

## Records and the Public Interest:

### Shredding of the "Heiner Affair" records: An up-dating summary

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#### Abstract

A paper on the long-running (since 1989) Queensland Heiner Inquiry, written for the Records and Information Management On-line Service by Australian archivist Chris Hurley, while Acting Chief Archivist of the National Archives of New Zealand, to summarise and up-date his Appreciation Paper, also on the RIMOS site, of events surrounding the shredding of the inquiry documents. Before his New Zealand appointment, Chris Hurley worked in government and state archives in Australia - Australian Archives, 1971-80, and the Victoria State Public Records Office, 1981-97. Since 2001, he has been Information & Archives Specialist for the Commonwealth Bank of Australia in Sydney.

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An up-date? Somehow, I doubt that anyone, anywhere can ever get "up to date" on the case. It is truly byzantine! However, this summary may, to some extent, help newcomers to the extraordinary events that have become known, in Australian archive circles, as the "Heiner Affair". Briefly:

In 1990, records being sought in a legal action about to be undertaken against the Queensland Government were destroyed at the direction of the Queensland Cabinet and with the approval of the Queensland State Archivist, who was apparently kept ignorant of the proposed legal proceedings and of Cabinet's reasons for wanting to be rid of them.

Later, the State Government's action was investigated by the Queensland Criminal Justice Commission (QCJC) which dismissed claims of impropriety. Subsequently, the 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.

The Heiner documents were the records of interviews 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 March 23, 1990.

Before I go on, here is the cast of characters :

**Peter Coyne:** Manager of the John Oxley Youth Centre (JOYC). In early 1990, immediately upon termination of Stipendiary Magistrate Heiner's inquiry, he was seconded out of the JOYC onto a "special project". He sought access to the Heiner documents through his solicitors and union, the Queensland Professional Officers' Association (QPOA), and advised the Queensland Department of Family Services and Aboriginal and Islander Affairs (DFSAIA) through his solicitor that he was intending to institute legal proceedings. One year later, he accepted a redundancy package.

**Noel Heiner:** Began investigations in November 1989 and indicated he was not prepared to continue in January 1990. Documents made and received in the course of his investigations were handed over to DFSAIA and sealed in January 1990. Sealed material was then transferred from DFSAIA to Cabinet secretariat in "a somewhat unusual development". He received indemnity from litigation expenses by Cabinet.

**Kevin Lindeberg:** Senior Organiser/Media/Publicity Officer with the Queensland Professional Officers' Association for six years who initially handled Peter Coyne's case. In mid-1990, he was dismissed from the QPOA. One of the reasons given by the QPOA for his dismissal was his handling of the Coyne case after the Minister for the DFSAIA complained that he was "overly-confrontationalist and inappropriate" in his negotiations.

**Ms Lee McGregor:** State Archivist. Her approval for the destruction of the Heiner documents was sought by Cabinet official, **Stuart Tait**, on February 23, 1990 and was given "apparently ... within a few hours".

**Ms Ruth Matchett:** Acting Director-General of the Queensland Department of Family Services and Aboriginal and Islander Affairs (DFSAIA) which replaced the Department of Family Affairs following the Queensland change of government in December 1989 and terminated the Inquiry in February 1990. She resigned in mid 1995.

**Kenneth O'Shea:** Queensland Crown Solicitor. In January 1990, his advice was sought on the manner in which the Inquiry had been set up and on Heiner's powers and indemnities. He advised that Heiner and his informants might not be immune from legal action for defamation.

**Alan Pettigrew:** Director-General of the Queensland Department of Family Services (DFS) which initiated the Heiner Inquiry after a meeting involving Janine Walker.

**Stuart Tait:** Acting Cabinet Secretary in early 1990. Sought approval from the Queensland State Archivist for the destruction after taking advice from O'Shea.

**Ms Janine Walker:** Industrial Relations Director of the Queensland State Services Union (QSSU) some of whose members were concerned about the management of the JOYC. She urged establishment of the Inquiry and handed written complaints to Pettigrew.

**Ms Anne Warner:** Minister in the Goss Labour Government responsible for the DFSAIA. Retired at the July 1995 State election.

#### **Since 1990 :**

- 1 The two central players, Mr Coyne and Mr Lindeberg, have sought redress.
- 2 The matter has been before two Queensland Senate inquiries and twice to a Senate Privileges Committee Hearing.
- 3 It was during one of these, the 1995 Senate Select Committee on Unresolved Whistleblower Cases, that the QCJC argued that archivists need only consider the historical significance of records when reaching a disposal decision, a view that has been fiercely criticised.

- 4 There have been two other inquiries in Queensland - the first in 1996 by two lawyers, **Anthony J. H. Morris** QC and **Edward J. C. Howard**, and the second, an investigation of the QCJC action, by **Peter Connolly** QC and commissioner **Kevin Ryan** QC in 1997. The Connolly/Ryan report was later published on the World Wide Web by the Queensland University's Department of Journalism at <http://www.uq.edu.au/jrn/twi/shrd75.htm>
- 5 A public statement by the Council of Federal, State & Territory Archives (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". The statement has been much criticised.
- 6 I wrote an appreciation of the affair, recommending action by the Australian Society of Archivists (ASA) and the Records Management Association of Australia (RMAA) to repudiate what the QCJC were saying about the Archives role.
- 7 Recommendations for prosecution made by the Morris/Howard Inquiry were thrown out by the Queensland Director of Public Prosecutions. The inquiry had uncovered a second destruction of Heiner documents. The inquiry's report was not published.
- 8 Controversy raged within the ASA over whether or not to take a public stand but it finally issued a public statement calling for legislation guaranteeing the independence of the State Archivist, including protection from political interference, in order to ensure the integrity of the public record.
- 9 A proposal to take the issue before an International Council on Archives (ICA) Committee chaired by Canadian archivist John McDonald was stymied by **Charles Keckemeti**, the then ICA Secretary-General, and the matter was referred back to Australia for the State & Federal Archivists and the ASA in Australia.
- 10 Evidence taken before the Connolly/Ryan inquiry was kept under a suppression order withholding all testimony relating to the State Archivist and her role (I am informed that the assertions of the QCJC concerning the role of the Archives were repeated under that cloak of secrecy). The report was eventually published by the *Weekly Independent*, now called the *Queensland Independent*, the staunch campaigning journal of the Department of Journalism at the University of Queensland in Brisbane. See *The Justice Project*, an internet initiative of the staff and students of the re-named School of Journalism and Communication at the university <http://justiceproject.net/content/default.asp>.
- 11 **The Connolly/Ryan Judicial Review** into the Effectiveness of the Criminal Justice Commission is at <http://www.uq.oz.au/jrn/twi/shrd75.htm> (177 kilobytes).

- 12 I nominated the *Weekend Independent* for the ASA's Mander Jones Award on account of its coverage of the Heiner Affair. My announcement of the nomination on the Aus-archivists listserver brought me a great deal of flaming criticism which may be seen on the listserv mail list messages following mine at <http://www.asap.unimelb.edu.au/asa/aus-archivists/msg00793.html>.
- 13 December 1997 saw the State Senate refer the Heiner question back to its Privileges Committee on the motion: "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". The Hansard report of the debate could be found on the World Wide Web at <http://library.aph.gov.au/libwww/trialhom.html>.  
The report of the Privileges Committee was published in mid-1998 and was on the Web at [http://www.aph.gov.au/senate/committee/priv\\_ctte/report\\_71/index.htm](http://www.aph.gov.au/senate/committee/priv_ctte/report_71/index.htm).
- 14 In July 1998, the State Premier the Rt. Hon. **Peter Beattie** tabled a Motion of Confidence in his own government in the Queensland Parliament. After a fierce debate in which the shredding of the Heiner papers figured hugely, the Government squeaked in with a 45 to 43 vote. The debate may be read at <http://www.parliament.qld.gov.au:81/hansard.htm>.
- 15 The Affair flared up again in 1999 following the February broadcast of the Australian television **Channel 9** current affairs programme "*Sunday*". The two-part programme alleged 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 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 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 was 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 was being suggested, was to shred them quietly out the back. A transcript of the broadcast was made available on <http://sunday.ninemsn.com.au/>.

My comments on the two parts of the programme can be found on the Aus-archivists Listserv archive at <http://www.asap.unimelb.edu.au/asa/aus-archivists/msg01184.html> and <http://www.asap.unimelb.edu.au/asa/aus->

[archivists/msg01258.html](http://www.archivists/msg01258.html) .

- 16 In March 1999, the Queensland State Parliament was at it again. The Opposition moved to set up an independent Inquiry into the shredding and into allegations that Goss Labour Government ministers knew the documents contained evidence of child abuse. Premier Beattie moved an amendment exonerating the Goss Labour Government and his own and argued that the **Forde Inquiry** into Abuse of Children represented an appropriate response. An independent member, Mrs **Liz Cunningham**, refuted this by pointing out that the Forde Inquiry was not investigating the Heiner Affair because it was outside its terms of reference! The motion to set up an Inquiry and condemn the Goss Government was defeated when the Beattie amendment was passed on party lines. You could find it all at <http://www.parliament.qld.gov.au:81/hansard.htm>.
- 17 A new Australian Society of Archivists commentary, *The Heiner Affair – A Position Statement*, was issued later that month by the President, Adrian Cunninghame, and published on the Aus-archivists Listserve.

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My original Heiner affair "appreciation" from 1996 I think stands up pretty well despite all the water that has flowed under the bridge since then and, if you are a glutton for punishment, there are several other World Wide Web sites to visit.

- **The Heiner Shredding:** An [Appreciation](#). My interpretation of the events of 1989 and 1990 surrounding the destruction of the Heiner Inquiry documents, available here on the RIMOS site at <http://caldeson.com/old-site/RIMOS/heiner.html>.
- **The Aus-archivists Listserve** Archive where debate has raged <http://www.asap.unimelb.edu.au/asa/aus-archivists/maillist.html>
- See also *The Justice Project*, an internet initiative of the staff and students of the School of Journalism and Communication, The University of Queensland <http://justiceproject.net/content/default.asp>.
- **The Connolly/Ryan Judicial Review** into the Effectiveness of the Criminal Justice Commission is at <http://www.uq.oz.au/jrn/twi/shrd75.htm> (177 kilobytes).
- **The Queensland Senate** Committee of Privileges 1998 report on "*Further possible false or misleading evidence before select committee on unresolved whistleblower cases*" at [http://www.aph.gov.au/senate/committee/priv\\_ctte/report\\_71/index.htm](http://www.aph.gov.au/senate/committee/priv_ctte/report_71/index.htm) (35 kilobytes).
- **The Hansard report** of the Queensland State Parliament debate on a Motion of Confidence on July 30, 1998, at <http://www.parliament.qld.gov.au:81/hansard.htm> (657 kilobytes).
- **Australian Tv Channel 9's** February, 1999, "Sunday" programme report of the Affair, interviews with Lindeberg and others. A transcript was mounted at <http://sunday.ninemsn.com.au/>.
- **Hansard's report** of the Queensland State Parliament debate on a call by the Opposition for an Inquiry on March 4, 1999, at <http://www.parliament.qld.gov.au:81/hansard.htm> (343 kilobytes).

- **Australian Society of Archivists'** March 18, 1999, release, "*The Heiner Affair - A Position Statement*", in the Aus-archivists listserv archive at <http://www.asap.unimelb.edu.au/asa/aus-archivists/msg03105.html> and the month earlier "*ASA Position on Heiner*" at <http://www.asap.unimelb.edu.au/asa/aus-archivists/msg03063.html>.

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