into Unresolved Whistleblower Cases, said it would be inappropriate for the CJC to investigate the matter because at the time of the Senate inquiry the CJC knew about cases of child abuse, but failed to disclose them to the Senate.

“That was an incredibly serious omission, and one can't have confidence that they will deal with it properly if it is referred to them again, " Rev Woodley said.

According to former members of staff and the girl concerned, the gang rape took place when she was taken on a supervised excursion with a group of male inmates to a remote location in the bush.

The state Opposition yesterday called for a fresh public inquiry into the Heiner shredding. Opposition Leader Mike Horan said he was shocked to learn of the rape allegations.

"This latest allegation of pack rape indicated the seriousness of the allegations that were covered up by the members of a Labor cabinet, some of whom still sit in this House," Mr Horan said.

"Nothing short of a full and open inquiry into this matter will ensure that justice can finally be given to victims of abuse."

Premier Peter Beattie said police and the CJC were examining the allegations.

DOCUMENT M: Victim’s Parents Respond to CJC Findings

THE COURIER-MAIL

Saturday 17 November 2001 Page 3

Journalists: Chris Griffith and Bruce Grundy

CJC FINDING QUESTIONED BY VICTIM'S PARENTS

THE parents of a 14-year-old girl who said she was pack-raped while under care at the John Oxley Youth Centre last night cast doubt on whether there was a thorough police investigation.

The parents' claim follows a Criminal Justice Commission finding yesterday that staff at the youth centre had not covered up the alleged pack-rape in 1988 and that Department of Family Services records from 1988 showed the allegations were reported to police.

The CJC said it had examined police notebooks and diaries "which further confirm this fact", along with medical records showing the girl was examined by a pediatrician at police request.

QPS spokesperson Tim White said police records also confirmed an investigation had taken place but he would not provide more details.

On November 3 *The Courier-Mail* reported claims by former staff the rape allegations had not been passed to police.

Karen Mersiades, one of those who supervised the 1988 excursion, said the girl's mother decided not to pursue the matter because she had been told the boys involved were "indigenous".

The CJC clearance yesterday prompted Department of Families director-general Frank Peach to issue a media statement welcoming the CJC's findings clearing his department of a cover-up.

But the girl's parents questioned whether any serious investigation of the rape claim occurred as they had never been informed by police. "I was never told anything about my daughter being raped or any investigations. That is a lie," the mother said.

"But they told the staff they couldn't do anything because I wouldn't press charges.

"I would have pressed charges - all the way."

DOCUMENT N: Former JOYC Youth Worker Speaks Out

Phone-interview with 'Michael' former JOYC Youth Worker
and Mr Steve Austin Presenter ABC Morning Radio (612 4QR) Brisbane
7 November 2001

I feel too many people are protecting their posteriors in the interest of self improvement at that time … you know … in getting on in the bureaucracy, government .. it was pure self interest.

Q. What do you know of the alleged rape of this young girl?

A. I cannot remember … as I say … this is going back about 1988 -- 87-88 … I cannot remember if I was on duty or not … everybody knew … I wasn't told directly … but we all knew … we were summonsed down a couple of days later to Peter Coyne's office and we were told it would be handled internally, we were under the Secrecy Act and we were not to discuss it outside … and they would handle it internally.

Q. What was the Secrecy Act that they cited as the reason why you couldn't speak?

A. That everybody who was a government employee in that sort of job, basically, you didn't discuss what went on outside of duty … concerning the children.

Q. Did it surprise you when you were told that you could say nothing?

A. It did. It did .. because, quite frankly, I thought it would be taken to the highest level. I mean, rape is rape, isn't it … and especially those children were in the care of … us … Peter Coyne being the manager.. and the other staff there … they were in the protection … OK, they weren't little angels, there were often nasty little children there, but the point is … or, that is beside the point, that they were under the protection of the Family Services and they weren't getting it.

Q. The current government's attitude seems to be that this matter has all been dealt with by the Forde Inquiry, and that's essentially the end of the story …

A. It's not … because I was interviewed by … oh what's his name … then … very nice man and his assistant …

Q. This is way back in '89 are you talking about … Noel Heiner …

A. That's it … and he was very nice … put it all on tape and everything. I spent oh … a lot of us spent time in there … I can't give you the other names because I can't remember , but I was there and I know other people went and then I think Anne Warner had it all shredded.

Q. Well the government's attitude seems to be that the Forde Inquiry has dealt with all these matters so there is no further investigation …

A. No, I don't agree with that. I don't. I think it has all been pushed under the carpet.

DOCUMENT O: ASA Council's Restatement of Its Position

GOVERNANCE ISSUES

As the Society's members are aware, the responsibility for day-to-day decisions of the Society rests with the Council. Councillors are elected on a rotating basis for a two year term by the professional membership.

The policy of the Society on any given issue is determined in descending order of importance by its Rules, Resolutions of the Annual General Meeting (and other special meetings), and a decision taken by Council.

Where an issue is open to decision by Council, there are many options available to it. These include taking a firm position in favour of something and actively pursuing it, deciding against a position on something and taking an equally firm position, and deciding not to take a position at all - or to reconsider the matter later. Some 70% of the current Council have been on it for two years or less. Many matters are revisited depending on changing circumstances or changing views of individual Councillors.

But, as mentioned, Council is not all-powerful. If members of the Society are unhappy with a position taken by Council on an issue then they can take the issue to an AGM or Special General Meeting and propose a formal Resolution that directs Council (and the Society) to take a given position on the issue. Providing that the Resolution is within the Rules of the Society, Council is obliged to do its best to implement the Resolution. Councillors if they are sufficiently opposed to the Resolution may, of course, resign from Council and the Society will then appoint new Councillors to implement the decisions of the AGM.

There has been no Resolution by an AGM directing Council to take a particular position on the Heiner Affair and - so far as I am aware – the whole issue has not been debated by an AGM. Similarly, there does not appear to be a clear view generally of the membership on the issue. Until a Resolution is passed by an AGM to the contrary, the policy position of the Society on Heiner is the responsibility of the Council.

Now, if members of the Society have a question on the position of Council on an issue or why a particular decision was taken, the appropriate action is to ask Council directly. A response by Council may take a little time but an answer will be given. The answer may not be to everyone's liking but they will get one. To turn to the Heiner Affair.

HEINER AFFAIR

I am not going to go over the details of the Heiner Affair as a whole. In part, this is because it is difficult to succinctly summarise the events - or even to agree on their relative importance. Also, the affair is not about just what happened in 1989 but also what happened in subsequent years with the various

inquiries into the matter. Those who are interested in the events can find various summaries and views under "Heiner" using a web search engine such as Webwombat.

However, it should be said that the Society's concerns were with the destruction of the records of the original Inquiry and whether that destruction was legally authorised. Second, the stated views of various Queensland authorities on the proper role and powers of the State Archivist. These views were in some instances rejected and criticised in others.

Contrary to what was stated, the Society has made more than one statement on the matter and these were strong statements. For those interested in the details, the documents may be found on the ASA's web site text library as follows:

1. June 1997 (titled on text library "ASA Statement on the Heiner Affair").
2. March 1999 (titled on text library "ASA Position Statement on the Heiner Affair").
3. October 1999 June 1997 (titled on text library "ASA letter on the Heiner Affair").

Also, I cannot fail to mention the many, many hours over several years put into dealing with Heiner related issues by previous Councillors and by Adrian Cunningham in particular.

Councillors over the years have had different views on how best to deal with Heiner and there has not been a formal view taken by Council beyond that contained in its public statements. Council in light of events of the last week has determined its position now on the Heiner matter.

Council Position on Heiner - December 2001

a) Council reaffirms its statements of June 1997, March 1999, and October 1999.
b) Council's view is that the likely only way to get to the bottom of Heiner events and related actions is by means of a Royal Commission into the original and subsequent events. This includes any matters in dispute connected with the destruction of records of the original Inquiry. Such a Royal Commission would have to have very wide-ranging Terms of Reference and would likely sit for an extended period.
c) To force the Queensland Government to appoint such a Royal Commission requires sufficient and incontrovertible evidence that the Government cannot ignore. There is apparently no such evidence to hand.
d) If a Royal Commission is appointed to inquire into Heiner then the Society will make a submission to it based on the Commission's Terms of Reference.
e) If new evidence does come to light concerning the Heiner affair - especially concerning the destruction of records - then Council will consider it and determine an appropriate response. Otherwise, Council will take no further action on Heiner.

Stephen Yorke
President
for the Council
Australian Society of Archivists
13 December 2001