

# PARLIAMENTARY (HEINER AFFAIR AND RELATED MATTERS) COMMISSION OF INQUIRY BILL 2014

## Explanatory Notes

### Short Title

The short title of the Bill is the Parliamentary (*Heiner Affair and Related Matters*) Commission of Inquiry Bill 2014.

### Policy objectives and the reasons for them

The relevant law is section 61 of the Constitution of Queensland 2001, in particular section 61 sub-section (5).

The purpose of this bill is to create a Commission of Inquiry to examine allegations of possible judicial misbehaviour relating to the handling of the alleged wrongdoing associated with the 'Heiner Affair'.

Section 61 of the Constitution of Queensland 2001 places an obligation on each member of Parliament to consider matters of such seriousness. Further such responsibility is placed on members of Parliament to safeguard the integrity of the Judiciary on behalf of the Crown and the people.

This responsibility is highlighted more so in these circumstances because the Crime and Misconduct Commission (CMC) on 15<sup>th</sup> May 2014 publicly accepted that it was legally constrained from exercising its relevant power under section 58 of the Crime and Misconduct Act 2001 to investigate such allegations of possible judicial misconduct, and other interconnected matters against other public officials as might normally occur, due to the presence of apprehended bias concerning a potential lack of independence standing against it.

Accordingly the purpose of the Bill is to ensure that Parliament complies with its constitutional obligation to act and resolve the allegations of potential impropriety in the matter commonly known as the Heiner affair because it concerns Parliament's vital supervisory duty to lawfully and expeditiously resolve allegations of possible misbehaviour against judges and other officials when brought to its attention under the authority of section 61 of the Constitution of Queensland 2001.

### Achievement of policy objectives

The Bill enables Parliament to authorise that the relevant matters prescribed in Clauses 4 and 5 of the Bill of allegations of possible unresolved impropriety against judicial officers

and others, shall be properly and thoroughly scrutinised by an independent Parliamentary Tribunal in an open and transparent manner presided over by three retired interstate judges.

### **Alternative ways of achieving policy objectives**

There are now no alternative ways at law to resolve the unfinished, interconnected business pertaining to the alleged wrongdoing as documented and settled in its audit, commonly known as the Rofe QC Audit of the Heiner affair and the related 26 January 2014 public interest disclosure lodged with the Crime and Misconduct Commission by whistleblower, Mr. Kevin Lindeberg.

The alternative way under section 58 of the Crime and Misconduct Act 2001 (or Crime and Corruption Act 2001) was voided on 15 May,, 2014 by the acting CMC Chair Dr Kenneth Levy RFD, on the basis of the existence of apprehended bias due to the CMC/Criminal Justice Commission's ("CJC") previous involvement in these matters, including his own role as a decision-maker when previously with the Department of Justice and Attorney-General in 1994.

### **Estimated cost for Government**

The cost to implement the Parliamentary (Heiner Affair and Related Matters) Commission of Inquiry which obligates its presiding officers be three retired interstate judges would necessarily require that their remuneration be at its contemporary scale for judges of their status as exists in the respective jurisdiction from which they are drawn.

Normal additional remuneration costs will accrue for counsel assisting and appropriate support staff as when and how many the presiding officers deem necessary to complete their commission.

Normal additional costs will accrue in respect of covering costs for those parties granted leave to appear and for others who may be summonsed to appear as and when necessary.

### **Consistence with fundamental legislative principles**

The Bill is generally consistent with fundamental legislative principles.

### **Consultation**

This issue has been a matter of concern to many in the community for many years. It has been recognised previously that a great deal of investigation, discussion and deliberation has preceded the presentation of this Bill.

This bill follows the precedent established in the Parliamentary (Judges) Commission of Inquiry Act 1988 (Qld) in respect of His Honour Mr Justice Angelo Vasta and His Honour Judge Eric Pratt when enacting the 2001 legislation.

The Bill replicates its aforesaid 1988 precedent.

## Notes on provisions

### **Part 1 – Preliminary**

Clause 1 states that, when enacted, the Bill will be cited as the Parliamentary (Heiner Affair and Related Matters) Commission of Inquiry Act 2014.

### **Part 2 – Establishment and operation of Commission of Inquiry**

Outlines the membership, structure and fees associated with the commission of inquiry

### **Part 3 – Role of Commission of Inquiry**

Outlines the functions and reporting responsibilities of the Commission of Inquiry.

### **Part 4 – Proceedings of Commission of Inquiry**

This part clarifies the practical operation of the Commission.

### **Part 5 – Other**

Clause 17 – deals with staffing of the Commission.

Clause 18 – clarifies the application of the Judicial Review Act 1991.

Clause 19 – confers regulation making powers to the Commission.

Clause 20 – sets the expiration date.