**Speech by**

# JACK PAFF

## MEMBER FOR IPSWICH WEST

Hansard 30 July 1998

### MOTION OF CONFIDENCE

**Mr PAFF** (Ipswich West—ONP) (8.23 p.m.): I rise to support the amendment to the motion moved by the member for Caboolture. I would like to commence by thanking the people of the electorate of Ipswich West for putting me here.

Other members have spoken in this Chamber today about different aspects of Shreddergate. I want to cover a couple of those aspects so that the media and members on both sides of this Chamber know why the case is so important. The remarkable thing about this debate is its unreality. It is unreal that any Government—that is the Crown—or law enforcement agency such as the CJC should argue that it is legal to shred public records to prevent their use in imminent court proceedings in which it is known that they are centrally relevant, while at the same time it is okay to destroy public records which are known to contain evidence of suspected abuse of kids in lawful custody to prevent it becoming public, and then not pursue those who actually shredded the information. It is unreal. What makes it even more unreal is that those who ordered the shredding and engaged in a cover-up for years and years now want to govern our State. This is unreal.

It was always a curious thing to me why the members of the Labor Party opposite could ever argue that it was right to shred public records in order to stop people suing each other for defamation. My understanding of the law is that if a person knew that records in his possession were critically relevant to court proceedings and the person destroyed them to prevent their being used in court, that person broke the law. This is the same principle that saw Matthew Heery face charges arising out of the Carruthers inquiry into the memorandum of understanding. Interestingly, after the jury dismissed the charges, the Chairman of the CJC, Mr Clair, said that it was correct that Mr Heery faced charges because destroying evidence struck at the very heart of our legal system.

It is remarkable that Mr Clair can adjudicate that it is right and proper for Mr Heery to face charges on, in effect, efforts to destroy evidence, but when it comes to the shredding of the Heiner inquiry documents, it is a horse of a different colour. The CJC never asked any of the Heiner inquiry witnesses whether they wanted their evidence destroyed. The CJC and the Goss Government presumed that they knew best. They did not, because there is certainly one youth worker who gave evidence at the inquiry into the John Oxley Youth Detention Centre who did not want his evidence shredded. What did these people have to fear? Unquestionably, they enjoyed qualified privilege, and if any writ were to have been issued, the Crown would have indemnified them if they told the truth. With those assurances, why shred the records?

There is another dimension to the need to shred that appears to have been lost in the dust of the CJC and members opposite trying to defend it. This so-called defamatory evidence was about the performance and management of a public official at a Government facility that was supposed to look after children in lawful custody. This brings into play two elements: duty of care and suspected misconduct. Let me say this: it was defamatory to say of the former Police Commissioner, Terry Lewis, that he was corrupt. Just because comments made about a public official in the performance of his or her public duty may be defamatory, it does not follow that the records should be destroyed. If it was evidence of suspected official misconduct or criminal conduct, there was every good reason to retain the material and not shred it. No matter which way we look at it, the records should never have been shredded.

Let me make a short comment about the additional payment of $27,190 to Mr Coyne. The plain fact is that Mr Coyne was not entitled to the money. There is absolutely no doubt about that. I believe that it is sheer nonsense to suggest that those in authority were unaware of their spending limits. Politicians such as Mr Brian Austin, Mr Don Lane, Mr Geoff Muntz and Mrs Leisha Harvey went to jail when they overspent. The amounts involved in those cases were much less than $27,190. It is beyond belief to suggest that Minister Warner was not aware of her legal spending limits at the time. It does not wash.The payment was a bribe—pure and simple. It was worked out by the department and the union colluding together behind closed doors. They thought that they had it all stitched up when Crown law was prepared to draw up a settlement deed that required Mr Coyne to never speak publicly on this matter. It was a fraud. It was a concoction to defraud Queensland taxpayers and a massive betrayal of public trust. Why could Mr Coyne never speak about what went on at the centre?

Let me deal with another area of massive betrayal of public trust. It is the area of the State Archivist and the CJC's understanding of her role. Firstly, let me deal specifically with the State Archivist, Ms Lee McGregor. She gave her approval to destroy the Heiner inquiry documents on 23 February 1990. She gave it in less than one working day, despite having over 100 hours of material which she had to check for its legal, historical, informational, administrative and data value. She worked with a colleague, but by any measure it was a rushed job. Perhaps the fact that the Cabinet sought her urgent approval may have something to do with the lightning pace of her work on that day.

On that very same day, Mr Lindeberg, who was seeking access to those documents for his union member Mr Coyne, was told by Family Services Director-General, Ms Ruth Matchett, at a meeting that the Heiner documents were secure with Crown law. She deceived him. One of Ms McGregor's staff, Senior Archivist Ms Kate McGuckin, actually destroyed the Heiner inquiry documents together with Ms Matchett's executive officer, a Mr Trevor Walsh, on 23 March 1990 in secret. It is worth noting that if one senior public servant knew that the Heiner material was required for court and the subject of an access statutory demand, it was Mr Walsh who, instead of protecting the material, helped shred it. Cabinet did not tell the State Archivist on 22 March 1990 that the reason it was ordering the shredding was to prevent it from being used in court proceedings that it knew were imminent. The deception and abuse of office in this affair appear endless.

But the point I want to make is that on 17 May 1990, Ms McGregor was officially told by Mr Coyne what the true status of the Heiner inquiry documents was. And instead of acting impartially and in accordance with her duty under the Libraries and Archives Act 1988, she misled Mr Coyne and followed the orders of Mr Walsh, a conspirator in the shredding, to tell Mr Coyne nothing. This Archivist, who still oversights the protection of our State's records, must be examined in public about her extraordinary role in Shreddergate.

As for the CJC, its position on the role of the State Archivist is not only sheer archival nonsense but also contradictory in crucial areas. The CJC actually knows what the proper role of the State Archivist is, and it was put forward to EARC in 1991 in its issue paper on Archives legislation. The CJC said that, under the Act, the Archivist had to engage in a wide audit when appraising any public record for retention or destruction. In other words, the CJC has deliberately twisted the Archivist's role to suit its own biased findings in respect of the shredding. It knows that if the Archivist was fully informed, she could never have approved the shredding of those documents. It knows that there is a duty on public officials, including the Cabinet, to give the Archivist all the known facts associated with records undergoing an appraisal to decide their fate, otherwise the Archivist cannot perform her task honestly, impartially and in the public interest. The Goss Cabinet may have followed the process, but it abused the process by actively deceiving the Archivist and withholding relevant facts from her in order to get the urgent decision it wanted. In this case the Cabinet wanted to destroy the evidence. Mr Coyne and others never, ever wanted it shredded.

The Archivist had to take into account all these administrative and legal factors. She was required to err on the side of caution. It was not for her to decide whether access to them should or should not be granted. It was her job to preserve them for that decision to be made by a court or between the warring parties. She was not a court of law, but unless she preserves public records with those values, our entire system of government and our legal system will be crippled.

Left as it is, the CJC has given our State Archivist greater powers than a court of law to decide the ultimate fact of public records. The office of Crown law in Queensland is also encouraging this dangerous course. Messrs Morris, QC, and Howard said this at page 97 of their report—

> "... the fact that a document is the Government's 'own property' certainly affords no defence to a charge under s.132 or s.140 (or, for that matter, s.129) of the Criminal Code; the gravamen of the offence does not consist in a wrongful interference with another person's property rights ... but in the fact that the destruction of property ... may interfere with the due administration of justice.

> Nor is the fact that the destruction occurred 'in accordance with a statutory regime which permitted ... destruction' of any relevance. The State archivist's authorization for the disposal of a public record under s.55 of the Libraries and Archives Act 1988 does not over-ride ss.129, 132 or 140 of the Criminal Code; it merely over-rides the general prohibition which s.55 contains against disposing of public records without such authorization. Section 55 does not confer on the State archivist the power to confer a plenary indulgence, authorizing the destruction of any document even if its destruction is prohibited by s.129 of the Criminal Code or would have the effect of obstructing, preventing, perverting or defeating the course of justice within the meaning of ss.132 or 140 of the Criminal Code; it merely empowers the State archivist to exempt a document from the general requirement of s.55 that 'a person shall not dispose of public records other than by depositing them with the Queensland State archives'."

The State Archivist operates under an international code of ethics devised by the International Council on Archives. The relevant section, section 8, states that Archivists should use the special trust given to them in the general interest and avoid using their position to unfairly benefit themselves or others. Archivists must refrain from activities which might prejudice their professional integrity, objectivity and impartiality. They should not benefit financially or otherwise personally to the detriment of institutions, users and colleagues. In this case, the Archivist bowed to the wishes of Executive Government, and when she was later officially informed about the true status of the Heiner documents, she let that deception stand. She did nothing but consult and take the advice of one of the conspirators. She betrayed her public trust.

If everything is aboveboard, then he or she will find accordingly. But left as it is, we have a CJC out of control, making nonsense findings to suit its political purposes. I ask: if there is nothing to hide, then why hide? We have an Archivist who appears willing to shred everything in sight. We have a police force incapable of attacking allegations of criminality at the highest levels of government, and we potentially have five senior Ministers who are sitting in Cabinet deciding the fate of this great State and who should be facing the full rigour of the law.

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