

# Politicians and officials excused – but date set for citizen’s trial in document destruction case

By Georgina Robinson

The District Court trial of a Queensland man on charges of destroying evidence or attempting to pervert the course of justice will begin in Brisbane early next month.

The case is being watched with interest both interstate and overseas because similar charges were never brought against a number of politicians and senior public servants who were responsible for destroying documents a decade ago.

In 1990 the Queensland government shut down an inquiry into a youth detention centre and State Cabinet authorised the destruction of all evidence it had taken.

At the time of the shredding the material was being sought by a firm of lawyers for legal action.

One of those involved in the shredding decision has since said Cabinet ministers at the time had been aware “in broad terms” that the material contained information about child abuse at the youth centre concerned.

Former staff have also since revealed that the aborted inquiry had heard evidence of residents being handcuffed to a fence and a storm water drain in the open overnight and a girl being pack-raped on an excursion into the bush.

In 1995 Shadow Attorney-General Denver Beanland asked then-Director of Public Prosecutions (DPP) Royce Miller QC to consider prosecuting the public officials involved in the shredding.

However, Mr Miller said charges could not be laid because no legal proceeding had been underway at the time the documents were destroyed.

“It is my view that there must be on foot a legal proceeding before this section (s.129 of the Criminal Code) is capable of application,” Mr Miller said.

When the matter was again raised with Mr Miller a year later he again advised that a legal proceeding had to be underway before such charges could be laid.

Others who have expressed or supported a similar view include a serving magistrate, Mr Nunan, the State Coroner, Michael Barnes, and three chairmen of the Criminal Justice (now Crime and Misconduct) Commission.

However, at the committal hearing of the man set to stand trial early next month, the Office of the DPP rejected the view that a legal proceeding had to be underway before a charge of destroying material likely to be required in evidence could be sustained.

The man will face charges under Sections 129 (destroying evidence) or 140 (attempting to pervert the course of justice) of the Criminal Code.

In this case no court proceeding had been commenced at the time the evidence was destroyed.

In April 2003, retired Supreme and Appeal court judge James Thomas QC told *The Queensland Independent* newspaper it was incorrect to claim a person could not be charged

because at the time he or she destroyed documents no court action related to such documents was actually under way.

Mr Thomas said the wording of s.129 specifically contemplated that legal proceedings might not be on foot.

Other prominent lawyers and legal academics have since agreed with the former judge’s view, including Associate Professor of Law at Bond University, David Field, barrister and former Senior Crown Prosecutor, Peter Waight and Senior Lecturer in Law at the Queensland University of Technology, Alastair MacAdam.

Mr Thomas also said those involved in the 1990 shredding could still be charged.

Current DPP Leanne Clare is on leave and could not be reached for comment on the matter.

The man’s counsel, Mr Frank Lippett, said the trial was set down for March 8, 9 and 10 in the District Court.

An international authority on archives practice and record keeping, Professor Terry Cook of the University of Manitoba, Winnipeg, told *The Independent Monthly* there was “keen international interest among professional recordkeepers in the forthcoming case because we realise the important precedent being set here”.

Professor Cook said the case exposed “the two-faced hypocrisy” of Queensland authorities for charging a citizen for destroying records that could reasonably be expected to be used as evidence in court proceedings, but would not charge some of their own for “the exact same offence.”

## House of Reps crime inquiry to hold further hearings into shredding and abuse cover-up

By Susann Kovacs

THE House of Representatives Inquiry into Crime in the Community is set to continue its examination of Queensland’s long-running document shredding scandal, the Heiner Affair.

The inquiry took evidence on the matter from a number of witnesses in Brisbane in October last year.

“We’ve had a second submission, a follow-up submission, and we will have a further hearing regarding that further submission,” Chairperson of the House of Representatives Legal and Constitutional Affairs Committee, Bronwyn Bishop, said.

Mrs Bishop said she was concerned there was a double standard in the Queensland legal system in relation to the Heiner Shredding and criticised the Queensland Government for what she called its “hypocrisy”.

“The thing that is of enormous concern to me, in this matter, is that under Queensland law and Mr Beattie, there seem to be two standards, two sets of justice,” she said.

In 1990, politicians and senior public officials destroyed documents known to contain serious allegations of child sex abuse and staff misconduct at the John

Oxley Youth Detention Centre and known to be required for a legal proceeding.

In 1995 the then Director of Public Prosecutions (DPP) determined no charges could be laid against them because, at the time of the destruction, no court action in relation to the documents was actually underway.

However, a Queensland man will shortly go on trial for destroying material likely to be needed in a legal proceeding – despite no court action being underway for five years after the evidence was destroyed.

“There is one (set of standards) if you are a Cabinet minister, or a former Cabinet minister, of the Goss Government,” Mrs Bishop said.

She said a different set of criteria applied to the ordinary citizen.

“That is just intolerable,” she said.

Mrs Bishop said Queensland Premier Peter Beattie’s approach to paedophilia within the Churches was in stark contrast to his handling of the Heiner Affair and revealed a further double standard.

She said: “... his publishing of that Church of England report in Queensland Parliament to try and get privilege, and at the same time covering up the destruction of evidence that showed what was going on with regard to child abuse in the

Government-run home, is hypocrisy of the most astounding heights.”

Mrs Bishop said the Shreddergate Affair had also been a source of international embarrassment for Queensland.

“I think Queensland, and Mr Beattie in particular – his refusal to deal with this matter properly – almost stands condemned by international authorities, who now cite it as such a blatant case of destruction of evidence,” she said.

The Heiner Affair is described by two United States academics in their book, *Archives and the Public Good*, as “one of the great document shredding scandals of the 20th Century”.

Mrs Bishop said those involved in the Heiner Affair shredding could – and should – still be held responsible.

“If the case should be brought against [a citizen] then it should also be brought against those Cabinet ministers,” she said.

“And the other thing that is of course important is that people went around saying that they didn’t know what sort of information was being given to, or they didn’t know the nature of allegations being made about the particular home, the John Oxley Youth Centre – saying they didn’t know it was about child abuse – when there is clearly evidence on the



Inquiry Chair Bronwyn Bishop

public record that certain people did know,” she said.

In 1999, a former minister in the Goss Cabinet, Pat Comben, told Channel Nine’s *Sunday* program the Cabinet had been aware “in broad terms” the shredded documents had contained information about child abuse.

Mrs Bishop said it followed that the members of Cabinet then had an obligation to do something about it.

“Now the bottom line is, if there was knowledge of child abuse being carried out in a government-run home, then all other factors are irrelevant,” she said.

## John Oxley victim reveals more details of abuse

By Bruce Grundy

Information provided by a woman who was pack-raped as a teenager on two excursions from the John Oxley Youth Centre has placed the second of the two incidents as occurring within a matter of weeks of the shutting down of the Heiner inquiry into the centre, and the shredding of all evidence it had gathered.

The woman was questioned by *The Independent Monthly* after it obtained new material about the centre during her time in custody.

The woman, clearly distressed by the material, also revealed she had been the victim of

yet more attacks while in the care and control of the State.

She said she had been forcibly held down by three boys who had not only raped her but as well had carried out a deviant and brutal sexual assault on her.

Official and medical records relating to the woman also raise serious questions about what happened to her, not only while she was held in custody in John Oxley, but also after her release into care, and about the standard of the care and the protection she received.

In mid-1988, official records reveal she was taken with a group of boys by five members of the John Oxley staff to the re-

mote Lower Portals area of the Mt Barney national park.

She was left unsupervised for some time and was raped by some of the boys.

The police were not advised for three days and only then was she medically examined.

There was no investigation of the incident.

The Criminal Justice Commission (now Crime and Misconduct Commission) examined the matter after the story of what had happened to the girl appeared in the press.

The CJC cleared all involved and said there had been no official misconduct on the part of anyone.



Rape evidence shredded

For more, see: *The Justice Project* at [www.eastes.net/justiceproject](http://www.eastes.net/justiceproject) and select *What They Did To A Girl In Care*