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24/5/06.

THE HEINER AFFAIR

Relevant Correspondence for the period 23 December 1999 – 05 August 2005

Between

His Excellency
The Governor of Queensland
The Honourable Major General Peter Arnison AC

Her Excellency
The Governor of Queensland
The Honourable Ms Quentin Bryce AC

Queensland Premier and Minister for Trade
The Honourable Peter Beattie MP

Kevin Lindeberg

As compiled on 22 May 2006

INDEX OF CORRESPONDENCE

1. **23 December 1999**: Letter by Queensland Premier the Hon Peter Beattie to Mr. Lindeberg referring to the *Lindeberg Petition* and stating that the issues "*...had been the subject of exhaustive investigations*" and that he did not intend to take any further action. He advised that the matter could be raised with the Governor by writing directly to his Official Secretary;
2. **20 January 2000:** Letter by Mr. Lindeberg to Queensland Premier the Hon Peter Beattie *inter alia* asking whether he himself had examined the contents of the *Lindeberg Petition:*
3. **16 February 2000:** Letter by Queensland Premier the Hon Peter Beattie to Mr. Lindeberg advising that his decision on the matter "*...was reached following my analysis of your petition*" and that the issues raised had been thoroughly investigated and did not require further action;
4. **19 January 2001:** Letter by Mr. Lindeberg to His Excellency Governor Arnison AC enclosing a copy of the *Lindeberg Petition* - tabled in State Parliament on 27 October 1999 - *inter alia* informing him that his chief adviser had dismissed the petition by a false claim that its allegations and been exhaustively investigated which may have placed him in breach of his Oath of Office by acting outside his sworn duty "*...to uphold the Westminster principles of ministerial responsibility and Parliamentary propriety impartially.*"
5. **19 January 2001:** Photo of Mr. Lindeberg hand-delivering the *Lindeberg Petition* to Government House and being accepted by Acting Official Secretary Mr. Steven Blinkhorn;
6. **2 March 2001**. Letter (2 pages) by Government House Official Secretary Mr. J R O'Connor, on behalf of His Excellency Governor Arnison AC, to Mr. Lindeberg stating that he was not empowered or resourced to conduct an independent investigation or to judge (the *Lindeberg Petition*) on its merits, and to seek advice from the Attorney-General "*...would seem to be at odds with your objectives*";
7. **11 April 2001**. Letter (2 pages) by Mr. Lindeberg to His Excellency Governor Arnison AC indicating that he may consult beyond the circle of his responsible ministers to ensure unbiased advice on the *Lindeberg Petition* such as the Chief Justice of Queensland;
8. **3 May 2002.** Letter (10 pages) by Mr. Lindeberg to His Excellency Governor Arnison AC restating the seriousness of the matters before him which, given their scope (*inter alia* illegal destruction of evidence, unlawful disbursement of public monies, and covering up the *prima facie* offence of criminal paedophilia) and their potential non-jusiticiable character, may trigger his reserve powers under the Crown;
9. **7 May 2002**. Letter by Government House Official Secretary Mr. J R O'Connor, on behalf of His Excellency Governor Arnison AC, to Mr. Lindeberg stating that the Governor was not in a position to assist in the matter;
10. **13 May 2002.** Letter (2 pages) by Mr. Lindeberg to His Excellency Governor Arnison AC *inter alia* pointing out his failure to recognize that criminal paedophilia occurring in a state-run institution was involved, and that to "inform himself" on the matter he could seek advice from whomever he saw fit. Mr.

Lindeberg suggests that in order to carry out his duty "to encourage, advise and warn" his Ministers that he was not the rubber stamp of Executive Government:

11. **14 May 2002:** Letter by Government House Official Secretary Mr. J R O'Connor, on behalf of His Excellency Governor Arnison AC, to Mr. Lindeberg restating that the Governor was not in a position to assist in the matter:
12. **13 February 2003:** Letter (13 pages) by Mr. Lindeberg to His Excellency Governor Arnison AC *inter alia* alerting him to committal proceedings against a minister of religion (Pastor Douglas Ensbey) on 22 and 23 January 2003 under section 129 of the *Criminal* Code in the Queensland District Court in respect of his destruction-of-evidence conduct some 5 years ***before*** the relevant judicial proceeding commenced, the relevance of *McCabe*, and the abuse of power being engaged in by his Government in respect of the Heiner affair:
13. **14 February 2003.** Letter by Government House Official Secretary Mr. J R O'Connor, on behalf of His Excellency Governor Arnison AC, to Mr. Lindeberg indicating that he was not in a position to assist on the matters before him:
14. **10 March 2003.** Letter (2 pages) by Mr. Lindeberg to His Excellency Governor Arnison AC *inter alia* suggesting that his position was profoundly misconceived and that, as Governor, he was, *"...the final guardian in our Constitutional Monarchy of peace, order and good government for the Queensland people"* and that he had a duty, under exceptional circumstances, to protect the people from any government willfully acting outside the rule of law by appropriate remedy. Mr. Lindeberg records that he *"...shall not live with your view and must take whatever remedies are available to me within the rule of law."*
15. **13 October 2003:** Letter (7 pages) by Mr. Lindeberg to Her Excellency Governor Quentin Bryce AC *inter alia* bringing to her attention "the Heiner affair and the *Lindeberg Petition*" suggesting that the issue is *"...so grave that you may be obliged to exercise your discretion under the Constitution's reserve powers."*
16. **11 November 2003**: Letter (2 pages) by Mr. Lindeberg to Her Excellency Governor Quentin Bryce AC informing her that the House of Representatives Standing Committee on Legal and Constitutional Affairs, chaired by the Hon Bronwyn Bishop MP - the Bishop Committee - was conducting an inquiry into the Heiner affair as part of its nationwide inquiry into *"crime in the community: victims, offenders and fear of crime"*;
17. **14 May 2004.** Letter (4 pages) by Mr. Lindeberg to Her Excellency Governor Quentin Bryce AC *inter alia* informing her (a) about evidence provided to the Bishop Committee showing evidence concerning the pack rape of a 14-year-old indigenous minor while in the care and custody of the State at JOYC went before the 1989/90 Heiner Inquiry; and (b) that Queensland's Attorney-General the Hon Rod Welford had lodged an appeal against Pastor Ensbey with the Queensland Court of Appeal (C.A. No 79 of 2004) on the grounds that the 6-month fully suspected jail sentence for his criminal conduct - as found by a jury in the District Court – was not reflective of the seriousness of the crime and did not act as a general deterrence.
18. **20 September 2004:** Letter (6 pages) by Mr. Lindeberg to Her Excellency Governor Quentin Bryce AC *inter alia* informing her (a) of the *R v Ensbey; ex parte A-G (Qld)* [2004] QC 335 decision; (b) a copy of recommendations of the Bishop Committee into the Heiner affair; and (c) that her Government was applying the criminal law by double standards to advantage itself over the people:

19. **15 October 2004:** Letter (10 pages) by Mr. Lindeberg to Queensland Premier and Minister for Trade the Hon Peter Beattie *inter alia* informing him of the systemic corruption associated with the Heiner affair and requesting him to appoint an independent Special Prosecutor to investigate the matter in order to restore public confidence in government;
20. **20 October 2004:** Letter by Mr. Lindeberg to the Administrator the Hon Paul de Jersey AC QC enclosing a copy of the letter of 15 October 2004 hand-delivered to Premier Beattie. The administrator is invited to consider its contents and other material already provided to the Office of the Governor of Queensland;
21. **27 October 2004:** Letter by Government House Official Secretary Mr. J. R O'Connor to Mr. Lindeberg, on behalf of the Administrator, receipt of correspondence of 20 October 2004;
22. **11 November 2004.** Letter by Chief of Staff of the Office of the Premier Mr. Rod Whiddon to Mr Lindeberg acknowledging receipt of his letter of 15 October and a copy of the Bishop Report and indicates that matters are under consideration;
23. **18 November 2004.** Letter by Government House's Official Secretary Mr. J. R O'Connor to Mr. Lindeberg, on behalf of the Governor, acknowledging receipt of letter of 20 September 2004 and informing him that "*...some time ago*" the Governor had sought an official position from the Queensland Government, but had not yet received it. Once received, and considered, the Governor would contact him again;
24. **22 November 2004:** Letter (8 pages) by Mr. Lindeberg to Queensland Premier and Minister for Trade the Hon Peter Beattie *inter alia* pointing out (a) the significance of his answer to Question on Notice (No 1471 18 November 2004) concerning the deception regarding her true age; (b) the true character of term "*the events*" in the February 1991 Deed of Settlement between the State of Queensland and Mr. Peter William Coyne; and (c) the duty of government to obey the law. Mr. Lindeberg, together with his solicitor, seeks a meeting with Premier Beattie to advance the matter to a proper conclusion;
25. **23 November 2004:** Letter (5 pages) by Mr Lindeberg to Her Excellency Governor Quentin Bryce AC *inter alia* informing her of the significance of Premier Beattie's answer to Question on Notice (No 1471 – 18 November 2004) and its interconnectedness with other elements of the Heiner affair, which, unless properly resolved by her Government, may trigger her reserve powers;
26. **29 November 2004:** Letter (5 pages) by Mr. Lindeberg to Her Excellency Governor Quentin Bryce AC *inter alia* providing her with and informing her of a Queensland Audit Office report on the ex gratia/special payment of $27,190 to Mr. Peter William Coyne (former JOYC Manager) – Report No 6 2004-05 Results of Audits Performed for 2003-04 as at 30 September 2004 (pp40-44);
27. **3 December 2004:** Letter by Chief of Staff of the Office of the Premier Mr. Rod Whiddon to Mr. Lindeberg acknowledging receipt of letter dated 22 November, and that he will be advised in due course about the Government's response;
28. **17 December 2004:** Letter by Chief of Staff of the Office of the Premier Mr. Rod Whiddon to Mr. Lindeberg advising him *inter alia* that (a) the (Beattie) Queensland Government did not intend appointing a special prosecutor because the matter had been exhaustively examined; (b) certain evidence concerning another alleged rape of a minor during a bush outing had been referred to the CMC; (c) there was no point in meeting with either him or his solicitor; and (d) the "error" concerning the girl's correct age in the 18 March 1989 article in *The Courier-Mail* was a matter for the newspaper and the then Minister;

29. **22 December 2004**: Letter (2 pages) by Mr. Lindeberg to Her Excellency Governor Quentin Bryce AC *inter alia* informing her of (a) Premier Beattie's "final position" which therefore ought to mean that the requested position statement from her Government would be delivered soon; and (b) by a detailed response, his intention to address Premier Beattie's claims about the "exhaustiveness" of the so-called inquiries;
30. **30 December 2004**; Letter (37 pages) by Mr. Lindeberg to Her Excellency Governor Quentin Bryce AC *inter alia* addressing the claim about the exhaustiveness of the alleged inquiries into his allegations demonstrating its untruthfulness;
31. **30 December 2004**: Letter (2 pages) by Mr. Lindeberg to Queensland Premier and Minister for Trade the Hon Peter Beattie *inter alia* acknowledging receipt of his letter of 17 December 2004 and claiming, by abuse of power, he is placing his Government and others above the law. He informs Mr. Beattie that the affair remains "*...unfinished business.*"
32. **4 January 2005.** Letter by Mr. Lindeberg to Her Excellency Governor Quentin Bryce AC enclosing a copy of his letter to Premier Beattie of 30 December 2004;
33. **18 January 2005:** Letter by Chief of Staff of the Office of the Premier Mr. Rod Whiddon to Mr. Lindeberg acknowledging receipt of his letter of 4 January 2005, and advising him that the Premier "*...has nothing further to add.*"
34. **5 March 2005:** Letter (9 pages) by Mr. Lindeberg to Her Excellency Governor Quentin Bryce AC *inter alia* suggesting that her Government was acting unlawfully, and persisting in such conduct through "*...a game of bluster and bluff*" which was putting democratic government in the balance because it was placing Executive decree over the rule of law;
35. **7 March 2005:** Letter by Government House Official Secretary Ms Annette Bastaja, on behalf of Her Excellency, to Mr. Lindeberg advising that her Government's response had not yet been received, and that he would be advised of the outcome as soon as possible;
36. **23 March 2005:** Letter (4 pages) by Mr. Lindeberg to Her Excellency Governor Quentin Bryce AC *inter alia* suggesting that (a) the non-response of her Government to her request for a report to be both insulting to her Office and a dereliction of duty; (b) the delay was a recognition that the cover-up of mates looking after mates had run its course; and (c) the exercise of her discretionary reserve powers may be warranted to restore public confidence in good government;
37. **3 April 2005:** Letter (6 pages) by Mr. Lindeberg to Her Excellency Governor Quentin Bryce AC *inter alia* suggesting that, in light of the information provided in Question on Notice No 47 answered on 29 March 2005, the report to be provided may be tainted;
38. **12 April 2005:** Letter by Mr. Lindeberg to Her Excellency Governor Quentin Bryce AC enclosing a copy of his paper on "*the Heiner affair*" delivered to the 17th Annual Conference of *The Samuel Griffith Society*;
39. **29 April 2005:** Letter (9 pages) by Mr. Lindeberg to Her Excellency Governor Quentin Bryce AC *inter alia* informing her of (a) facsimile dated 13 October 2003 by the Pastor Ensbey legal team to Queensland DPP seeking to have the charge under section 129 of the *Criminal Code* dropped because (i) of its interpretation used in the Heiner affair by the former DPP Mr. Royce Miller QC; and (ii) it was not in the public interest to proceed; (b) a letter dated 6 November 2003 from DPP Ms Leanne Clare to solicitors Dibbs Barker Gosling rejected

their application on both counts: and (c) a legal opinion from President of *The Samuel Griffith Society* and former Chief Justice of the High Court of Australia the Right Honourable Sir Harry Gibbs GCMG AC KBE advising that the Goss Cabinet of 5 March 1990 was, at least, in *prima facie* breach of section 129 of the *Criminal Code*;

40. **24 May 2005:** Letter by Government House Official Secretary Ms Annette Bastaja, on behalf of Her Excellency, to Mr. Lindeberg advising that Governor Bryce AC had considered all the material before on the matter and had decided to take no action;

41. **30 May 2005:** Letter (11 pages) by Mr. Lindeberg to Queensland Premier and Minister for Trade the Hon Peter Beattie *inter alia* informing him that his position on the Heiner affair by not appointing a Special prosecutor was self-serving and of (a) facsimile dated 13 October 2003 by the Pastor Ensbey legal team to Queensland DPP seeking to have the charge under section 129 of the *Criminal Code* dropped because (i) of its interpretation used in the Heiner affair by the former DPP Mr. Royce Miller QC: and (ii) it was not in the public interest to proceed; (b) a letter dated 6 November 2003 from DPP Ms Leanne Clare to solicitors Dibbs Barker Gosling rejected their application on both counts: and (c) a legal opinion from President of *The Samuel Griffith Society* and former Chief Justice of the High Court of Australia the Right Honourable Sir Harry Gibbs GCMG AC KBE advising that the Goss Cabinet of 5 March 1990 was, at least, in *prima facie* breach of section 129 of the *Criminal Code*;

42. **7 June 2005**: Letter by Mr. Lindeberg to Her Excellency Governor Quentin Bryce AC enclosing a copy of his letter of 30 May 2005 to her Chief Adviser;

43. **16 June 2005**: Letter (5 pages) by Mr. Lindeberg to Her Excellency Governor Quentin Bryce AC enclosing *inter alia* the answer to Question on Notice Mo 643 of 14 June 2005 by Premier Beattie, and seeking confirmation of receipt of listed correspondence and a request to make public the report provided to her on the Heiner affair because of its significance to the constitutional government of Queensland and the rule of law;

44. **6 July 2005**: Letter (3 pages) by Mr. Lindeberg to Queensland Premier and Minister for Trade the Hon Peter Beattie *inter alia* seeking clarification on 6 points, including making the report to Governor Bryce AC public by tabling it in State Parliament;

45. **11 July 2005**. Letter by Chief of Staff of the Office of the Premier Mr. Rod Whiddon to Mr. Lindeberg *inter alia* reaffirming the Queensland Government's position not to inquire into the matter, and that, at the time of the order to destroy the Heiner Inquiry documents, it was based on the best legal advice available;

46. **11 September 2005**: Letter (8 pages) by Mr. Lindeberg to Her Excellency Governor Quentin Bryce AC *inter alia* (a) requesting confirmation of receipt of all correspondence; (b) expressing concern over the proposed amendment to section 34 of the *Constitution of Queensland 2001*; (c) expressing concern that the prosecutorial discretion regarding "the public interest" was being applied by double standards; and (c) requesting a waiver so that the Queensland Government's report on the Heiner affair to her may be made public;

47. **5 August 2005**: Letter by Chief of Staff of the Office of the Premier Mr. Rod Whiddon to Mr. Lindeberg *inter alia* informing him that (a) the Queensland Government's report was forwarded to Governor Bryce on 26 April 2005; (b) the report would not be tabled in Parliament and that the Queensland Government would not seek the Governor's approval for such an action; and (c)

QUEENSLAND GOVERNMENT

PREMIER OF QUEENSLAND

(1)

23 DEC 1999

Mr Kevin Lindeberg
20 Lynton Court
ALEXANDRA HILLS QLD 4161

Dear Mr Lindeberg

I refer to your petition, addressed to the Honourable the Speaker and Members of the Legislative Assembly of Queensland, drawing the attention of the House to the Heiner Inquiry documents.

I believe that the issues raised in your petition have been the subject of exhaustive investigations, and I do not intend to take any further action.

If you wish to raise this matter with His Excellency the Governor of Queensland, I suggest that you write directly to the Governor's Official Secretary.

Yours sincerely

Peter Beattie MLA
PREMIER

Executive Building 100 George Street Brisbane Queensland 4000 PO Box 185 Brisbane Albert Street Qld 4002
Phone (07) 3224 4700 Fax (07) 3221 3631 email premier@premiers.qld.gov.au www.thepremier.qld.gov.au

Kevin Lindeberg
20 Lynton Court
ALEXANDRA HILLS QLD 4161
20 January 2000

The Hon Peter D Beattie MLA
Premier of Queensland
Executive Building
100 George Street
BRISBANE QLD 4000

Dear Premier

Re: The Lindeberg Petition - The Shredding of the Heiner Inquiry Documents and Related Matters

I refer to your letter of 23 December 1999

You made the following comment regarding the petition's content in the above letter:

> *"...I believe that the issues raised in your petition have been the subject of exhaustive investigations, and I do not intend to take any further action."*

My petition contained serious allegations affecting the integrity of Queensland's public administration. As the sole petitioner, I was fully aware of my prime duty to be truthful in placing such a document before the Parliament. The Clerk of Parliament, pursuant to Standing Rules and Orders, referred my petition to you, as it appears that he believed you were the responsible Minister of the Crown capable of considering its content.

In turn, I seek clarification on your comment for the sake of accuracy, integrity in government and the historical record.

I ask:

1. Against the background of your views as set out in your answer to a Question Without Notice in the Queensland Parliament on 28 October 1999 regarding the petition, can it be properly assumed that you personally considered its content which in turn permitted you to reach the above view and determination?
2. If you did not consider the petition's content yourself, was the task allocated to a Departmental public official who was required to report back to you?
3. If (2) applies, what role did your Departmental Chief Executive Officer Dr Glyn Davis have in the process?
4. Did your Departmental Chief Executive Officer Dr Glyn Davis, on your behalf, consider the petition's content himself and report back to you?

Yours sincerely

KEVIN LINDEBERG

QUEENSLAND GOVERNMENT

PREMIER OF QUEENSLAND

(3)

16 FEB 2000

Mr Kevin Lindeberg
20 Lynton Court
ALEXANDRA HILLS QLD 4161

Dear Mr Lindeberg

I refer to your letter of 20 January 2000 regarding my intention not to take any further action on the issues raised in your petition.

My decision on this matter was reached following my analysis of your petition. I believe that the issues you have raised in the petition have been thoroughly investigated and require no further action.

Yours sincerely

Peter Beattie MLA
PREMIER

Executive Building 100 George Street Brisbane Queensland 4000 PO Box 185 Brisbane Albert Street Qld 4002
Phone: 07 3224 4500 FAX: 07 3221 3631 email: premiers@premiers.qld.gov.au Web: http://www.premiers.qld.gov.au

Kevin Lindeberg
11 Riley Drive
CAPALABA QLD 4157
19 January 2001

His Excellency Major General Peter Arnison AO
Governor of Queensland
Government House
Fernberg Road
PADDINGTON QLD 4064

Your Excellency

RE: THE LINDEBERG PETITION

I respectfully submit a copy of my petition tabled in Parliament on 27 October 1999.

On 23 December 1999, Queensland Premier the Hon Peter Beattie MLA informed me that he believed that the issues raised in my petition had been the subject of exhaustive investigations, and that he did not intend taking any further action. He further advised that if I wished to raise the matter with you that I should write directly to your secretary.

On 16 February 2000, after being asked by me in a letter of 20 January 2000 whether he had personally examined my petition, Mr Beattie confirmed that he had before reaching his view.

In respect of my documented allegations ever having been properly investigated as Mr Beattie seeks to claim, the facts associated with the so-called Heiner Affair, as set out in my petition, show that his claim is untrue.

As Premier, he had an obligation to establish the truth or falsity of the matters placed before him, and, by his claim, he has failed to meet that obligation.

I respectfully submit that the Premier's treatment of my petition *prima facie* places him in contravention of his Oath of Office and therefore finds him acting outside of his sworn duty to uphold the Westminster principles of ministerial responsibility and Parliamentary propriety impartially.

Accordingly, I respectfully present my petition to you for consideration and appropriate action. I do so pursuant to the provisions of the *Constitution (Office of Governor) Act 1987* which obliges you to execute your office according to the best of your skill and ability, and that you will, in all things appertaining to you in your office, duly and impartially administer justice in Queensland as my serious grievances remain unresolved and touch the heart of democratic government.

Yours sincerely

KEVIN LINDEBERG

AN HISTORIC OCCASION AT GOVERNMENT HOUSE BARDON QUEENSLAND

These photographs witness the *Lindeberg Petition* being hand-delivered to His Excellency Major General Peter Arnison AO, Governor of Queensland on Friday 19 January 2001 at 12.40pm. (L to R Mr Kevin Lindeberg and Mr Steven Blinkhorn, Acting Official Secretary to the Governor)

(6)

GOVERNOR'S OFFICE
QUEENSLAND

2 March 2001

Mr K. Lindeberg
11 Riley Drive
CAPALABA QLD 4157

Dear Mr Lindeberg

I am writing on behalf of His Excellency the Governor to acknowledge receipt of your letter of 19 January 2001 seeking remedies in relation to certain allegations outlined in what you term the Lindeberg Petition.

The matters raised in your letter involve complex matters of law and process.

As you are no doubt aware, the Governor is not empowered to intervene in matters under consideration within the Queensland criminal justice system, nor is his office established or resourced to conduct independent investigations. The only exception is that a Governor is empowered to grant a Pardon or remission of sentence to convicted persons under very limited circumstances, based upon the advice of the State's principal law officer, the Attorney-General.

Also, it is a convention of the Westminster system of Government that Crown Ministers are responsible for the administration of Acts of Parliament which fall within their respective areas of responsibility. In the case of your concerns, the administration of the statutes covering law and order is the responsibility of the Minister for Police and Corrective Services. Consequently, the Governor does not enjoy the flexibility to take independent action in the manner that you may have thought.

His Excellency the Governor is not in a position to judge the merits of your complaint, nor is he empowered to investigate them. Were he to act, he would seek the advice of the Attorney-General, a course of action that would seem to be at odds with your objectives. This Office is also mindful that your allegations have been considered and/or investigated by a wide

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range of agencies including the Premier, the Queensland Police Service, the Criminal Justice Commission, and a range of Government Departments.

In summary, His Excellency the Governor is not in a position to assist you as his office is not established, empowered or resourced to conduct independent investigations.

Yours sincerely

J.R. Q'Connor
Official Secretary

Kevin Lindeberg
11 Riley Drive
CAPALABA QLD 4157
11 April 2001

Your Excellency Major General Peter Arnison AO
Governor of Queensland
Government House
Fernberg Road
PADDINGTON QLD 4064

Dear Excellency

RE: THE LINDEBERG PETITION

I refer to your letter of 2 March received on 5 March 2001 which happened to be the eleventh anniversary of the Executive Government of Queensland's decision to shred the Heiner Inquiry documents, the central subject matter of the *Lindeberg Petition*.

You have stated that you are not empowered or resourced "*...to conduct independent investigations*" or "*...to judge the merits of* (my) *complaint.*" With great respect, you appear to have misunderstood what I expected you to do pursuant to your legal obligations as Governor of Queensland.

In constructing the Petition I was aware of your constitutional obligations, just as I was when writing my letter of 15 January 2001.

I had anticipated that you would ensure that Her Majesty's Queensland Government had acted constitutionally and within the law. As Governor you have the right to be consulted, the right to advise, and the right to encourage and warn.

My petition and my letter both request that you consider the matter before you and take appropriate action.

With great respect, I did not ask you to conduct an investigation.

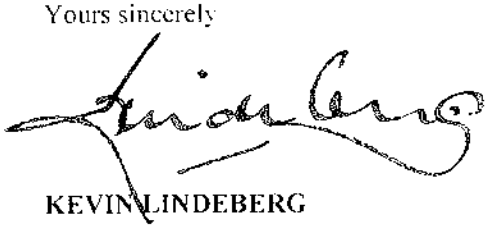
As Her Majesty's representative, it is well established by precedent that you may informally consult beyond the circle of your responsible ministers when certain circumstances arise which require unbiased advice in order that you may comply with your sworn duty.

You have before you my Petition revealing *prima facie* breaches of the law by the Queensland Cabinet and others. It also reveals that concealment of known abuse of children held in the care of the Crown occurred. Supporting evidence exists.

I realise your difficulty in obtaining unbiased information from either the Queensland Cabinet or Queensland's Public Administration and agencies because it is open to conclude that they have been involved in covering up these matters and therefore cannot reasonably offer impartial advice.

While this matter rests in the exercise of your discretion, may I respectfully suggest that the Chief Justice of Queensland might offer a way forward by offering impartial advice.

Yours sincerely



KEVIN LINDEBERG

(8)

Kevin Lindeberg
11 Riley Drive
CAPALABA QLD 4157
3 May 2002

Your Excellency Major General Peter Arnison AO
Governor of Queensland
Government House
Fernberg Road
PADDINGTON QLD 4064

Your Excellency

RE: THE LINDEBERG PETITION

I refer to my letters of 19 January and 11 April 2001 concerning the above Petition which exposes the unresolved systemic corruption in what may be commonly called the Heiner Affair.

Your last letter of 18 April 2001 acknowledged that this matter before you involved the abuse of children at a State-run institution, namely the John Oxley Youth Detention Centre.

You hold evidence that your chief adviser, Queensland Premier the Hon Peter Beattie, has aided in covering up the systemic corruption embodied in the Heiner Affair - as set out in my Petition - which makes any advice from him in respect of this matter open to the charge of being tainted, and therefore unsafe.

You have already acknowledged that advice on this matter from the Queensland Attorney-General would not be appropriate because of its surrounding circumstances.

I respectfully advised that your discretion, in a matter such as this, which may trigger the use of the reserve powers, allows you to seek a wider circle of independent advice, and consequently,

His Honour the Chief Justice of the Supreme Court of Queensland might be approached as a more appropriate source of advice on whether or not my allegations have sufficient weight.

It would follow that should they have weight, it may be sufficient, as a matter of last resort failing justiciability of the matter, to trigger the use of the reserve powers of the Crown.

The matter concerns the comprehensive breakdown of the administration of justice in Queensland. It goes to Queensland Governments and its various arms and law-enforcement bodies either singularly or in concert:

(a) engaging in the unlawful conduct of obstructing justice by means of destroying evidence;
(b) interfering with the right to a fair trial;
(c) inviting adverse inferences against the Crown/State in court proceedings going to contempt of court, perverting the course of justice, and potential failure in the duty of defending or mitigating against claims on State/Crown revenue;
(d) engaging in abuse of office and official misconduct; and
(e) covering up known abuse of children and criminal paedophilia in a State-run institution by illegally shredding public records containing evidence of such abuse, and by other unlawful means including the illegal disbursement of public monies and misleading Parliament and Executive Council.

The facts unequivocally show that the Queensland Legislative Assembly was knowingly misled by Queensland Premier the Hon Peter Beattie MLA to prevent an independent investigation into these matters.

I submit that Mr Beattie is in breach of his Oath of Office in which he swore before you to act lawfully in all matters of State in order that you might commission him to govern Queensland on behalf of the Crown.

Mr Beattie has acknowledged that he personally examined the contents of my Petition. He asserted to the People and Parliament that he believed that all the issues had been exhaustively investigated, when that is patently untrue.

All the so-called investigations do not do what Mr Beattie claims, nor, in some cases, occurred at all.

Clearly, Mr Beattie would have known that the Petition's issues involved allegations of official misconduct and criminal conduct on the part of his Government and others, and therefore, warranted referral to an appropriate impartial law-enforcement body to consider and adjudicate on. He would have known that in deliberating on these matters himself that he had a vested interest in the outcome.

To my knowledge you have not advanced this serious matter since 18 April 2001. I now do so.

First, since our last correspondence of 18 April 2001, new evidence revealing the depths of the cover-up has been obtained by investigative journalist Mr Bruce Grundy. It is now known that a 14-year-old Aboriginal female Centre inmate was pack-raped on 24 May 1988 by male inmates during a supervised bush outing. Those in positions of authority and trust, and who owed the girl a duty of care by law and court order, had knowledge of the pack-rape and knew the identities of the alleged rapists but, on the face of available evidence, failed to hold anyone to account.

We now know that this incident was examined by Mr Heiner during his 1989/90 inquiry (also see Points 22, 60, 63, 89-90, and 92 of the *Lindeberg Petition*), and this evidence was subsequently shredded to (a) prevent the material being used against the careers of Centre staff, and (b) prevent its use in known foreshadowed legal proceedings and other potential proceedings (see attached media coverage).

You may note in the attached Criminal Justice Commission (CJC) media release of 16 November 2001 that the Commission examined a departmental file and police records on the incident. In particular, you should note that the CJC publicly claimed that the incident was referred to the police *"...at the time"*, and therefore, in its view, found no cover-up because it was referred and that relevant staff had not engaged in official misconduct.

However, I am now aware that the relevant departmental files reveal a different story. They reveal that the pack-rape was ***not*** referred to the police *"...at the time"* but three days ***after*** the incident occurred on 27 May 1988, and the police did not interviewed the victim until the following day.

I am aware that the victim wanted the alleged rapists charged but changed her mind three days later after well-documented threats and intimidation had been levelled against her by inmates at the Centre.

Senior Counsel has advised that the law has not been applied properly and appropriately, and, contrary to the CJC's view, this grave dereliction of duty involves suspected official misconduct at the very least.

The law says that the bringing of charges against the alleged rapists was not the child's responsibility as a minor. That duty rested solely with the Crown and it would have been reasonably known to police and public officials alike, but was not upheld. Moreover, when this incident occurred, the victim was in the care and custody of the Crown.

Second, the offence of rape demands immediate action to preserve the evidence, by way of collecting clothing and body specimens for scientific examination which is vital and elementary in proving the Crown's case. This protocol is long-standing in respect of the crime of statutory rape and criminal paedophilia.

Third, I am aware that the victim came under intimidation at the Centre after the incident. Unconscionably, there was no effort to remove her from the Centre to be away from the threats of violence by others.

Fourth, the CJC ***knew*** it could not come to an examination of this pack-rape incident in an unbiased manner when the matter was referred to it by the Beattie Government in November 2001 but failed to disclose this (legal) constraint which it had placed on itself.

This constraint is revealed in a 'highly confidential' internal CJC memorandum dated 11 November 1996, which states that the CJC could not (would not) come to the Heiner Affair again because its handling of the matter had been brought into question by the Queensland Legislative Assembly following the tabling of the Morris/Howard Report on 10 October 1996. I hold this document by lawful means. In legal terms, the CJC was from then on a protagonist in this matter.

It is open to conclude that the CJC misled the Queensland public and Parliament in its 16 November 2001 media release by use of half-truthful, but deceptive, wording when claiming that the pack-rape incident was referred to the police *"...at the time"* by those with knowledge of the incident. ***That simply did not happen***. This delay has been disclosed in an answer supplied to Parliament on 4 January 2002 by the Minister for Families and Minister for Aboriginal and Torres Strait Islander Policy and Minister for Disability Services, the Hon Judy Spence, to a Question on Notice put by the Leader of the Opposition, the Hon Mike Horan, on 28 November 2001.

It is reasonable to conclude that the CJC has misled the People and Parliament on a matter of the utmost gravity; and it is equally reasonable to conclude that the 14-year-old Aboriginal child was denied justice and racially discriminated against by servants of the Crown.

Fifth, the Queensland Crime Commission (QCC) was the appropriate authority to investigate criminal paedophilia as it had a standing reference to do so pursuant to section 46(7) of the *Crime Commission Act 1997*.

Sixth, I understand that the new evidence reveals that Centre manager Mr Peter Coyne informed his superiors about the pack-rape, and that their prime concern seemed to be that the child would not fall pregnant (hence a contraceptive pill was administered after the assault), and that the media might find out about the incident. The truth had to wait another 13 years before the media and public found out through the efforts of Mr Bruce Grundy.

The QCC informed me on 19 December 2001 that the elements of the May 1988 incident fell within the description of "criminal paedophilia" under of section 6 of the *Crime Commission Act 1997*. On 13 and 21 December 2001, I approached the QCC and lodged a detailed complaint. In essence, the complaint, as stated in my letter of 21 December 2001, read thus:

> *"Given the QCC's standing reference to investigate criminal paedophilia, and the fact that evidence of such an incident was first published on 3 November 2001 clearly linking it to the Heiner Affair, it is reasonable to assume that the QCC has already been enlivened to investigate, and therefore a file may already be open.*

Notwithstanding the above, I hereby lodge a complaint concerning the cover-up of criminal paedophilia at John Oxley Youth Detention Centre in which the shredding of the Heiner Inquiry documents and related matters are indissolubly linked (as provided in my submission to Crime Commissioner Carmody SC on 13 December), and request that an investigation commence immediately."

My letters of 13 and 21 December 2001 to the QCC are attached to this letter for perusal.

It is now open to conclude, together with the *Lindeberg Petition's* contents, that the new evidence shows that the purpose of the February 1991 Deed of Settlement demanding the lifetime silence of both parties (i.e. Mr Coyne and the State of Queensland) in exchange for the illegal disbursement of taxpayers' monies to Mr Coyne amounting to $27,190, concerning the *"...events leading up to and surrounding"* his (Mr Coyne's) relocation away from the Centre, not only involved known abuse of children in respect of handcuffing them to fences and grates overnight in 1989, but the cover-up of the May 1988 crime of criminal paedophilia.

This conduct cannot be lawful, even moreso when done in the name of the Crown (see attached Mr Robert F Greenwood QC's submission of 9 May 2001 setting out the Lindeberg Grievance to the Australian Senate).

On 1 January 2002, the CJC and QCC amalgamated to become the Crime and Misconduct Commission (CMC) under the chairmanship of Mr Brendan Butler SC, former CJC Chairman, with my complaint to the QCC left in a state of limbo.

In my view, notwithstanding the doctrine of necessity, the CMC cannot come to this matter impartially because of the existence of apprehended and/or actual bias. Key members on its management committee are also tainted with either prejudgement, apprehended or actual bias. Any investigation its reference committee may wish to have conducted in respect of this matter (upon application to that committee by me) would inevitably involve an investigation also of the CJC and QCC's conduct over their respective handling of the pack-rape incident, and other matters pertaining to the CJC over a long period as set out in the *Lindeberg Petition*, hence the CMC itself would come under investigation by its own reference committee, and therefore, would result in an appeal from Caesar to Caesar.

In respect of the aforesaid doctrine of necessity, it does not apply to the CMC in this matter as long as the appointment of a Special Prosecutor upon the reintroduction of the Special Prosecutor Act remains an option.

Seventh, in *McCabe v British American Tobacco* [2002] VSC 73, the court held that the destruction of documents for the purpose of preventing their use in court before proceedings commenced amounted to a contempt of court and an unacceptable attack on a citizen's right to a fair trial. In this case, even when acting on legal advice from solicitors Clayon Utz, it was held that British American Tobacco (BAT) through its 1985 'Document Retention Policy' had deliberately interfered with Mrs Rohal McCabe's right to a fair trail even before she had signaled her intention to sue BAT for compensation in respect of its negligence in failing to warn her before she commenced smoking about the known detrimental affects smoking would have on her health. The court discovered that this 'shredding' action was done by the defendant with a state of mind, at the time, when BAT knew that any potential litigant would seek access to the records under the discovery process once proceeding were commenced. As the court discovered, when Mrs McCabe sought critically relevant documents under the discovery process from BAT, they could not be provided by them because of its earlier decision to shred them. The court found that this conduct denied her the right to a fair trial even though the destruction itself had taken place before the defendant was even served with notice, and, such was the adverse inference drawn by the court, that it struck out BAT's defence and went straight to the judgement of awarding compensation.

In the matter at hand, the Executive Government of Queensland destroyed the Heiner Inquiry documents when it had a state of knowledge that solicitors were seeking those records for court but had not yet served their writ: and, with that state of knowledge, the Executive Government ordered their destruction for the purpose of preventing their use in those anticipated proceedings. The relevant Cabinet submissions tabled by Queensland Premier the Hon Peter Beattie on 30 July 1998 (see State *Hansard* 30 July 1998 p1484 and Point 2 in the Petition) verify this fact.

At the time the Goss Cabinet took its decision, it had been earlier advised by the Office of Crown Law on 16 February 1990 on the question of discovery that the records could not attract "Cabinet/Crown privilege" and would be accessible in the discovery process once the writ was

served (see Point 35 in the Petition). This same conduct in *McCabe* was ruled as contempt by the court because it denied a citizen his or her right to a fair trial.

We are faced with the fact that the Crown's servants (i.e. Queensland Ministers of the Crown [including the Attorney-General], legal officers in the Office of Crown Law, law-enforcement officers and public servants) deliberately interfered with Mr Coyne's right to a fair trial. At the same time, this interference perverted the rights of the abused children to a fair trial in respect of any prospective litigation they may have wished to bring or still wish to bring over a breach of duty of care owned to them by the Crown when those aforesaid servants of the Crown ordered and/or subsequently endorsed the shredding of the Heiner Inquiry documents which were relevant to those known and/or anticipated proceedings.

I respectfully refer you to Gaudron J in *Nicholas v The Queen* [1998] HCA 9 (2 February 1998) at 74 who said:

> *"In my view, consistency with the essential character of a court and with the nature of judicial power necessitates that a court not be required or authorised to proceed in a manner that does not ensure equality before the law, impartially and the appearance of impartiality, the right of a party to meet the case made against him or her, the independent determination of the matter in controversy by application of the law to facts determined in accordance with rules and procedures which truly permit the facts to be ascertained and, in the case of criminal proceedings, the determination of guilt or innocence by means of a fair trial according to law. It means, moreover, that a court cannot be required or authorised to proceed in any manner which involves an abuse of process, which would render its proceedings inefficacious, or which brings or tends to bring the administration of justice into disrepute."*

Given the Heiner Affair's facts as set out in the *Lindeberg Petition* and other public documentation, the stated legality of destroying those public records with the state of knowledge in existence at the time within the various arms of Your Government now means, in accordance with the *McCabe* case, that the right to a fair trial no longer exists in the Sovereign State of Queensland because the executive arm of the Crown appears to have the unfettered right to destroy evidence in its possession known to be required for court up to the moment a writ being

served, unless, of course, in the matters laid before you, you are looking at serious unresolved systemic corruption on a wide scale.

In summary, I submit that Queensland's system of justice and public administration is now in parlous non-justiciable gridlock and brought into disrepute by those who are and were duty bound to uphold the law and Parliamentary propriety; and, in the process, through inaction, deceit and cover-up, have knowingly given State sanction to the crime of rape and criminal paedophilia and abuse against children being held in the care and custody of the Crown at the John Oxley Youth Detention Centre, as well as taken away Queensland citizens' constitutional right to a fair trial without interference.

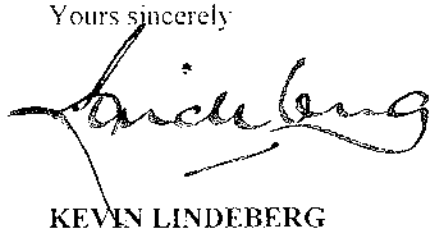
The right and duty to encourage, advise and warn

You have a constitutional right and duty to "encourage, advise and warn" your Ministers where and when appropriate. *In my view, this could be such a time.* In certain circumstances, you have a right and duty to exercise the reserve powers of the Crown as a last resort against serious abuse of authority by your advisers in order to restore integrity to our system of government so that "peace, order and good government" may reign. *In my view, this **may become** such a time.*

With respect, should you be satisfied of the *prima facie* substance of this case, assisted by your own circle of advice or from your own deliberation, you may, in the first instance, be obliged to "encourage" and "advise" your chief adviser the Queensland Premier the Hon Peter Beattie (who has firsthand knowledge of the *Lindeberg Petition*) that because the integrity of our public administration and criminal justice system is now so tarnished and in disrepute as to undermine the People's faith and confidence in it, that, by the common cause of peace, order and good government, and in order to render the matter justiciable, the Parliament should reconvene immediately to reintroduce the Special Prosecutor Act; and then, Parliament (by consultation and agreement of *all* members) should appoint an independent Special Prosecutor with sufficiently wide terms of reference, adequate resources and time to gather evidence, conduct public hearings, make recommendations, and, where sufficient inculpatory evidence exists, to prosecute wrongdoers before Her Majesty's court of law in order that faith might be restored in the Queensland Crown as the font of justice.

Should such encouragement and advice be rejected, I respectfully remind you that you have the right and duty to consider the position in which of the Queensland Premier would have placed himself and the Crown.

Yours sincerely



KEVIN LINDEBERG

3 May 2002

GOVERNMENT HOUSE
QUEENSLAND

9

7 May 2002

Mr K. Lindeberg
11 Riley Drive
CAPALABA QLD 4157

Dear Mr Lindeberg

I am writing on behalf of His Excellency the Governor to acknowledge receipt of your correspondence of 3 May 2002 suggesting certain actions that the Governor may care to take into allegations previously outlined in the Lindeberg Petition document, and expanded in your letter of 3 May 2002.

At the outset may I clarify and confirm that my correspondence to you of 18 April 2001 did not 'acknowledge that this matter ... involved the abuse of children at a State-run institution' as stated in your letter of 3 May 2002. My letter of 18 April 2001 simply acknowledges 'receipt of your letter of 11 April 2001 on the subject of alleged abuse of children'. As also stated in my letter of 18 April, His Excellency the Governor has not been and is not in a position to judge the merits of your complaint, nor is he empowered to investigate them.

This Office notes that you consider that Queensland's system of justice and public administration has failed to function effectively in the case of the allegations that you have outlined. The Office of the Governor is also mindful that your allegations have been assessed and/or investigated by a wide range of agencies including the Premier, the Queensland Police Service, the Queensland Criminal Justice Commission, the Queensland Crime Commission, and a range of Government Departments.

As previously advised, His Excellency the Governor is not in a position to assist you in this matter.

Yours sincerely

J.R. O'Connor
Official Secretary

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(10)

Kevin Lindeberg
11 Riley Drive
CAPALABA QLD 4157
13 May 2002

Your Excellency Major General Peter Arnison AO
Governor of Queensland
Government House
Fernberg Road
PADDINGTON QLD 4064

Your Excellency

RE: THE LINDEBERG PETITION

I refer to your letter of 7 May 2002.

Of necessity, I must make the following reply.

First, I note the fine point of distinction you make concerning what you acknowledged in respect of the information I put before you. I respectfully submit that your point has no weight because, *inter alia,* my information was unquestionably about the abuse of children and criminal paedophilia occurring in a State-run institution, and to not acknowledge this is, for me, to reasonably conclude that you did not read my material or you seek to avoid the obvious.

Second, you have an unqualified obligation and right to inform yourself about matters of State which come before you. However, this does not mean that you must personally "investigate" all such matters put before you as you mistakenly seem to think and persist that I wanted in this matter, known as the Heiner Affair. In order to inform yourself, you may seek advice from whomever you deem fit – and I accept that.

However, you are not the rubber stamp of Executive Government and nor should you be perceived as such in respect of all matters put before you, otherwise how could you carry out your duty to "encourage, advise, and warn" your Ministers of the Crown, and, when and if necessary, exercise your reserve powers.

Because of the circumstances surrounding this matter, I have respectfully suggested that advice on the *prima facie* substance of my allegations might be sought from His Honour Chief Justice Paul de Jersey of the Supreme Court of Queensland but you may, of course, take your own advice.

Third, in your letter of 7 May 2002, despite detailed evidence put before you, supported by opinion from eminent senior counsel, you have seen fit to claim that my allegations have been *"...assessed and/or investigated by a wide range of agencies including the Premier, the Queensland Police Service, the Queensland Criminal Justice Commission, the Queensland Crime Commission, and a range of Government Departments"* when the facts show otherwise.

I reiterate, by way of example, that when Queensland Premier the Hon Peter Beattie "assessed" the contents of my Petition knowing that it contained serious allegations against himself and others concerning obstruction of justice, interference with the right to a fair trial, abuse of office, misleading Parliament and covering up abuse of children in a State-run institution by means of destroying the evidence, he did so without any apparent concern that

he was adjudicating on matters in which he had a vested interest in the outcome. The law proscribes such conduct.

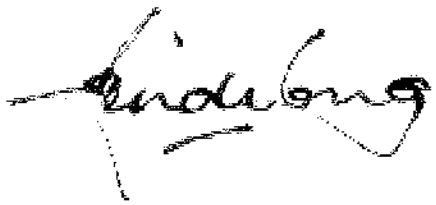
Fourth, by way of underpinning further the substance of my Petition's contents and the claim of a cover-up in respect of the offence of rape and criminal paedophilia against a 14-year-old female Aboriginal inmate while in the care and custody of the Crown at the John Oxley Youth Detention Centre, and the allegation that the right to a fair trial in Queensland is now in jeopardy by the Crown's hands if the Heiner document shredding stands in the face of the *McCabe* decision, I invite your attention to the following Internet site out of the School of Journalism and Communication, University of Queensland posted on 8 May 2002:

http://www.sjc.uq.au/about_jouirnalism/staff/grundy.htm

You should go to "***Shreddergate* – Great is Truth and Mighty Above All Things.**"

In the light of this, I respectfully request that you reconsider my letter of 3 May 2002.

Yours sincerely



KEVIN LINDEBERG

13 May 2002

GOVERNMENT HOUSE

QUEENSLAND

14 May 2002

Mr K. Lindeberg
11 Riley Drive
CAPALABA QLD 4157

Dear Mr Lindeberg

I am writing on behalf of His Excellency the Governor to acknowledge receipt of your correspondence of 13 May 2002 concerning allegations previously outlined in the Lindeberg Petition document, and expanded in your letter of 3 May 2002.

As previously advised, His Excellency the Governor is not in a position to assist you in this matter.

Yours sincerely

J.R. O'Connor
Official Secretary

(12)

Kevin Lindeberg
11 Riley Drive
CAPALABA QLD 4157
13 February 2003

Your Excellency Major General Peter Arnison AO
Governor of Queensland
Government House
Fernberg Road
PADDINGTON QLD 4064

Your Excellency

RE: THE HEINER AFFAIR AND THE *LINDEBERG PETITION*

Your Office holds comprehensive correspondence on this matter.

You dismissed my concerns in your letter of 7 May 2002 stating that you did not have the power to investigate them and that the so-called Heiner Affair (Heiner) had been "*...assessed and/or investigated by a wide range of agencies including the Premier, the Queensland Police Service, the Queensland Criminal Justice Commission, the Queensland Crime Commission, and a range of Government Departments.*"

The incorrectness of the aforesaid was addressed in my last letter of 12 May 2002. It stands.

I must now bring to your attention further evidence which substantiates the gravity of this matter.

Notwithstanding your ability to act in this matter on what you already hold, I respectfully submit that this additional material is too compelling to ignore pursuant to your constitutional obligation of ensuring that peace, order and good government is delivered by the three arms of government (i.e. Executive, Legislature and Judiciary) within the rule of law so that Her Majesty's Queensland citizens may live in freedom and security under the umbrella of equal justice and not be oppressed by any one arm of government by abuse of power.

The Deception Revealed

On 22 and 23 January 2003 in the Brisbane Magistrate's Court, I witnessed the Queensland Director of Public Prosecutions (DPP) bring committal charges against a Queensland citizen, namely a Minister of religion, in the form of breaches of section 129 of the *Criminal Code (Qld)* – destruction of evidence – and/or section 140 of the *Criminal Code (Qld)* – attempting to pervert the course of justice. (See attached *Courier-Mail* article addendum).

Of relevance, the shredding conduct which the Minister of religion was alleged to have committed thereby enlivening section 129 of the *Criminal Code (Qld)*, occurred some 5 years ***before*** a sexual-assault incident was taken to the police by the victim, and one more year ***before*** the perpetrator was brought before the courts and sentenced for his admitted guilt.

In its submission to the court, the DPP held that at the time the pastor guillotined the victim's diary in which he also knew the girl recounted being sexually assaulted by one of his parishioners, it was beyond reasonable doubt that he knew that the document would be required in a judicial proceeding (and any prospective police investigation) and in destroying the document, he breached section 129 of the *Criminal Code (Qld)* as it prevented its use in a judicial proceeding.

In short, the provision did not require – and never has required - a judicial proceeding to be on foot to trigger it.

The critically relevant point flowing from the DPP's action is not whether the Minister of religion is committed to face trial by the Magistrate, and even whether he is ultimately found not guilty in a superior court, but merely that his alleged criminal conduct was put before the court under section 129 of the *Criminal Code (Qld)* in particular, and section 140 of the *Criminal Code (Qld)* as sufficient *prima facie* evidence existed.

Application to Heiner

In Heiner, the triggering elements, as set out in *Carters*, are more compelling and unequivocal in respect of section 129 of the *Criminal Code (Qld)*, and/or sections 132 and/or 140 of the *Criminal Code (Qld)*.

For your benefit, the elements of the offence are as follows at section 129.10 in *Carters, Chapter 16 - Offences Relating to the Administration of Justice - The Criminal Code*.

The Accused:

1. Knowing any book, document or other thing is or may be needed in evidence:
2. Wilfully destroys it or renders it illegible, or indecipherable, or incapable of identification;
3. With intent to prevent it being used in evidence.

Those elements were present in the minds of the (Goss) Queensland Executive, Office of Crown Law, departmental public officials and others at the time the Heiner records were ordered destroyed on 5 March 1990. You hold this evidence.

Eminent senior counsel (such as Messrs Robert F Greenwood QC, Anthony Morris QC, and (now) High Court Justice the Hon Ian Callinan QC AO) have *always* concurred with this view of section 129's applicability in Heiner, and now, in the public glare of Her Majesty's Magistrate's court, the Queensland DPP is applying section 129 in a matter plainly relevant to its provisions but less emphatic against available evidence and far less serious than in Heiner where the alleged wrongdoers are the members of Queensland's Executive Government, two of whom still serve in your Government, namely the Hon Terry Mackenroth MLA as Deputy Premier, Treasurer and Minister for Sport, and the Hon Dean Wells MLA as Minister for the Environment. There is no statute of limitations applicable in this matter.

I respectfully remind you that when the law-enforcement agencies of the Queensland Government came to Heiner, they claimed that section 129 of the *Criminal Code (Qld)* could only be triggered when a judicial proceeding was on foot – and dismissed my claim that the law had been breached, and ridiculed me for suggesting such a thing. The *Lindeberg Petition* and other documents in your possession show who the public officials are who twisted the law in its application in Heiner.

A wide-spread cover-up

You hold evidence of a wide-spread cover-up revealing systemic corruption of the highest order engulfing and involving the Executive and Legislative arms of the Queensland Government for unlawful purposes involving, *inter alia*, the destruction of evidence known (a) to be required in a judicial proceeding, and (b) to contain evidence about the abuse of children held in the care and custody of the State.

If your chief adviser, Queensland Premier the Hon Peter Beattie MLA, is the source of your advice which caused you to believe that this matter has been properly investigated (as suggested above), then you have been deliberately deceived for an unlawful purpose.

If, however, you have taken your own counsel - and, by your own discretion, not approached the Chief Justice of the Supreme Court of Queensland for independent advice which is constitutionally open to you - then I respectfully suggest that your conclusion is profoundly wrong, or, that you have been badly advised by your own staff into suggesting this remains outside your constitutional jurisdiction; consequently, I respectfully request that you reconsider your position.

Equal justice is indivisible if the rule of law is truly respected under our constitution. Equal justice can only function when Oaths of Office taken by elected and/or appointed public officials, such as yourself, the Queensland Premier or police constables, are honoured when confronted with allegations of wrongdoing.

This is such a time.

You now have indisputable evidence that your Executive Government is applying the law by double standards for a corrupt purpose.

Simply put, if it is good enough for a Minister of religion to stand charged before Her Majesty's courts, then I submit, by the application of equal justice, that it is good enough for Ministers of the Crown to be brought before Her Majesty's courts for the same conduct so that justice may be done and the law is not brought into disrepute.

You now have indisputable evidence that your Executive Government is prepared to apply the penal code to one of Queensland's citizens but will not apply the same law to itself for the same conduct.

Furthermore, in unicameral Queensland, your Executive Government, with the acceptance of the Legislature - using Heiner as the benchmark – is declaring to the Judiciary that whenever it has public records in its possession and control (even including known evidence of abuse of children in a State-run institution going to the crime of criminal paedophilia) which the Executive knows is required in anticipated/foreshadowed judicial proceedings, it will deliberately destroy them up to the moment of a writ being filed/served to prevent their use by the Judiciary - pursuant to its constitutional obligations - to deliver justice to and for the

people according to law; and, at the same time, deliberately breach the doctrine of the separation of powers by wilfully offending the Judiciary's rules of court in respect of discovery/disclosure.

In all of the aforesaid, you now see your Executive Government acting tyrannically and unconstitutionally by placing itself above and outside the law, and placing itself in *prima facie* criminal contempt of the Judiciary.

As for the (unicameral) Queensland Legislature, it remains either helpless to do anything in the face of Beattie Government's overwhelming majority on the floor of Parliament which is capable of being abused in this matter, or even, through inaction, supportive of or indifferent to this constitutional crisis where executive decree has undoubtedly replaced the rule of law and destroyed any notion of responsible government.

Gaudron J in *Nicholas v The Queen* [1998] HCA 9 (2 February 1998) at 111 spelt out the seriousness of this core governance principle which plainly now embraces Heiner. She said:

"If the doctrine of the separation of powers is to be effective, the exercise of judicial power needs to be more than separate from the exercise of legislative and executive power. To be fully effective, it must also be free of legislative or executive interference in its exercise. As a result, legislation that is properly characterised as an interference with or infringement of judicial power, as well as legislation that purports to usurp judicial power, contravenes the Constitution's mandate of a separation from legislative and executive powers."

Another confirmation of the law

I respectfully draw your attention to the outcome of the Standing Committee of Attorneys-General's (SCAG) meeting in Cairns on 1 August 2002 as reported in *The Australian Financial Review* on 2 August 2002.

In a declaratory law announcement, SCAG agreed to crack down on solicitors who advised or assisted their clients to destroy documents known to be required for ***anticipated*** court proceedings, and who assisted or advised their clients to relocate documents in order to avoid the disclosure/discovery obligations pursuant to the rules of court of the Supreme Court.

This agreement came in the wake of the landmark *McCabe* case and the USA Enron/Arthur Andersen shredding scandal. Although such conduct is already impermissible and capable of

disbarring a lawyer from the rolls (at the very least), it appears that SCAG wanted to reinforce the unacceptability of this impermissible conduct in unambiguous terms to the community at large and the legal fraternity.

Or, in other terms, SCAG was attempting to restore public confidence in our justice system and to allay public concern that the right to a fair trial being jeopardised in the present climate of *McCabe* and Enron was being addressed by all the first law officers within the Commonwealth of Australia.

I respectfully remind you that in Heiner this relevant law (section 129 of the *Criminal Code (Qld)*) has been deliberately flouted and its interpretation twisted for the purpose of self-interest in order to avoid the consequences of what the law really says.

Plainly the SCAG 'declaratory law' agreement also confirms everything I have stood for in Heiner but which the Queensland Government, Criminal Justice Commission and others have ridiculed for years in their systemic cover-up to escape equal application of the law.

The Victorian Appeal Court on destroying known evidence

In referring to *McCabe* earlier, you should note that on 6 December 2002, in *British American Tobacco Australia Services Limited v Cowell (as representing the estate of Rolah Ann McCabe, deceased)* [2002] VSCA 197 (6 December 2002) at 173, the court relevantly and unanimously found:

> "... it seems to us that there must be some balance struck between the right of any company to manage its own documents, whether by retaining them or destroying them, and the right of the litigant to have resort to the documents of the other side. The balance can be struck, we think, if it be accepted that the destruction of documents, before the commencement of litigation, may attract a sanction (other than the drawing of adverse inferences) if that conduct amounts to an attempt to pervert the course of justice or (if open) contempt of court, meaning criminal contempt (inasmuch as civil contempt comprises wilful disobedience of a court order and will ordinarily be irrelevant prior to the commencement of proceedings). Such a test seems to sit well with what has been said in the United States as well as what has been said in England. Whether contempt, even criminal contempt, is possible before any proceeding has been instituted need not be examined on this

occasion. (For instance, in *James v. Robinson*, which did not involve disobedience of a court order, it was said that that there can be no contempt of court before there is any litigation actually on foot, but, as the majority in the High Court pointed out, that case concerned only the narrower type of contempt, namely interference with the fair trial of a particular cause. Certainly, there can be an attempt to pervert the course of justice before a proceeding is on foot, as *R. v. Rogerson* demonstrates, and that, we think, provides a satisfactory criterion in the present instance."

Rogerson has *always* been specifically cited in Heiner as being relevant by my earlier senior counsel Messrs Ian Callinan QC and Robert F Greenwood QC.

Mason CJ's said in *R v Rogerson* (1992) 174 CLR 268 F.C. 92/021 (1992) 60 A Crim R 429 that:

"... *It is well established at common law and under cognate statutory provisions that the offence of attempting or conspiring to pervert the course of justice at a time when no curial proceedings are on foot can be committed* (12) *Reg. v. Murphy* (1985) 158 CLR, at p 609; *Vreones; Sharpe; Kane; Reg. v. Spezzano* (1977) 76 DLR (3d) 160; *Reg. v. Thomas. That is because action taken before curial or tribunal proceedings commence may have a tendency and be intended to frustrate or deflect the course of curial or tribunal proceedings which are imminent, probable or even possible. In other words, it is enough that an act has a tendency to frustrate or deflect a prosecution or disciplinary proceeding before a judicial tribunal which the accused contemplates may possibly be instituted, even though the possibility of instituting that prosecution or disciplinary proceeding has not been considered by the police or the relevant law enforcement agency* (13) *Reg. v. Spezzano* (1977) 76 DLR (3d), at p 163."

The Heiner Affair – Ranked as One of Last Century's worst shredding cover-ups

A new exhibit, showing how seriously another profession views this matter, is a 340-page major academic book entitled "*Archives and the Public Good Accountability and Records in Modern Society*" published by Quorum Books Westport Connecticut (USA) and London in July 2002.[1] It was jointly edited by Professor Richard Cox, School of Information Management and Archives, University of Pittsburgh, and Assistant Professor David A Wallace, Assistant Professor, School of Information, University of Michigan.

The book is now being used as a teaching tool in universities throughout the world.

It features 14 essays by some of the world's foremost archivists on the world's worst shredding/archives scandals of 20th century. It features this matter in that company and is Australasia's sole example. According to this independent analysis, the Heiner Affair has placed Queensland into the category of a rogue world State in respect of proper public recordkeeping and accountability. For example, it is ranked alongside the Iran-Contra Affair and the shredding of South Africa's apartheid records in the final days of that notorious regime.

The book derides the role of the CJC (and the Queensland Government) in handling the Heiner Affair and misrepresenting the archivist's proper role, and the notion that acting on legal advice may provide an unchallengeable shield for a client who deliberately destroys documents required for anticipated court proceedings.

Mr Chris Hurley[2], the author of the chapter on Heiner, makes this assessment of the proposition put to the Australian Senate in 1995 by then CJC Chief Complaints Officer Mr Michael Barnes,[3] in which he declared that an archivist's sole discretion when appraising public records for retention and/or disposal was limited to considering their "historical" value. At page 314, Mr Hurley says:

"...The Queensland Electoral and Administrative Review Commission found that its investigation of alleged irregularities in electoral redistribution was thwarted by the lack of an adequate public record. It concluded that the state's archives system had to be upgraded and strengthened. Can anyone suppose, as CJC would apparently have us believe, that EARC's concern was for the lack of an adequate historical *record? The Western Australian Royal Commission into W.A. Inc., scandals concluded that its investigations were hampered by gaps in the official record. It recommended that the Western Australian archives system should be upgraded and strengthened. It is nonsense to suggest, as the CJC must contend, that the Royal Commission was worried solely about the impact on scholars."*

See Amazon url: http://www.amazon.com/exec/obidos/ASIN/1567204694/qid%3D1028653373/sr%3D11-1/ref%3Dsr%5F11%5F1/102-6116804-6768961

[2] Former General Manager of New Zealand Archives Business and former State Archivist of Victoria, Australia. Former Australian representative on UNESCO's International Council on Archives stationed in Paris. Keynote speaker in 1991 for EARC's seminar on "Archives Legislation" as part of the Fitzgerald reform process.

[3] Now Head of Queensland University of Technology's School of Criminal Justice Studies.

In respect of the shredding itself and the view taken by the CJC, Mr Hurley makes this comment at page 305:

"...The CJC's contention that there is no evidence of criminal intent is dubious to say the least. The record shows that it was Cabinet's intention to prevent Coyne from getting the documents and using them in a legal action he was contemplating. Having formed this intention, which may or may not have been criminal, the government sought legal advice on how to carry it through. CJC seems to have reached a conclusion that whatever criminality may have been involved in forming an intention to destroy records in these circumstances, it is removed once a lawyer says you can do it!"

***Archives and Manuscripts* publication**

I also invite your attention to another article *"Recordkeeping, Document Destruction, and the Law (Heiner, Enron and McCabe)"* by Mr Hurley in *Archives and Manuscripts* - the journal of the Australian Society of Archivists[4] Volume 30 Number 2 November 2002 pp6-25. It reinforces material before you.

Prospective Retrospective legislation

On advice, I respectfully forewarn you that a remedy to the parlous political, legal, and constitutional predicament your Executive Government now find itself in, may see an attempt by the Queensland Government, with its overwhelming majority in the Queensland Legislative Assembly, to introduce retrospective legislation declaring lawful all matters and actions associated with Heiner.

Should such a policy be adopted by the Executive and passed in the Legislature then you are earnestly requested not to sign it into law as it would be the grossest breach of the law itself and such an unconscionable abuse of power perpetrated against the people and our constitution as to crack the very foundations of our constitutional monarchy system of government, namely equality before the law.

Restricted Avenues for Advice

I must revisit an inescapable threshold issue which confronts you in this matter should you desire to obtain advice about the substance of what is before you and what your constitutional

options are. On advice, I respectfully suggest that it would be neither proper nor constitutionally open to obtain advice on this matter from either your usual chief adviser Queensland Premier the Hon Peter Beattie MLA or Queensland's first law officer, Attorney-General and Minister for Justice the Hon Rod Welford MLA because of the character and grave implications on the Executive which Heiner represents. Hence, I remind you that any such advice from either Minister of your Executive (in this matter) would be tainted through the existence of prejudgement and conflict of interest.

Nor, given the previous role of the Office of the Director of Public Prosecutions in this matter, can that prosecuting organ return here without the existence of prejudgement and conflict of interest. (see *R v Watson; ex parte Armstrong* (1976) 136 CLR 248; *Livesey v NSW Bar Association* (1982-1983) 151 CLR 288; *Re JRL; ex parte CJL* (1986) 161 CLR 342; *Webb v The Queen* (1993-1994) 181 CLR 41; and *Laws v Australian Broadcasting Tribunal* (1990) 170 CLR 70 Gaudron and McHugh JJ at 100:

"...When suspected pre-judgment of an issue is relied upon to ground the disqualification of a decision-maker, what must be firmly established is a reasonable fear that the decision-maker's mind is so prejudiced in favour of a conclusion already formed that he or she will not alter that conclusion irrespective of the evidence or arguments presented to him or her".

Abuse of Power

The abuse of power by the Executive and Legislature in respect of Heiner thereby ensuring that it has never been properly investigated and the *prima facie* wrongdoing brought before the court for adjudication gives rise to fundamental questions concerning the constitutional and statutory duty of the main players to carry out their respective duties according to law in the face of the Executive and Legislature failing to do theirs. As Her Majesty's representative, Governor of Queenland, you carry a heavy constitutional duty, made even more burdensome when your overriding duty to ensure peace, order and good government, now gravely disturbed in Heiner, puts you on an inevitable collision course with the Executive and Legislature. In short, there is a constitutional duty to be done - and it cannot be avoided.

The majority judgment in *Clunies-Ross v The Commonwealth*, (1984) 155 CLR 193 at 204 per Gibbs CJ, Mason, Wilson, Brennan, Deane and Dawson JJ points to what your duty may be in Heiner:

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[1] Contact address: Australian Society of Archivists Incorporated, PO Box 83, O'Connor ACT 2602.

"...It would be an abdication of the duty of this Court under the Constitution if we were to determine the important and general question of law ... according to whether we personally agreed or disagreed with the political and social objectives which the Minister sought to achieve. ... As a matter of constitutional duty, that question must be considered objectively and answered in the Court as a question of law and not as a matter to be determined by reference to the political or social merits of a particular case".

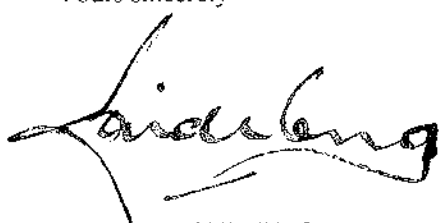
Owing to the non-justiciability in Heiner, in that the Executive arm of the Queensland Government would be effectively incriminating itself by bringing the matter before the courts and is therefore refusing to apply the law equally, it is beyond question that the peace, order and good government of Queensland has indeed been gravely disturbed and the people must now look to you for constitutional relief and restoration of confidence in the rule of law and Her Majesty's government.

An Obligation to Intervene

Consequently, under these grave circumstances, you may feel obliged, pursuant to your powers under the constitution, to warn and advise your Executive and Legislature to take appropriate steps to resolve this matter by appointment of a Special Prosecutor - upon the repealed Special Prosecutor Act's urgent reintroduction onto the statute books - with sufficiently wide Terms of Reference, resources and power, to gather evidence and hold public hearings, make recommendations and, where sufficient evidence exists, to prosecute any wrongdoer in our courts so that peace, order and good government may be restored to the Queensland people.

Should the Executive, in particular, fail to heed your advice and warning, you may feel obliged to execute the ultimate sanction of your constitutional reserve powers, namely dismissal of the current Executive and replaced by the Leader of the Opposition on the strict condition that your advice in respect of Heiner be heeded and a fresh election held.

Yours sincerely



KEVIN LINDEBERG

The Courier-Mail

Friday 24 January 2003

Pastor 'shredded' sex victim's diary

Journalist: Jasmin Lill

A church pastor shredded the diary of a teenage sex abuse victim and suggested holding a ceremonial burning of another of her diaries, a court heard yesterday.

The pastor also cancelled her baptism ceremony pending a church investigation into claims she had been flirting and taking photos of builders working at her parent's home, Brisbane Magistrate's Court was told.

The 51-year-old Baptist pastor on Brisbane's northside has been charged with destroying evidence and attempting to pervert the course of justice between May 1995 and July 1996 after he destroyed the diary of the girl who had been sexually abused by one of his parishioners.

The pastor has not been able to be identified since a court decision last July to suppress his name.

Police have told the court the victim's family provided their church pastor with diary notes their daughter made of the abuse.

Cut when they asked for the notes back, the clergyman returned them in shredded form, together with a letter indicating they should "just forget the matter", police said.

When the mother asked the pastor what they should do, he recommended the family come together to church, a pastoral care worker said yesterday.

He said the pastor told church staff or elders that he had recommended the sex offender seek advice from a lawyer, but the church worker denied that he and the pastor had ever discussed going to the police.

The pastoral carer said the teenage victim of the abuse was due to be baptised, but said the pastor called it off after a parishioner reported concerns that she had taken a photo of young builders working at her home.

In earlier evidence, the girl's father claimed the pastor said the diary would be incriminating, and that pursuing her complaint through the courts would be difficult for her.

The victim's mother said she was initially relieved to talk to her pastor, and thought he would be able to tell them how to deal with it.

She said the pastor alerted her to the existence of the diary, which he said the girl had been "bragging" about at school. The woman said she gave the diary to the pastor who interviewed the girl and her family.

"He said it's not bad enough to take to the police and even if you did, you wouldn't have a leg to stand on," she said. "We respected (him) and we went with his decision at the time."

The woman said she later became aware of a second diary and that the pastor had suggested they have a ceremony at his house where they would burn it as a form of closure for her.

But she said her daughter took matters into her own hands, and destroyed it.

In a last bid to sever ties with the church, the woman said she phoned the pastor and asked for the diary back.

After agreeing to return it, the woman said it arrived in a shredded form.

The hearing was adjourned.

(13)

GOVERNMENT HOUSE
QUEENSLAND

14 February 2003

Mr K. Lindeberg
11 Riley Drive
CAPALABA QLD 4157

Dear Mr Lindeberg

I am writing on behalf of His Excellency the Governor to acknowledge receipt of your correspondence of 13 February 2003 suggesting certain actions that the Governor may care to take into allegations previously outlined in the Lindeberg Petition document, and expanded in your recent letter.

As previously advised, His Excellency the Governor is not in a position to assist you in this matter.

Yours sincerely

J.R. O'Connor
Official Secretary

(14)

Kevin Lindeberg
11 Riley Drive
CAPALABA QLD 4157
10 March 2003

Your Excellency Major General Peter Arnison AO
Governor of Queensland
Government House
Fernberg Road
PADDINGTON QLD 4064

Your Excellency

RE: THE HEINER AFFAIR AND THE *LINDEBERG PETITION*

I am in receipt of your letter of 14 February 2003 in which you have dismissed my concerns associated with the so-called Heiner Affair by declaring that you are "*...not in a position to assist you* (i.e. me) *in this matter.*"

I write this final communication in good faith to make it unmistakably clear where we stand for historical and other potential legal purposes which will unavoidably come to this matter in the future.

Firstly, in accordance with your constitutional and sworn duty, I shall take it as read now and in the future that you personally acquainted yourself with the factual accuracy of what was presented in all my correspondence. In short, you cannot say now or in the future that you did not know what the legal and constitutional ramifications of Heiner were.

Secondly, so that you cannot say now or at any future time, I hereby inform you that the Heiner Affair is not and has never been a matter that just concerns me as you suggest. No reasonable interpretation of the facts can support such a view.

With great respect, your narrow interpretation of Heiner is so profoundly misconceived as to reflect adversely on what you seem or want to understand your Constitutional role is when a matter as grave as Heiner comes before you.

The confluence of Heiner has made it an issue which affects the peace, order and good government of the all the people of Queensland. It cannot be isolated as being my personal concern to the exclusion of all others who also live by the democratic precept of equality before the law for all.

Accordingly, it shall be read now and at any future time that you have decided to accept assurance from the Executive, presumably your chief adviser Queensland Premier and Minister for Trade the Hon Peter Beattie MLA, that the Heiner Affair has been exhaustively investigated, and no wrongdoing found.

So that there is no misunderstanding now or at any future time, let it be restated here that the facts do not support such an assurance from your chief adviser nor can any impartial examination of material provided to you reasonably permit such a finding.

The Constitution obliges you not to be the rubber stamp of Executive Government decisions.

Furthermore, as the final guardian in our Constitutional Monarchy of the peace, order and good government for the Queensland people, you are the undoubted Constitutional custodian of the reserve powers of the Crown provided by the people in their faith and wisdom over 100 years ago so that you may, under exceptional circumstances, protect them from any government wilfully acting outside the rule of law by appropriate remedy.

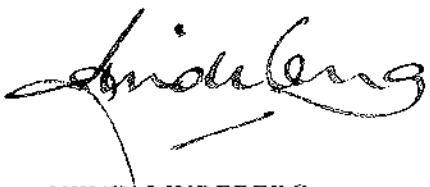
You hold material showing that Heiner has reduced the administration of justice to non-justiciable gridlock. That is, your Executive Government has so wilfully interfered with its requisite impartial administration as to act unconstitutionally and illegally by not permitting sections 129, 132 and 140 of the *Criminal Code (Qld)* being applied to itself while, at the same time, allowing those same provisions to be applied to a Queensland citizen – a Minister of religion – in Her Majesty's Magistrates Court for the same conduct of destroying evidence required in a judicial proceedings and attempting to cover up known child abuse.

Simply put, double standards in the application of the *Criminal Code (Qld)* in which the Executive is not put before the courts while the people are for similar unlawful conduct amounts to tyrannical abuse of office.

In conclusion, having made your decision in regard to Heiner, you must, with great respect, live with it now and in the future and accept whatever consequences may flow from it in the fullness of time.

However, as one of Queensland's citizens who believes in equal justice, I shall not live with your view and must take whatever remedies are available to me within the law.

Yours sincerely



KEVIN LINDEBERG

Kevin Lindeberg
11 Riley Drive
CAPALABA QLD 4157
13 October 2003

Your Excellency The Hon Quentin Bryce AO, BA, LLB Qld,
Governor of Queensland
Government House
Fernberg Road
PADDINGTON QLD 4064

Your Excellency

RE: THE HEINER AFFAIR AND THE *LINDEBERG PETITION*

Your Excellency may refer to previous correspondence your predecessor received on the above matter from me, in particular my most recent letters of 13 February and 10 March 2003.

Your predecessor took the view that he was unable to assist or act in this matter.

I contested his view and provided compelling evidence which underpinned my serious allegations associated with the so-called Heiner Affair (Heiner).

Since 10 March 2003, fresh evidence has emerged in the public arena, which I am now obliged to place before you as part of the Crown acting in perpetuity of governance principle.

I respectfully suggest that, given your background in law, human rights and child welfare, it is legally and constitutionally open to you to take a different view from that of your predecessor particularly as Heiner's legal and constitutional ramifications have increased in their seriousness since my last correspondence to the former State Governor. Moreover, the Heiner cover-up is now so serious that you may be obliged to invoke your constitutional discretion, as an immediate first step, to warn and advise the Government to properly address this issue so that good government might prevail for the people of Queensland.

Notwithstanding you may acquaint yourself with the Heiner file already held by your Office, as a refresher, it does appear that your predecessor may have taken advice from his chief adviser, Queensland Premier and Minister for Trade the Hon Peter Beattie MLA, on material put before him by me. His Excellency claimed in his letter of 7 May 2003 to me that this matter had been "*...assessed and/or investigated by a wide range of agencies including the Premier, the Queensland Police Service, the Queensland Criminal Justice Commission, the Queensland Crime Commission, and a range of Government Departments*".

This claim, based either on advice tendered to or reached by the former Governor himself is simply untrue. It has no foundation in fact, but it is a claim reiterated by the Hon the Premier (and others) over a number of years. None of these agencies have fully investigated my outstanding claims.

This matter has been the subject of a widespread unlawful cover-up involving the Executive Government of Queensland and the Legislature, albeit in the latter arm of Government by an unavoidable manifestation of who has the numbers. Although unravelling, this matter remains resolutely unresolved because the Executive Government is applying the criminal law by double standards to advantage itself over the people by not applying the criminal law equally in materially similar circumstances. Consequently, this unacceptable conduct on the part of your Government has plunged its constitutional duty of ensuring good government for all Queenslanders into non-justiciable gridlock and dire straits.

By way of example, I draw your attention to **The Justice Project**[1] at the University of Queensland, oversighted by School of Journalism and Communication's Journalist in Residence (former Associate Professor) Mr Bruce Grundy. You will note that it deals with the rule of law, abuse of children in institutions and is primarily based on the Heiner Affair, which finds its origins at the (now-closed) John Oxley Youth Detention Centre at Wacol.

In earlier correspondence to your predecessor, specific mention was made about section 129 of the *Criminal Code (Qld)*, its interpretation and application in the materially similar document-shredding circumstances of Heiner and of an incident involving a Baptist minister. The Baptist minister has been charged under this provision and currently awaits trial in the Queensland District Court with the alternative charge of section 140 of the *Criminal Code (Qld)* - attempting

[1] see http:// www.castes.net/justiceproject/htm/default.asp

to obstruct justice – facing him also for destroying a document some ***6 years before*** a relevant judicial proceeding commenced.

I now possess a copy the Director of Public Prosecution's indictment in respect of this matter as presented to the District Court by signature of Crown Prosecutor Mr Richard James Pointing dated 14 August 2003. Of relevance the Crown's indictment speaks of "*...knowing that pages from an exercise book might be required in evidence in a judicial proceeding.*" (My underlining)

On this point. I invite your attention to **The Justice Project**: 12 October 2003 "Decade-long farce Laid Bare." http://www.eastes.net/justiceproject/htm/Decade-longFarceLaidBare.asp

By contrast, in Heiner, the Executive Government of Queensland (i.e. the Cabinet) and certain public officials were unquestionably aware of the anticipated court proceedings in which the Heiner Inquiry documents were known to be relevant evidence when ordering their destruction to prevent their use in a (anticipated) judicial proceedings, and yet section 129 was not applied by the same law-enforcement authorities on the pretext that a judicial proceeding had to be on foot before it could be triggered.

Your Excellency should note that recently retired Queensland Supreme and Appeal Court Justice the Hon James Thomas QC advised **The Justice Project** that section 129 did ***not*** require a judicial proceeding to be on foot to trigger it, moreover, ***it was never open to such an interpretation***. He also advised that those involved in the act were still open to criminal charges being laid.

I hold a letter dated 5 June 2003 from Western Australia's Director of Public Prosecutions Mr Robert Cock QC. I had asked him for his interpretation of section 132 of the *Criminal Code (WA)* which mirrors precisely section 129 on Queensland's Criminal Code. He advised that the provision was unambiguous in its intent. In short, he plainly agreed with the view expressed by Mr Thomas QC and how it was being applied in the case of the Baptist Minister.

The Necessity to access and examine January 1997 DPP's advice to the Queensland Government in respect of the 1996 Morris/Howard Report

I respectfully suggest that, given the centrality of how section 129 of the *Criminal Code (Qld)* has been interpreted in Heiner, and my assertion that it has been deliberately twisted for an improper purpose by certain public officials to prevent criminal charges being laid against Ministers of the Crown (and others) associated with the destruction of the Heiner Inquiry documents, you may be obliged to call for the Director of Public Prosecutions January 1997 advice to the Borbidge Queensland Government in respect of the Morris/Howard Report, and read for yourself what interpretation the Director placed on section 129. Notwithstanding your own legal background, given the authoritative interpretation of section 129 by eminent jurists, barristers and law lecturers on the public record confirming the non-necessity of a judicial proceeding having to be on foot to trigger it, if you find that the Director advised that section 129 required a judicial proceeding to be on foot to trigger it, then you may be constitutionally obliged and entitled to 'advise and encourage' your chief adviser that this matter be revisited and properly investigated by an appropriate authority.

Such an authority, may I suggest, simply cannot be the Queensland Police Service or the CMC because both are tainted and can only now be seen as protagonists in this matter.

As will be seen in the *Lindeberg Petition* and in other material in your possession, my legal advisers have suggested that the only 'appropriate authority' now available in Queensland to resolve Heiner is a Special Prosecutor appointed by the will of the Queensland Legislative Assembly.

Federal Government Involvement

It is also appropriate that I draw to your attention my public submissions (No 142 and 142.1) dated 5 March and 1 July 2003 respectively presented to the House of Representatives Standing Legal and Constitutional Affairs Committee as part of its inquiry into crime in the community established by reference from the Federal Minister for Justice and Customs Senator the Hon Chris Ellison. The Committee is chaired by the Hon Mrs Bronwyn Bishop MHR. My submissions are based on the Heiner Affair and public hearings on the matter are to be heard on 27 October in Brisbane.

My submissions may be found at the Federal Parliament's website/URL:

http://www.aph.gov.au/house/committee/laca/crimeinthecommunity/subs/sub142.pdf and
http://www.aph.gov.au/house/committee/laca/crimeinthecommunity/subs/sub142.1pdf

Within that material I suggest you will find compelling evidence demonstrating that it is open to conclude that the Queensland Government and Criminal Justice Commission deliberately misled the Australian Senate when it was investigating this affair in 1995 and later. The possible contempt goes to the unlawful misrepresentation the criminal law for the Queensland Government's own sectional interests and, at the same time, concealing evidence in the Queensland Government's possession and control which was intrinsically connected with the Heiner Inquiry, going to the crime of criminal paedophilia involving the pack-rape of a 14-year-old indigenous female inmate by other male inmates, during a supervised bush outing to the Lower Portels, which was never properly investigated.

Furthermore, it is also open to conclude that the Queensland Government consciously tampered with a material piece of evidence supplied to the Senate in 1995[2], which included material showing physical and psychological abuse of children at the John Oxley Youth Detention Centre, by cropping it in such a considered manner as to cause a detriment to a witness before the Senate for its own advantage.

As said, without any apparent concern by the State for the serious crime committed against a child in care, no one was held to account over this documented pack-rape incident. In addition, the known (held in custody at the time) alleged culprit/s may have gone on and committed further crime once released into the community, when said culprit/s may otherwise have been held in detention for the assault, assuming a court of law pronounced a guilty verdict.

Alarmingly, it is now open to suggest that one of the accused did indeed go on to commit a major crime involving the point-blank killing of another person with a shotgun in Newmarket on 1 September 1990.[3] (See **The Justice Project**: 12 October 2003 "Mysterious Death of the John

[2] Document 13 supplied by the Queensland Government on 31July 1995 to the Senate Select Committee on Unresolved Whistleblower Cases by cover letter signed by Office of the Cabinet's (then) Director-General Dr Glyn Davis. See Volume 1 Queensland Government Submissions, Supplementary Submissions and Other Written Material Authorised to be Published.
[3] See *The Courier-Mail* p6 "Jail for family mystery killing."

Oxley Connection" – by journalist Mr Bruce Grundy – Former Police Chief Calls for Immediate Investigation.
http://www.castes.net/justiceproject/htm/MysteriousDeathAndTheJohnOxleyConnection.asp

Open Letter to the Commonwealth Parliament

Notwithstanding your constitutional authority is limited to the lawful functioning of the Queensland Government, I nevertheless invite your attention to my Open Letter of 30 May 2003 to the Commonwealth Parliament which may be accessed as an attachment to submission 142.1 to the House of Representatives Legal and Constitutional Affair Committee. This letter is highly relevant to this matter as it brings into sharp focus the seriousness of the misleading conduct engaged in by the Queensland Government and the CJC (now the CMC) towards the Senate in Heiner.

Any potential prospective finding of contempt by the Senate or expression of serious concern by the House of Representatives Legal and Constitutional Affairs Committee in its inquiry into crime in the community must touch on your constitutional function in respect of your reserve powers. Of course, you need not wait until for any such findings by the Federal Parliament before acting by your own cognisance because Heiner is much more relevant to the lawful governance of Queensland as it currently presents itself than it is to the governance of the Commonwealth of Australia and the functioning of our Federal Parliament and its committee system. Indeed, your sworn duty, upon satisfying yourself on the substance of these matter, may require immediate action on your part to ensure that Her Majesty's Queensland Government abides by the law.

Nevertheless, both Governments are now intrinsically connected by this Affair and the corruption associated therewith.

The legal, political and constitutional breadth now embodied in Heiner may, in the fullness of time, thrust both Governments into constitutional litigation before the High Court of Australia because its elements are unavoidably legal and constitutional in nature, causing a meshing of tensions between both jurisdictions as the elements have universal application to good government and the rule of law for both. It is simply untenable for the criminal law underpinning the administration of justice to be administered by double standards on a matter so fundamental

as the preservation of evidence required for judicial proceedings and the right of all Australians, irrespective of which constitutional jurisdiction they may live in, to a fair trial and equal justice.

Heiner plainly has jurisdictional relevance to the Commonwealth Government under Section 51(XXVI) of the *Australian Constitution* because the pack-rape victim was an indigenous Australian.

In conclusion, I invite Your Excellency's careful consideration of the contents of this letter and others placed before the previous State Governor. In my respectful opinion, the contents are so grave that you may be obliged to exercise your discretion under the Constitution's reserve powers so that Her Majesty's Queensland Government may be restored to lawful conduct and held to account before the law in all matters associated with the so-called Heiner Affair.

Yours sincerely

KEVIN LINDEBERG

13 October 2003

(16)

Kevin Lindeberg
11 Riley Drive
CAPALABA QLD 4157
11 November 2003

Your Excellency The Hon Quentin Bryce AO, BA, LLB Qld,
Governor of Queensland
Government House
Fernberg Road
PADDINGTON QLD 4064

Your Excellency

RE: THE HEINER AFFAIR AND THE *LINDEBERG PETITION*

I refer to my letter of 13 October 2003.

I informed you that the House of Representatives Standing Committee on Legal and Constitutional Affairs, chaired by the Hon Bronwyn Bishop MP, would be coming to Brisbane on 27 October 2003 to take evidence on the Heiner Affair as part of its nationwide inquiry into crime in the community.

I wish to inform you now that a hearing took place and evidence provided on oath may be found at LACA *Hansard:*

http://www.aph.gov.au/house/committee/laca/crimeinthecommunity/transcripts/27oct03.pdf

Witnesses for 27 October 2003 were Mr Bruce Grundy, Journalist-in-residence, School of Journalism and Communication, University of Queensland, Dr Alastair MacAdam, senior lecturer, Law Faculty, Queensland University of Technology and myself.

http://www.aph.gov.au/house/committee/laca/crimeinthecommunity/transcripts/28oct03.pdf

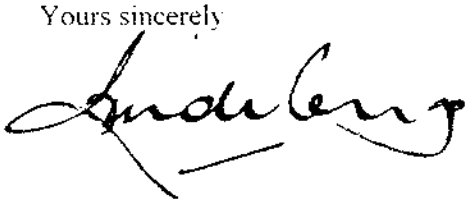
Witness for 28 October 2003 was Mr Desmond O'Neill.

I am aware that the Heiner hearing was subsequently covered by *ABC* National Radio PM on 27 October 2003, *ABC* 612 4QR Drive on 27 and 28 October 2003 and briefly on *ABC-TV* News on 27 October 2003.

I understand that the Committee may be taking further evidence on the matter in the future as well as seeking certain relevant material held by the Queensland Government and others, including the January 1997 Director of Public Prosecution's advice to the (Borbidge) Queensland Government in respect of the findings and recommendations in the October 1996 Morris/Howard Report into my allegations.

This is the same advice which I respectfully suggested in my letter of 13 October 2003 that you might access and examine.

Yours sincerely



KEVIN LINDEBERG

Kevin Lindeberg
11 Riley Drive
CAPALABA QLD 4157
14 May 2004

(17)

Your Excellency The Hon. Quentin Bryce AO. BA. LLB Qld.
Governor of Queensland
Government House
Fernberg Road
PADDINGTON QLD 4064

Your Excellency

RE: THE HEINER AFFAIR AND THE *LINDEBERG PETITION*

I refer to my earlier correspondence on the above matter and believe that it is necessary to inform you of recent developments in the so-called Heiner Affair which add to and underpin the seriousness of the issues before you.

In my last letter I informed you that the House of Representatives Legal and Constitutional Affairs Committee had taken evidence on this Affair in Brisbane on 27 October 2003 as part of its national inquiry into crime in the community. You were informed where you might access the relevant *Hansard* and submissions on the Federal Parliament's web page.

The Committee returned to Brisbane on 16 March 2004 and took further evidence on this matter. Mr. Bruce Grundy, former John Oxley Youth Detention Centre Youth Worker Mr. Michael Roch and myself provided evidence under oath. Mr. Grundy tabled the May 1988 Department of Families pack-rape file which reveals that no one was ever held to account over the sexual assault of the 14-year-old indigenous female inmate.

Mr. Roch verified that Mr. Heiner did indeed investigate the May 1988 pack-rape incident during his inquiry as he questioned Mr. Roch about his knowledge of it when he appeared as a witness at the Children's Court Building North Quay in late 1989/early 1990.

You may find this bracket of evidence at:
http://www.aph.gov.au/hansard/reps/commttee/R7411.pdf

My Submission in Reply of 25 November 2003 may be found at:
http://www.aph.gov.au/house/committee/laca/crimeinthecommunity/subs/sub142.2pdf

Late Special Supplementary Submission of 5 March 2004 may be found at:
http://www.aph.gov.au/house/committee/laca/crimeinthecommunity/subs/sub142.3pdf

On 1 April 2004 the Senate established the Senate Select Committee on the Lindeberg Grievance. In the main, it shall be looking into whether or not the Queensland Government and the then CJC, now the CMC, committed criminal contempt against the Senate in respect of deliberately providing false and misleading evidence (including the withholding and tampering of evidence) which covered up the possible crimes of (a) destruction of evidence; (b) covering up known child abuse going to the crime of criminal paedophilia; (c) paying hush money touching on collusion/bribery/extortion to cover up certain events whose character was known abuse of children in care; and (d) misrepresenting the proper role of the State Archivist.

The basis of this Senate inquiry is founded on:

1. Mr Robert F. Greenwood QC's May 2001 submission to the Senate;
2. My Open Letter to the Federal Parliament of 30 May 2003;
3. *The State of Queensland vs. Douglas Roy*
4. *Ensbey* judicial ruling; and
5. Related material on the School of Journalism and Communication University of Queensland *The Justice Project.* (Also see *The Independent Monthly*).

This possible criminal contempt of the Senate also encompasses the role of (a) Office of Crown Law; (b) Office of the Director of Public Prosecutions; (c) Queensland Police Service; (d) Queensland Audit-Office; (e) Office of the Information Commission and others in the alleged cover-up.

In my letter of 13 October 2003 you were informed about a Queensland citizen facing trial over the destruction of evidence concerning his guillotining of a girl's diary in which the citizen knew was recorded evidence relevant to an unlawful sexual assault by an adult on the girl. Of relevance

to the Heiner Affair, the citizen destroyed the evidence some 5 years ***before*** the relevant judicial proceeding commenced. The citizen was charged under section 129 of the *Criminal Code (Qld)* and, in the alternative, section 140 of the *Criminal Code (Qld)* – attempting to obstruct justice.

On 8 March 2004, in *the State of Queensland vs. Douglas Roy Ensbey*, the trial commenced in the Queensland District Court with his Honour Judge Nick Samios presiding. Of relevance to this matter, his Honour ruled on the proper interpretation of section 129 of the *Criminal Code (Qld) 1899*. It accorded with my long-held view that the provision ***did not require*** a judicial proceeding to be on foot to trigger it. In my earlier letter of 13 October 2003, you were respectfully forewarned of this case, and also informed about retired Queensland Supreme and Appeal Court Justice the Hon. James Thomas QC's interpretation of section 129. It accorded with his Honour Judge Samios' ruling. Pastor Ensbey was found guilty on 11 March 2004 of breaching section 129, and given a wholly suspended 6-month prison sentence.

On 25 March 2004 Queensland Attorney-General and Minister for Justice the Hon. Rod Welford lodged an appeal with the Court of Appeal of Queensland (C.A. No 79 of 2004) on the grounds that the sentenced imposed was manifestly inadequate because of the following reasons:-

a. It failed to reflect the gravity of the offence generally and in this case in particular;
b. It failed to take sufficiently into account the aspect of general deterrence; and
c. The sentencing judge gave too much weight to factors going to mitigation.

Former Supreme Court Justice Thomas advised *The Justice Project* that not only was the provision ***never open and never arguable*** to the interpretation placed on it by the Queensland Government, CJC and former DPP, ***but that those who perpetrated the shredding act of 5 March 1990 were still open to criminal charges***. I suggest that it is open to conclude that the only reasonable view you can reach about the incorrect interpretation of section 129 adopted and embraced by the Queensland Government and others for over a decade, is that it was a deliberate contrivance to cover up their own criminal conduct in this Affair.

Abuse of Office

The evidence provided supports my allegation that your Government is wilfully applying the criminal law by double standards and acting outside the law. It is knowingly and oppressively

applying the criminal law to the people which it will not apply to itself in circumstances both similar in kind and far more serious. Accordingly, pursuant to your Constitutional duty and discretion under your Reserve Powers, I respectfully suggest that you simply cannot ignore such serious abuse of office set out in my correspondence and in the *Lindeberg Petition*.

Yours sincerely

KEVIN LINDEBERG

Kevin Lindeberg
11 Riley Drive
CAPALABA QLD 4157
20 September 2004

Your Excellency The Hon. Quentin Bryce AO, BA, LLB Qld.
Governor of Queensland
Government House
Fernberg Road
PADDINGTON QLD 4064

Your Excellency

RE: THE HEINER AFFAIR AND THE *LINDEBERG PETITION*

I refer to my earlier correspondence on the above matter and, once again, believe that it is necessary to inform you of recent developments in the so-called Heiner Affair which add to and underpin the seriousness of the issues before you.

QUEENSLAND COURT OF APPEAL DECISION IN *ENSBEY*

Please find enclosed a copy of *R v Ensbey; ex parte A-G (Qld)* [2004] QCA 335.

You have been forewarned of the significance of this case to my allegations associated with the Heiner affair by detailed correspondence in your possession. On 17 September 2004, their Honours Davis, Williams and Jerrard JA handed down their decision which concurs with my long-held interpretation of section 129 of the *Criminal Code (Qld) 1899*. As a lawyer, you would know that such a ruling has no higher authority in Queensland.

At Points 15 and 16, Davis JA states:

> "...It was not necessary that the appellant knew that the diary notes would be used in a legal proceeding or that a legal proceeding be in existence or even a likely occurrence at the time the offence was committed. It was sufficient that the

appellant believed that the diary notes might be required in evidence in a possible future proceeding against B. that he wilfully rendered them illegible or indecipherable and that his intent was to prevent them being used for that purpose.

[16] Mr. Hanson QC therefore accepted as correct the following direction of the learned trial judge:

> "Now, here, members of the jury, the words, 'might be required', those words mean a realistic possibility. Also, members of the jury, I direct you there does not have to be a judicial proceeding actually on foot for a person to be guilty of this offence. There does not have to be something going on in this courtroom for someone to be guilty of this offence. If there is a realistic possibility evidence might be required in a judicial proceeding, if the other elements are made out to your satisfaction, then a person can be guilty of that offence."

And at Point 48, his Honour Jerrard JA states on the matter of the definition of "judicial proceeding":

> ..."Since the term is used in different ways in chapter 16, and since s 129 should not be unduly restricted in its ambit, the judicial proceeding referred to in s 129 in which an offender knows that the relevant book, document, or other thing is or might be required in evidence, should be understood to include a judicial proceeding which the offender knows, or believes on reasonable grounds, may occur. An alleged offender might know, for example, that a complaint and a summons had issued or that the person suspected had been arrested, and thus that criminal proceedings were already on foot; or that a complaint had been made to the police, or that the intending complainant said he or she would report a matter to the police, in which case criminal proceedings would be foreshadowed."

I remind you again that (then) DPP Mr. Royce Miller QC in his 6 January 1997 advice to the Borbidge Queensland Government in respect of the findings and recommendations of the Morris/Howard Report incorrectly interprets section 129 which prevented this matter progressing to a public inquiry in 1997. Once again, by the exercise of your discretion, I strongly urge that you obtain a copy of this advice so that you may personally examine its contents, or obtain another source of independent advice on it.

You will see that Mr. Miller QC's advice, in respect of section 129, is erroneous. It covers up crime involving Executive Government. However, at its worst, it is opened to be seen as intentionally contrived unlawful advice ***to*** cover up crime, given that former Queensland Appeal and Supreme Court Justice James Thomas QC advised that section 129 was never open to such an interpretation which has now been unequivocally reaffirmed by the full bench of the Queensland Court of Appeal in *R v Ensbey*.

In *R v Cunliffe* [2004] QCA 293, McMurdo P, McPherson JA, Mackenzie J state this:

> "...Misinterpretation of the law equates to ignorance of the law and is not an excuse: *Ostrowski v Palmer* and see also *Olsen & Anor v The Grain Sorghum Marketing Board; ex parte Olsen & Anor*."

You will note that the authorities cited and considered by their Honours, namely *R v Rogerson* (1992) 174 CLR 269, cited; *R v Selvage & Anor* [1982] 1 All ER 96, cited; and *R v Vreones* [1891] 1 QB 360, considered, ***all predate*** the first (CJC) substantive decision made in my matter on 20 January 1993.

This interpretation simply states what the law has been since 1899. There can be no debate on this point.

With respect, in Government House correspondence, you will find that your predecessor cited the CJC as having investigated this matter, and, in effect, being satisfied with its findings to disarm my allegation. The Queensland Court of Appeal decision in *Ensbey* now disarms the CJC and others who have claimed that no law has been breached.

THE HOUSE OF REPRESENTATIVES LEGAL AND CONSTITUTIONAL AFFAIRS COMMITTEE REPORT INTO THE HEINER AFFAIR

Please find enclosed Volume 2 of the above Committee's report into the Heiner affair as part of its national inquiry into crime in the community. It was tabled in Federal Parliament on 11 August 2004 by Committee Chairman the Hon Bronwyn Bishop MP.

Its recommendations pertaining to the Heiner affair are:

Recommendation 1

That the Queensland Government publicly release the 1996 advice on the Morris/Howard Report provided by the Director of Public Prosecutions to the then Borbidge Government.

Recommendation 2

Given that:

- it is beyond doubt that the Cabinet was fully aware that the documents were likely to be required in judicial proceedings and thereby knowingly removed the rights of at least one prospective litigant:
- previous interpretations of the applicability of section 129 as not applying to the shredding have been proven erroneous in the light of the conviction of Pastor Douglas Ensbey: and
- acting on legal advice such as that provided by the then Queensland Crown Solicitor does not negate responsibility for taking the action in question.

the Committee has no choice but to recommend that members of the Queensland Cabinet at the time that the decision was made to shred the documents gathered by the Heiner inquiry be charged for an offence pursuant to section 129 of the Queensland *Criminal Code Act 1899*. Charges pursuant to sections 132 and 140 of the Queensland *Criminal Code Act 1899* may also arise.

Recommendation 3

That a special prosecutor be appointed to investigate all aspects of the Heiner Affair, as well as allegations of abuse at John Oxley Youth Centre that may not have been aired as part of the Heiner inquiry and may not have been considered by the Forde or other inquiries.

That this special prosecutor be empowered to call all relevant persons with information as to the content of the Heiner inquiry documents, including but not necessarily limited to:

- Public servants at the time, including staff of the then Department of Family Services, the Criminal Justice Commission, Queensland police, and the John Oxley Youth Centre
- Relevant union officials

That the special prosecutor be furnished with all available documentation, including all Cabinet documents, advices tendered to Government, records from the John Oxley Youth Centre and records held by the Department of Family Services, the Criminal Justice Commission and the Queensland Police.

The above findings now have the benefit of the Queensland Court of Appeal decision in *Ensbey* to reinforce them.

It is my understanding that your chief adviser, Queensland Premier the Hon. Peter Beattie MLA has dismissed the Report's findings as a political stunt. I invite your consideration of them and I believe that you will quickly see that it is no stunt or an abuse of Parliamentary processes for party-political purposes.

THE UNIVERSITY OF QUEENSLAND'S *THE INDEPENDENT MONTHLY*

For your benefit, I also enclose a copy of the September 2004 edition of the above newspaper. You should note that another John Oxley Youth Centre (JOYC) abuse victim has been unearthed

by Mr. Bruce Grundy, and that the May 1988 pack rape JOYC victim is now facing a statute of limitations obstacle placed in front of her by the Queensland Government, let alone earlier having destroyed probative Heiner Inquiry evidence to prevent its use in relevant judicial proceedings. The victim intends to press on.

CONCLUSION

The evidence provided supports my allegation that your Government is wilfully applying the criminal law by double standards and acting outside the law. It is knowingly and oppressively applying the criminal law to the people which it will not apply to itself in circumstances both similar in kind and far more serious. Such conduct is both unacceptable and unconstitutional. Queensland's highest court now supports my claim.

Any attempt by the Queensland Government to introduce emergency retrospective legislation to make all things associated with the Heiner affair lawful must be resisted.

Accordingly, pursuant to your Constitutional duty and discretion under your Reserve Powers, I respectfully suggest that you cannot continue to ignore such serious abuse of office set out in my correspondence and in the *Lindeberg Petition*.

Yours sincerely

KEVIN LINDEBERG

(19)

Kevin Lindeberg
11 Riley Drive
CAPALABA QLD 4157
15 October 2004

The Hon Peter D Beattie MP
Queensland Premier and Minister for Trade
Level 15
Executive Building
100 George Street
BRISBANE QLD 4000

Dear Premier

RE: THE HEINER AFFAIR AND RESTORING PUBLIC CONFIDENCE IN THE GOVERNANCE OF QUEENSLAND

I write in the public interest and in good faith. In my opinion, this letter should be for your immediate attention only because of the serious legal and constitutional gravity of the issue at hand.

I wish to bring to your attention significant matters revealing possible criminal conduct involving many public officials caught up in the so-called Heiner affair. These unresolved matters have placed in jeopardy good government in Queensland over which you preside as its first Minister of the Crown.

As the first Minister of the Crown, I have taken the view that you are entitled to know firsthand what the problem is so that it may be remedied by appropriate means. In my view, those means are extremely limited.

This letter should not be seen as a threat against you as a public official, real or inferred. I feel duty bound to faithfully inform you of the gravity of the issue as my duly elected Premier and guardian of a position of great public trust.

The people of Queensland have a right to enjoy public confidence in our parliamentary and legal systems and our public administration, but unfortunately, the festering systemic corruption associated with this affair prevents that from happening.

I bring to your attention Volume 2 of the House of Representatives Legal and Constitutional Affairs Committee which is a report into the Heiner affair as part of its national inquiry into crime in the community. A copy is enclosed.

The Committee recommended that:

1. All members of the Goss Cabinet of 5 March 1990 are open to criminal charges pursuant to section 129 of the *Criminal Code* (Qld) in respect of their order to knowingly destroy the Heiner Inquiry documents to prevent their use as evidence in judicial proceedings;
2. A Special Prosecutor be appointed to investigate the Heiner affair; and
3. The January 1997 DPP's advice to the Borbidge Queensland Government on the findings and recommendations of the Morris/Howard Report be made public.

The relevant Cabinet Register, which is in your possession or control, shall confirm who attended the above Cabinet Meeting on 5 March 1990. While I have been previously denied access to the Register, it would seem reasonable to suggest that current serving Deputy Premier, Treasurer and Minister for Sports the Hon Terry Mackenroth MP and backbencher the Hon Dean Wells MP were in attendance as Goss Government Ministers at the time. Consequently, it is reasonably open to submit that they were party to the order to destroy the said evidence to prevent it being used in evidence in a judicial proceeding when knowing that it was required, discoverable pursuant to the Rules of the Supreme Court of Queensland, and being sought by solicitors and two State registered trade unions.

The relevant Cabinet submissions of February and March 1990, tabled by you during the motion-of-confidence debate of 30 July 1998 when you first gained office as a minority Government on

the casting vote of the Member for Nicklin Mr Peter Wellington MP, unequivocally confirm that this inculpatory awareness existed in the Goss Cabinet at the time it ordered their destruction.

The Queensland Court of Appeal Confirms the Law

I respectfully inform you that the Queensland Court of Appeal in *R v Ensbey: ex parte A-G (Qld)* [2004] QCA 335 on 17 September 2004 unanimously confirmed the correctness of my long-held interpretation of sections 129 and 119 of the *Criminal Code* (Qld). The misinterpretations of those sections by the Criminal Justice Commission (CJC) - now the Crime and Misconduct Commission (CMC) – Queensland Police Service, and Office of the Director of Public Prosecutions and others prevented criminal charges relating to my complaint being laid and put before the courts for resolution at all relevant times. A copy of the judgement is enclosed.

The central structure for confirming the conviction in *Ensbey* by their Honours Davies, Williams and Jerrard JJA at 15 in respect of section 129 was put in these terms:

> *"...It was not necessary that the appellant knew that the diary notes would be used in a legal proceeding or that a legal proceeding be in existence or even a likely occurrence at the time the offence was committed. It was sufficient that the appellant believed that the diary notes might be required in evidence in a possible future proceeding against B, that he wilfully rendered them illegible or indecipherable and that his intent was to prevent them being used for that purpose."*

Their Honours (at 16) confirmed the legal correctness of Judge Samios' direction to the District Court jury, which was as follows:

> *"Now, here, members of the jury, the words, 'might be required', those words mean a realistic possibility. Also, members of the jury, I direct you there does not have to be a judicial proceeding actually on foot for a person to be guilty of this offence. There does not have to be something going on in this courtroom for someone to be guilty of this offence. If there is a realistic possibility evidence might be required in a judicial proceeding, if the other elements are made out to your satisfaction, then a person can be guilty of that offence."*

As a qualified solicitor yourself, you will appreciate that no statute of limitations may attach itself to the alleged criminal offences involved in this matter.

Both the Court of Appeal judgement in *Ensbey* and a recent earlier public statement by former Queensland Appeal and Supreme Court Justice the Hon James Thomas A.M. to *The Independent Monthly* make plain that the misinterpretation of section 129, as used by those aforesaid law-enforcement authorities and certain public officials in my matter, was never open to them. The section is so unambiguous that it was never even arguable.

In short, no reasonable lawyer, properly briefed and applying the law honestly and impartially, could have ever reached a view that known evidence may be deliberately destroyed up to the moment of an expected Writ/Plaint being filed and served to prevent its use as evidence in the expected judicial proceeding, even more so when such evidence reveals known or suspected crime and/or official misconduct. Such a shredding act is a *prima facie* criminal cover-up.

If one were to embrace your view of section 129 (as applied in the Heiner affair), it would invite "a world without evidence." For any government – the so-called "model litigant" – to do so, is unthinkable.

Demonstrable Double Standards vs Probity in Public Office

Indeed, your own Attorney-General the Hon Rod Welford MP, on 25 March 2004, signed the application to the Queensland Court of Appeal seeking an increased sentence against Pastor Douglas Ensbey because of the seriousness of his shredding crime and the manifest inadequacy of the 6-month fully suspended jail sentence imposed on him by his Honour District Court Judge Nick Samios. In so signing the appeal instrument, your own Government unequivocally endorsed my interpretation of section 129 which the Queensland Government publicly rejected when applying to its own similar shredding conduct in the Heiner affair.

Notwithstanding the Attorney-General is the first law officer of Queensland whose prime responsibility is to protect and maintain the integrity of the administration of justice, may I respectfully suggest that your sworn duty, as first Minister of the Crown, is no less obligatory on

you to act with the utmost probity at all times. That is, in an unprecedented matter such as this which directly impacts on the integrity of your Executive Government and other accountability arms of Government, you are obliged to ensure that the administration of justice and the application of the criminal law are applied consistently and equally. It is an unqualified duty.

Under these circumstances, it may be open to suggest that any failure to act with the utmost probity on the part of any public official may amount to an abuse of office and obstruction of justice here. Obviously, as first Minister of the Crown, that should be avoided at all costs.

In a democracy, no one is above the law. I have noted favourably your complementary stance during the difficult 2000/01 Shepherdson Inquiry period and, more recently, in the so-called Energex affair, that if anyone had broken the law, you publicly declared that the full force of the law should be applied, and due process allowed to flow unhindered, irrespective of who might be involved.

In that respect, you displayed courage, probity and respect for the law -- and I commend you for that.

Non-justiciable Gridlock

However, the completely discredited interpretation of section 129 of the *Criminal Code* (Qld) has tainted Queensland's public administration which you oversight as its first Minister of the Crown. Our system has been reduced to non-justiciable gridlock. It properly requires the appointment of an independent Special Prosecutor to remedy the deep malaise and gridlock.

There is compelling evidence to suggest that a conspiracy to pervert the course of justice, over a period of some 14 years, has been entered into by certain high-ranking persons to prevent the law from being applied honestly and equally. All must have reasonably known, at all relevant times, that the elements of this affair triggered section 129, as well as possibly, in the alternate, sections 132 and 140 and other equally serious provisions of the *Criminal Code* (Qld), and relevant provisions, at particular times, of the *Criminal Justice Act 1989*, *Crime Commission Act 199?*, *Crime and Misconduct Act 2001*, *Libraries and Archives Act 1988* and *Financial Administration and Audit Act 19??*.

For the record, this matter has never been properly investigated. That is beyond dispute. For anyone to suggest otherwise is simply not true. Some of the alleged or so-called inquiries either (a) never took place; (b) never reported before being closed; (c) were provided with false and misleading evidence to prevent full and proper findings; (d) never had their findings acted on; (e) never had sufficiently wide terms of reference; (f) applied relevant law incorrectly; or (g) failed to properly investigate.

Systemic Corruption

The incorrect interpretation of section 129 was first fostered by lawyers Messrs Noel Nunan and Michael Barnes of the Criminal Justice Commission (CJC) in 1992/3. It was a self-serving contrived view of the section which prevented charges being laid because their interpretation was never open to be made. Others mentioned on the public record followed suit. It has infected other accountability arms of government (i.e. Parliamentary Criminal Justice Committee, Office of Crown Law, Office of the Information Commissioner, Ombudsman, Queensland Audit Office, Queensland Police Service, Office of the Director of Public Prosecutions) on whose impartiality and honest-functioning open and accountable government depend.

We are not talking about "new law" in respect of section 129. As it applied in *Ensbey* in 2004, it should have applied in Heiner at all times, having remained unchanged since its enactment in 1899.

Eminent counsel such as Ian Callinan QC, Anthony Morris QC and Robert F Greenwood QC and other barristers and senior law lecturers consistently questioned your interpretation as being correct. Case law supporting our interpretation existed and was always cited such as *R v Rogerson* (1992) 174 CLR 269, *R v Vrones* [1891] 1 QB 360, *R v Selvage & Anor* [1982] 1 All ER 96, and *R v Murphy* (1985) 158 CLR 596. Indeed, in this matter, Mr. Callinan QC placed on the public record in 1995 that the CJC's (and Queensland Government) strict narrow interpretation of "judicial proceedings" was too significant to ignore, but it was.

The Queensland Court of Appeal in *Ensbey* has now conferred its imprimatur on our position. Government by the rule of law demands that such judicial authority ought not be ignored.

With the utmost respect, if the rule of law counts for anything in Queensland, you, as first Minister of the Crown, cannot permit Executive Government in Queensland and senior bureaucrats to be, or remain, above the law by now doing nothing about this crisis when you know that the criminal law has and is being unquestionably applied by double standards to advantage the Executive over the people. It ought to be remedied urgently, and not have justice delayed any longer.

The Role of the DPP & Ignorance of the Law

For the record, I am aware that the former Director of Public Prosecutions, Mr Royce Miller QC, in his January 1997 advice to the Borbidge Queensland Government in respect of the findings and recommendations of the October 1996 Morris/Howard Report, incorrectly interpreted section 129. **He failed to apply the criminal law correctly**.

It is a matter of public record that Messrs. Morris QC and Howard interpreted section 129 as the Queensland Court of Appeal in *Ensbey* unanimously declared it to be.

As a qualified lawyer, you would know that ignorance of the law is no excuse. This includes acting on advice from any Crown Solicitor, DPP or legal practitioner which turns out to be wrong. (See *Ostrowski v Palmer* [2004] HCA 30 16 June 2004 and *R v Fingleton* [2003] QCA 266). Nor, may I point out, does any disposal of a public record pursuant to the *Libraries and Archives Act 1988* override the provisions of section 129 of the *Criminal Code* (Qld) which such disposal may trigger.

Destroying Evidence of Child Abuse

Compelling evidence also exists revealing that public officials, knowledgeable about what was happening at the John Oxley Youth Detention Centre at all relevant times, ***knew*** that the evidence gathered by Mr. Heiner was about children being abused and did nothing to preserve it. The Forde Commission of Inquiry into the Abuse of Children in Queensland Institutions later confirmed the abuse in its findings but failed to properly address either the abuse or the shredding of evidence to cover it up.

It is beyond dispute that former Family Services and Aboriginal and Islander Affairs Minister the Hon Anne Warner ***knew*** about the abuse before and at the time the shredding of the evidence was ordered.

Criminal Paedophilia at John Oxley Youth Detention Centre

Evidence now exists showing that the abuse was sexual in nature, going to the pack rape of a 14-year-old indigenous female inmate – the act being legally defined as "criminal paedophilia" under the *Crime Commission Act 1997* – which was never properly investigated at any level, at any time, by either the police, Families Department or CJC. Further evidence has been obtained revealing the rape of another female minor inmate at the Centre in April 1991 during another bush outing by a male staff member who was never held to account.

Accordingly, it had to be reasonably known by the Queensland Government that the Heiner Inquiry documents, lawfully gathered, would have been probative contemporaneous evidence in any judicial proceeding relevant to:

(a) disciplining certain Centre staff to be undertaken by either the department, CJC, police or any tribunal;
(b) dismissal proceedings before the State Industrial Relations Commission;
(c) any criminal proceeding; and
(d) any future negligence claim any abuse victim/s may wish to bring against the State of Queensland or particular person/s.

Breach of the Doctrine of the Separation of Powers

The position adopted by the Queensland Government and the Queensland Legislative Assembly in the Heiner matter has placed both those arms of government in serious conflict with the Judiciary in terms of breaching the doctrine of the Separation of Powers. That is, by a willful act of the Executive, with the subsequent approval of the Legislature, you have shown that it will and has destroyed evidence – in this case public records – to knowingly prevent their use as evidence in a judicial proceeding thereby preventing or obstructing the Judiciary from carrying out its *Constitutional* function.

Such conduct undermines the rule of law. It scandalizes the discovery/disclosure Rules of the Supreme Court of Queensland and public recordkeeping.

It also places in real jeopardy justice for minors assaulted while in State care if government is prepared to destroy probative public records of the offence to prevent its use as evidence in a judicial proceeding.

Conclusion

There is ample credible evidence suggesting that serious *prima facie* criminality has occurred in this matter. It remains unresolved. It is open to conclude that a concerted widespread cover-up has been engaged in to prevent justice being done.

Notwithstanding certain referral obligations under the *Crime and Misconduct Act 2002*, it is not open to you to refer this matter to either the CMC or police because both are unquestionably compromised. They simply cannot come to the matter impartially and are therefore restricted in what they can legally do. ***They are protagonists***. Their conduct must be the subject of serious review, along with that of other authorities like the Office of the Information Commissioner, Office of the Director of Public Prosecutions, Office of Crown Law, State Archives etc.

While the decision is yours from whom you seek advice on this matter, I respectfully point out that the Office of Crown Law cannot come to the matter without giving reasonable rise to real and/or apprehended bias because of its well-documented role in this affair, and the undoubted wrong advice previously given to Government. Only a comprehensive review of this Office's conduct in handling this affair by an independent authority can now restore public confidence in its important function.

Unavoidably, the role of the Office of Premier and Cabinet in handling this matter, at relevant times, must also come under review so that public confidence may be restored in its vital role in our democracy.

Accordingly, by the exercise of thoughtful leadership on your part and being mindful of the Hon Bill Gunn's example of political courage in 1987 in setting up the Fitzgerald Inquiry, I respectfully urge you to appoint an independent Special Prosecutor with sufficiently wide terms

of reference, time and resources – with the concurrence of all members of Parliament – to investigate all aspects of the Heiner affair.

When and if sufficient inculpatory evidence is found to exist against any person, it should be brought before the courts for final and open resolution.

The Special Prosecutor should be commissioned to report to Parliament and recommend appropriate changes to legislation and structures within government to ensure that there is never a repeat of this shameful episode in our political history again so that the people of Queensland may have confidence in our system of government, not least in the integrity of the Office of Premier and Cabinet.

At your convenience, together with my solicitor, I would be happy to meet with you so that, in good faith, we can advance this serious matter to an open, speedy and accountable conclusion in the public interest and in the wider interests of democracy, justice and good government.

I await your written response.

Yours sincerely

KEVIN LINDEBERG
15 October 2004

Kevin Lindeberg
11 Riley Drive
CAPALABA QLD 4157
20 October 2004

The Hon Paul de Jersey AC QC
Administrator
The Office of the Governor of Queensland
Government House
Fernberg Road
BARDON QLD 4065

Dear Administrator

RE: The Heiner Affair and the Lindeberg Petition

I acknowledge that you are Acting-Governor while Her Excellency is on official business overseas.

In light of the potential accelerating dimensions of this matter and its grave impact on the good government of Queensland, I feel obliged to provide you, as a matter of some urgency, with a copy of a letter, dated 15 October 2004, hand-delivered by me to the Queensland Premier and Minister for Trade the Hon Peter D Beattie MP on Monday 18 October 2004.

Together with material already provided to the Office of the Governor of Queensland on this matter over a period, your attention is respectfully invited to the contents of the letter for appropriate consideration and action.

Yours sincerely

Lindeberg

KEVIN LINDEBERG

GOVERNMENT HOUSE

(2)

27 October 2004

Mr K. Lindeberg
11 Riley Drive
CAPALABA QLD 4157

Dear Mr Lindeberg

I am writing on behalf of His Excellency the Administrator to acknowledge receipt of your correspondence of 20 October 2004.

Yours sincerely

J.R. O'Connor
Official Secretary

22

Queensland Government

Please quote 64790/mb23/LJP

11 NOV 2004

Mr Kevin Lindeberg
11 Riley Drive
CAPALABA QLD 4157

Dear Mr Lindeberg

Thank you for your letter to the Premier of 15 October 2004 concerning the Heiner Inquiry and the report of the House of Representatives Standing Committee on Legal and Constitutional Affairs on its inquiry into crime in the community.

The matters you have raised in your letter are currently under consideration. The Premier will write to you in the near future responding to the matters you have raised.

Yours sincerely

Rob Whiddon
Chief of Staff

Telephone +61 7 3224 4500
Facsimile
Email
Website

GOVERNMENT HOUSE

(23)

18 November 2004

Mr K. Lindeberg
11 Riley Drive
CAPALABA QLD 4157

Dear Mr Lindeberg

I am writing on behalf of Her Excellency the Governor to acknowledge receipt of your correspondence of 20 September 2004.

Some time ago, and on Her Excellency's behalf, I sought advice from the Government as to its formal position on the matters that you have raised. At the time of writing no response has been received, however, I undertake to contact you again once Her Excellency the Governor has received advice, and had an opportunity to consider it.

Yours sincerely

J.R. O'Connor
Official Secretary

(24)

Kevin Lindeberg
11 Riley Drive
CAPALABA QLD 4157
22 November 2004

The Hon Peter D Beattie MP
Queensland Premier and Minister for Trade
Level 15
Executive Building
100 George Street
BRISBANE QLD 4000

Dear Premier

RE: THE HEINER AFFAIR AND RESTORING PUBLIC CONFIDENCE IN THE GOVERNANCE OF QUEENSLAND

Thank you for your letter of 11 November 2004 acknowledging receipt of my letter dated 15 October 2004 and its attachments. You have confirmed that the matter is under consideration.

I am aware of your answer to a Question on Notice from Mr. Chris Foley MP, the Member of Maryborough (No 1471 18 November 2004).

You have revealed a very serious deception giving rise to possible misconduct at the very least, and possibly a conspiracy to pervert the course of justice.

This occurred in the lead up to the Heiner Inquiry. There was compelling evidence[1] adduced before the House of Representatives Legal and Constitutional Affairs Committee (LACA) that this cover-up involving the May 1988 pack rape was raised at the Heiner Inquiry, possibly, again by the same anonymous whistleblower who unsuccessfully attempted to bring the unresolved assault to public attention in *The Courier-Mail* on 16 March 1989. His or her

[1] See pp62-63 Points 3.34-3.36, 3.81-3.86 LACA Report *Crime in the Community: victims, offenders and fear of crime* - August 2004 - Volume Two.

evidence on the incident may have triggered Mr. Heiner to ask questions about it when witnesses appeared before him.

There is also evidence in existence indicating that Mr. Heiner sought access to certain departmental files relevant to his inquiry. It is now open to suggest that the departmental file on the May 1988 pack rape incident may have been accessed by him and later returned to the Department's archives.

It is, nevertheless, strongly open to conclude that the deception, as revealed in your answer, covered up the known crime of criminal paedophilia[2] given that the sexual assault involved a 14-year-old female indigenous inmate.

It is highly probable that then Family Services Minister the Hon Craig Sherrin spoke from a sought-after briefing note. Arguably, it would have been supplied by senior departmental staff down to Mr. Coyne's level after the riot at the Centre when the alleged assault first surfaced publicly by an anonymous whistleblower in *The Courier-Mail*.

It must be fairly said that it cannot be assumed that Mr. Coyne was part of the deception, nor, however, can it be ruled out. It is an open question.

Nevertheless, it is strongly open to conclude that then Family Services Minister the Hon Craig Sherrin[3], wittingly or unwittingly, seriously misled the public into believing that the victim was above the age of consent and had declined to lay charges after being encouraged to do so, when, in fact, it was known inside the Department that nothing was further from the truth as the May 1988 victim's departmental file attests.

The Make-up of the March 1989 Department of Families Executive Team

It has now become relevant that the following former Executive team in the Department of Family Services comes under scrutiny.

Director-General:	Mr. Alan C. Pettigrew (deceased)
Deputy Director-General (Corporate Support)	Mr. Colin W. Thatcher
Deputy Director-General (Child Protection and Family Support)	Ms. Myolene Carrick

[2] Section 6(1) and (2) of the *Queensland Crime Commission Act 197*[illegible] and See Point 3.125 LACA Report August 2004 Volume Two.
[3] Currently Director of the Southbank Institute of TAFE

Deputy Director-General (Community and Youth Support)	Mr. George E. Nix
Executive Director (Child Protection and Family Support)	Mr. Barry McPhee
Executive Director (Youth Support)	Mr. Ian Peers
Executive Director (Community Support)	Ms. Ruth L. Matchett
Director and Principal Adviser, Intellectual Handicap Services	Ms. Robyn N. Shepherd
Executive Officer to Director-General	J. Hogan

* Taken from the Queensland Government Directory as at 3 March 1989

In reaching the aforesaid conclusion, I make no final judgement as to Mr. Sherrin's true state of knowledge because that can only be established by a properly constituted independent inquirer taking evidence on oath in public. In respect of any of above mentioned (then) departmental Executive officials, it is simply inconceivable that following the major riot at the Centre and the newspaper coverage of it (including the alleged rape of a 15-year-old during an art outing), the Executive team did not fully discuss it. Of course, within that Executive team, certain officers did not have any responsibility for juvenile detention centres and related matters while others did. In other words, some would be relying on the information of others.

I make no improper inferences or assertions about the conduct of any of the aforesaid senior departmental officials concerning who knew what and who did or did not do the right thing concerning the pack rape. That is a matter for an independent inquirer to establish. It is, however, a matter of fact that several played a role in establishing the Heiner Inquiry, closing it down, destroying the evidence and authorising the disbursement of public moneys in the February 1991 Deed of Settlement which bought the silence of the parties over certain "events" leading up and surrounding Mr. Coyne's relocation away from the Centre. In other words, a continuum from one government to another is visible, even reaching back to May 1988 as the departmental pack rape file shows.

The victim's file is now on the public record. I hold a copy, as do others. It was tabled before the House of Representatives Legal and Constitutional Affairs Committee by Mr. Bruce Grundy during his bracket of evidence. He came by the file lawfully. The Queensland Auditor-General holds a copy having received it from me after it was made a public document.

The file reveals that far from the victim not wanting her alleged assailants charged, she did. She was subsequently threatened, and then declined to proceed. The police did not arrive on the scene until days ***afterwards***. During this period after the assault, the Queensland Government afforded her no protection from threats and intimidation made by her alleged assailants and their network of inmate friends at the Centre.

Significantly, her alleged assailants were not only known to authorities but they were in custody at the same Centre. None has been held to account. Arguably, they would be still open to criminal charges.

Irrespective of what the victim wanted at the time, at law, she was neither legally capable of consenting to sexual intercourse in the first place, nor of preventing the Crown from proceeding with criminal charges because she was a minor. She could have gone before the court as a hostile witness if necessary.

Her file shows that the sexual intercourse was non-consensual: notwithstanding she could not legally give consent thereby making consent not an issue here. The alleged pack rape was made all the worse because the victim was in the care and protection of the Crown by court order at the time it happened.

The victim's file – as released under freedom of information – has highly significant blanked out pages concerning the assault and who presumably knew about it at the time. I respectfully suggest, in the wake of your answer, the entire uncensored file should be made available by the Queensland Government, albeit to a properly appointed independent inquirer other than the Crime and Misconduct Commission (CMC).

I am aware that the victim is currently suing the State of Queensland over the incident seeking a claim in damages for negligence *inter alia*, and that the Queensland Government is contesting her claim as being out of time. In my opinion, without gainsay on my part, that is unconscionable and immoral conduct of the highest order under the prevailing circumstances.

Public servants still in the system

Over and above Mr. Sherrin still working as a senior Queensland public official, others caught up in this affair at various relevant times, including those reasonably "in the know" at the time of this serious deception, are still in the Queensland public service. While I do not

declare or infer wrongdoing on any of their parts as being either compliant or knowledgeable willing partners in such a deceptive enterprise, many had to know that the victim's age was wrong and that she wanted her alleged assailants charged until threatened out of doing so, and yet they said nothing then or since, save former Youth Worker Mr. Michael Roch to the Legal and Constitutional Affairs Committee on 16 March 2004.

In turn, this gives reasonable rise to an added level of *prima facie* self-interest for connected associated public officials of ensuring that the Heiner Inquiry documents should be destroyed. Of relevance, aside from destroying the records to prevent their use as evidence in an anticipated judicial proceeding – which itself is unlawful pursuant to section 129 of the *Criminal Code* (See *R v Ensbey; ex parte A-G (Qld)* [2004] QCA 335 17 September 2004) – the Goss Cabinet specifically ordered their destruction so that the gathered evidence could not be used against the careers of the staff at the Centre.

In terms of open and accountable government, such conduct is, I submit, unacceptable. The gathered evidence ought to have been referred to the CJC or police at the time for independent investigation. That obligation would have been reasonably known. The shredding deliberately obstructed that known course of action.

I submit that in order for public confidence to be maintained in our public administration, and in the interests of good governance itself, all such parties should come under public scrutiny by an independent inquirer, not only to restore public confidence in our system of government and justice system, but to allow them to publicly clear their names from what is, unquestionably, a serious deception perpetrated against the public interest and the administration of justice as it covered up the crime of criminal paedophilia.

Improper Payment of Public Moneys to Buy Silence

Your answer gives a clear insight into the character of "the events" which lead up to Mr. Coyne's relocation from the Centre. In this case, the deception gives rise to serious questions of possible official misconduct or conspiracy to pervert the course of justice.

To suggest that the *ex gratia* special payment provisions of the *Financial Administration and Audit Act 19*[illegible] provide for public moneys to be paid to hush up such events is untenable. The Queensland Audit Office had a duty to inquire why the money was being paid to Mr. Coyne and what were the so-called "events" never to be spoken of ever again. It failed to do so on two separate occasions. Under these circumstances, the role of the Queensland Audit Office

in handling my complaints should be independently reviewed, along with others like the CJC CMC, police, Office of the Information Commissioner, Crown Law, State Archives and DPP.

It is simply not open to take advice from the CMC on anything to do with this matter. It is a protagonist at law[4]. As far back as 11 November 1996, the CJC agreed that it could not come to the Heiner affair again because its independence had been impinged/impugned by the Queensland Parliament. In short, to act after such doubt had been cast over its independence by the Parliament itself, would have placed it in breach of section 22 of the *Criminal Justice Act 1989*. Having been impugned once by Parliament, the authority remains impugned afterwards even though it is now known as the CMC, having amalgamated with the Queensland Crime Commission on 1 January 2002.

Obey the Law

On advice, the only legal way for this matter to be resolved is through the appointment of an independent Special Prosecutor with sufficient time and resources to thoroughly investigate all this affair's elements, and where sufficient inculpatory evidence is found to exist, put the accused before the court to final adjudication.

With great respect, for you to continue with the claim that this matter has been investigated thoroughly, no credit will come of it. It is simply untrue. It is a self-serving myth. Political self-interest and survival has thwarted justice from the very beginning, and brought good government by the rule of law in Queensland into constitutional crisis.

In respect of any considered view you may eventually put to me, or to anyone else who has requested a report from you on this matter, it is simply not open to the Queensland Government to contest my interpretation of the core criminal provision in the Heiner affair: section 129 of the *Criminal Code*. Its interpretation used by the CJC, police, Crown Law and DPP to prevent criminal charges being laid against the Goss Cabinet and others was wrong. The Queensland Court of Appeal has so ruled in *Ensbey*.

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[4] *Livesey v New South Wales Bar Association* [1983] 151 CLR 288 at 294; *Metropolitan Properties Co. (F.G.C.) Ltd v Lannon* (1969) 1 QB 577 at 599. *Stollery v The Greyhound Racing Control Board* (1972) 128 CLR 509 Menzies J stated: "*Authority (i.e. Dickason v Edwards* (1910) 10 CLR 243; *Allinson v General Council of Medical Education* [1894] 1 QB 750; and *R v London County Council ex parte Akkersdyk* [1892] 1 QB 190) *further establishes that a person who has an interest adverse to, or in such proceedings, has been opposed to, the person on trial, is within the category of persons who in fairness ought not to be present at the deliberations of the tribunal*"

As leader of a Government and Minister of the Crown, you are obliged to obey the law and must not place yourself or Government above it. To do otherwise, may place your Government outside its sworn duty to Her Excellency that in all things it would obey the law.

You cannot hide behind any claim that the Queensland Government acted on advice from its advisers. In *R v Cunliffe* [2004] QCA 293, McMurdo P, McPherson JA, Mackenzie J state this:

> "*...Misinterpretation of the law equates to ignorance of the law and is not an excuse.* See *Ostrowski v Palmer* and see also *Olsen & Anor v The Grain Sorghum Marketing Board; ex parte Olsen & Anor* "

It is long-settled at law that acting on legal advice which turns out to be wrong is no defence from charges for the illegal act being brought against the doer. Recently, in *Ostrowski v Palmer* [2004] HCA 30 (16 June 2004), the issue of ignorance of the law was addressed again. Mr. Palmer, a crayfisherman, who acted on legal advice provided by the Western Australia Department of Fisheries regarding a fishing area, found himself being charged because the advice he received from the Crown was wrong. He appealed his conviction to the High Court of Australia. His guilt was confirmed. Callinan and Dreydon JJ ruled as follows at 85 in finding a guilty verdict against Mr. Palmer even though he was diligent in obtaining advice before acting:

> "*...it is the task of this Court to apply the law by answering the question whether the respondent should be regarded merely as having been ignorant of the law, an excuse which s 22 of the Code would deny him, or whether he had an honest and reasonable, but mistaken, belief in the existence of a state of things which if they had in fact existed would have meant that he was not criminally responsible. The question is an important one. A mockery would be made of the criminal law if accused persons could rely on, for example, erroneous legal advice, or their own often self-serving understanding of the law as an excuse for breaking it, however relevant such matters might be to penalty when a discretion, unlike here, in relation to it may be exercised.*"
> (My underlining)

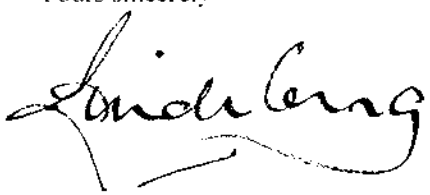
By your own answer to Mr Foley, you have sealed the proof that a serious *prima facie* criminal cover-up has been going on for over 14 years despite my best efforts to have the

truth told. To that same resolve, Mr Grundy has played a hugely significant part in wanting the truth told. It has involved the State of Queensland covering up the crime of criminal paedophilia and, in order to escape accountability and the equal application of the law, it has been prepared to shred evidence, bribe a public servant, abuse power and parliament, and misinterpret the criminal law for self-serving purposes, aided by a network of well-placed mates.

The time has come to do the right thing. I urge you to show courage and leadership and appoint a Special Prosecutor and let the truth and the law reap what they may so that good government in Queensland may be restored, and justice be done.

My solicitors and I would be happy to meet to advance this matter to a proper conclusion.

Yours sincerely



KEVIN LINDEBERG

Kevin Lindeberg
11 Riley Drive
CAPALABA QLD 4157
23 November 2004

Your Excellency The Hon. Quentin Bryce AO, BA, LLB Qld,
Governor of Queensland
Government House
Fernberg Road
PADDINGTON QLD 4064

Your Excellency

RE: THE HEINER AFFAIR AND THE *LINDEBERG PETITION*

I am in receipt of your letter dated 18 November 2004 written on your behalf by your Official Secretary, Mr. J R O'Connor.

I refer to my earlier correspondence on the above matter and, once again, I believe that it is necessary to inform you of recent developments which add to and underpin the seriousness of the issues before you.

Firstly, I note that you have referred to my letter of 20 September 2004 on which, some time ago, you sought advice from the Government as to its formal position on the affair. It appears that the Queensland Government is yet to respond to your request.

For the record, my letter of 20 September 2004 brought to your attention the following:

1. The relevance of the Queensland Court of Appeal judgement in *R v Ensbey; ex parte A-G (Qld)* [2004] QCA 335, 17 September 2004 to the Heiner affair;
2. The findings and recommendations of the House of Representatives Legal and Constitutional Affairs Committee *Crime in the Community: victims, offenders and fear of crime* - August 2004 Report - Volume Two - Investigation into the Heiner affair:

3. September 2004 edition of *The Independent Monthly* coverage on the May pack rape victim's statute of limitations difficulties in her damages action against the State of Queensland.

Secondly, you also hold a copy of my first letter to your chief adviser dated 15 October 2004. By coincidence, I delivered it to The Administrator the Hon Paul de Jersey AC QC on 20 October 2004 who was acting in your stead during your State visit to the United Kingdom.[1] May I respectfully suggest that its contents are highly relevant to your request for a formal position from the Queensland Government.

For the record, your chief adviser, Mr. Beattie, acknowledged receipt of that letter on 11 November 2004 indicating that he was considering its contents.

Thirdly, I now respectfully invite your attention to the enclosed letter dated 22 November 2004 which was delivered to your chief adviser, Mr. Beattie, on the same day.

Fourthly, I also respectfully invite your attention to the attached answer provided by your chief adviser, Mr. Beattie to a Question on Notice put by the Member of Maryborough Mr. Chris Foley MP (No 1471 18 November 2004).

All these facts are interlinked.

Constitutionally Reserved Powers

While this new material speaks for itself, may I, with respect, point out its legal significance to the Heiner affair so that any such action you may take, after advice, is firmly and safely based within your Constitutional reserve powers to advise, warn and encourage your Ministers of the Crown in the performance of their sworn duties.

Covering up the Crime of Criminal Paedophilia

In respect of the Question on Notice, it is now strongly open to conclude that then Family Services Minister the Hon Craig Sherrin[2], wittingly or unwittingly, seriously misled the public into believing that the pack rape victim was above the age of consent and had declined to lay charges after being encouraged to do so, when, in fact, it was known inside the

[1] Acknowledgement of receipt by Government House was received in a letter dated 27 October 2004.
[2] Currently Director of the Southbank Institute of TAFE

Department that nothing was further from the truth as the May 1988 victim's departmental file attests. I do not impute or infer wrongdoing here to anyone but I have urged Mr. Beattie to establish a proper independent inquirer – i.e. a Special Prosecutor - so that all involved may be given the public opportunity to clear their names, or if found culpable, face justice.

This gross deception, revealing a serious crime of criminal paedophilia which is not time barred, if left unchecked, may undermine public confidence in government and the administration of justice.

The pack rape victim, against whom the Queensland Government is currently applying the statute of limitations in her quest for justice, is referred to in my earlier correspondence.

I refer to the following passage in my letter of 22 November 2004 to Mr. Beattie:-

> *".. By your own answer to Mr Foley, you have sealed the proof that a serious prima facie criminal cover-up has been going on for over 14 years despite my best efforts to have the truth told. To that same resolve, Mr Grundy has played a hugely significant part in wanting the truth told. It has involved the State of Queensland covering up the crime of criminal paedophilia and, in order to escape accountability and the equal application of the law, it has been prepared to shred evidence, bribe a public servant, abuse power and parliament, and misinterpret the criminal law for self-serving purposes, aided by a network of well-placed mates.*
>
> *The time has come to do the right thing. I urge you to show courage and leadership and appoint a Special Prosecutor and let the truth and the law reap what they may so that good government in Queensland may be restored, and justice be done."*

Duty to Obey the Law

With great respect, your Constitutional duty is to ensure that your Government acts within the law in all matters, especially in matters as serious as this. If your Government fails to do so, and other law enforcement authorities have failed to act, the remedy rests with you.

The core legal element in this matter is secure as unanimously ruled by Queensland's Court of Appeal in *R v Ensbey; ex parte A-G (Qld)* [2004] QCA 335.

Your Government's position of no wrongdoing in this matter is no longer supportable, without suggesting that it ever was. Its position has been primarily founded on a serious misinterpretation of section 129 of the *Criminal Code* 1899. You hold compelling evidence strongly suggesting that this misinterpretation was a deliberate contrivance by certain public officials before whom this matter came to advantage those Ministers of the Crown and certain senior bureaucrats caught up in the shredding and related matters.

At every stage, my efforts to have the truth told have been thwarted by improper political interference and abuse of power or failure by the whole of Government, in particular the various law enforcement authorities, to apply the law properly.

The Force of the *Lindeberg Petition*

The force of the *Lindeberg Petition* still holds good, only now, in 2004, it is reinforced by *R v Ensbey*, the House of Representatives Legal and Constitutional Affairs Committee Report into the Heiner affair, and Mr. Beattie's answer to Mr. Chris Foley MP's Question on Notice.

I respectfully remind you that your chief adviser personally examined my Petition and claimed to me that all matters had been exhaustively investigated. That same assurance, I believe, was given to your predecessor. It was untrue then, it is more poignant now.

Unfinished Business

It is not possible to look to the Forde Commission of Inquiry into Abuse of Children in Queensland Institutions as an act of openness or good will on the part of the Queensland Government to address child abuse in State institutions, particularly the John Oxley Youth Detention Centre. The Forde Inquiry failed in its commission to examine this material despite its power to elicit relevant available departmental documents when looking into the care of children at the Centre in 1998/99. Its inquiry was strictly, and curiously limited.

The Forde Inquiry rejected my submissions which went to the destruction of evidence by the Goss Cabinet to cover-up known child abuse by claiming that it fell outside its Terms of Reference. Those Terms of Reference were set by the Beattie Government in which five of its

senior Ministers[3] had ordered the destruction of the Heiner Inquiry evidence years earlier to (a) prevent its use as evidence in judicial proceedings: and (b) prevent its use against the careers of the staff at the Centre.

While it may be a matter of law as to whether or not the Terms of Reference could have been reasonably interpreted in such a strict narrow manner by Commissioner Forde and her counsel assisting Ms. Kate Holmes, for the purposes of your considerations in 2004, your Government cannot now claim, in any formal position put in its advice to you, that the abuse of children at the John Oxley Youth Detention Centre has been fully investigated.

You would therefore be secure in concluding that the serious abuse of children at the Centre, going to the crime of criminal paedophilia as Mr. Beattie's answer proves, remains unfinished business for your Government.

On advice, I understand that you have the Constitutional authority to encourage your Government to resolve this matter by proper means. Failure to act on the part of your Government upon such encouragement under these extraordinary circumstances, may invite other remedy at your Constitutional discretion.

With great respect, I urge you to act within your Constitutional powers so that peace, order and good government may be restored to our State of Queensland.

Yours sincerely

KEVIN LINDEBERG

[3] Your Excellency may ascertain who was in attendance at the Cabinet Meeting of 5 March 1990 by requesting a copy of the Cabinet Register. It is reasonably presumed, on my part, that all members of the Goss Cabinet were in attendance, notwithstanding I have previously sought access to the Register but been refused on the basis of it being exempt under "*Cabinet confidentiality*."

Kevin Lindeberg
11 Riley Drive
CAPALABA QLD 4157
29 November 2004

Your Excellency The Hon. Quentin Bryce AO, BA, LLB Qld.
Governor of Queensland
Government House
Fernberg Road
PADDINGTON QLD 4064

Your Excellency

RE: THE HEINER AFFAIR AND THE *LINDEBERG PETITION*

I refer to my earlier correspondence on the above matter. Once again, I believe that it is appropriate to bring to your attention a relevant matter tabled in the Queensland Legislative Assembly on 25 November 2004.

I enclose a copy of the Queensland Audit Office *Report No 6 2004-05 Results of Audits Performed for 2003-04 as at 30 September 2004*. I invite your attention to Point 5.4.2 *John Oxley Youth Detention Centre – Referral by Kevin Lindeberg* pp 40-44.

While you may make your own assessment of the Queensland Auditor-General's report on my referral, and on your Government's requested position statement on this matter when it eventually arrives for your consideration, may I respectfully make the following comments so that any decision you may ultimately make is safe so that the integrity of your Office's function within our constitutional monarchy democratic system of government is protected and public confidence in government maintained.

Firstly, in reporting my complaint, the Queensland Auditor-General exercised his discretionary reporting to Parliament function because he reached a view that this matter fell within the category of being *"...significant or in the public interest"* and therefore worthy of Parliament's consideration and placing on the public record. Without gainsay, it can therefore be reasonably said that my complaint itself, irrespective of his final view, was not frivolous.

Secondly, the Queensland Auditor-General decided that my complaint fell outside the scope of his statutory function under the *Financial Administration and Audit Act 1977*.

Thirdly, the Queensland Auditor-General complied with his statutory obligation to refer ***all*** suspected official misconduct to the Crime and Misconduct Commission (CMC) pursuant to section 39 of the *Crime and Misconduct Act 2001*; and it is that body which has adjudicated on the lawfulness or otherwise of the payment and its purpose, not the Queensland Auditor-General himself.

My solicitors wrote to the Queensland Auditor-General on 4 November 2004 in which we reasonably concluded that he had reached the (important) threshold question that my complaint involved suspected official misconduct because he referred the matter to the CMC on 13 February 2004.

In his 11 March 2004 response, CMC Chairman Mr. Brendan Butler SC is purported to have said:

> *"...Mr Lindeberg does not provide any evidence that the 1991 termination payment, was made by the Government of the day to 'buy the silence' of* [the recipient of the ex-gratia payment] *regarding the destruction of the relevant documents or the mistreatment of juvenile detainees of JOYDC*
>
> *...He provides no new evidence."*

Notwithstanding our position that the CMC is a protagonist and cannot independently adjudicate on this matter any longer (a **legal position** which its own "highly protected" internal correspondence of 11 November 1996 affirms[1]), on the weight of irrefutable available evidence, Mr. Butler SC's assertion is simply untrue. The CMC is speaking in its own self-interest, and, with respect, any reliance you may put in such claims should be cautious in the extreme.

I have been in serious conflict with the CJC/CMC since January 1993 when it made so-called definitive findings on my initial 1990 complaint. Those findings were made by then CJC Chief Complaints Officer Messrs. Michael Barnes[2] and CJC contracted reviewing barrister

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[1] See QAO Report No 6 Page 44 Point 2
[2] Now State Coroner of Queensland

Noel Nunan[3], and subsequently approved of by then Director of the Official Misconduct Division, Mr Mark Le Grand.

Those findings have been shown to be deeply flawed. This is incontestable. I am suggesting that the findings were corrupt and remain so, and have placed your Government outside the law.

At the time of the January 1993 CJC findings, the issue of child abuse at the John Oxley Youth Detention Centre was not known by myself as the complainant. It was concealed. It only surfaced because of my constant struggle for justice, together with investigative journalist of the University of Queensland's School of Journalism and Communication, Mr. Bruce Grundy. Of relevance, that abuse, however, was ***always known*** by those operating inside government, and I respectfully invite your attention to my comment on page 40 Point 2 in the Queensland Audit Report No 6.

When one applies that state of knowledge which existed inside government at all relevant times to the specific clauses in the February 1991 Deed of Settlement demanding "silence" on the parties concerned about certain "*...events leading up and surrounding*" Mr. Coyne's relocation from the Centre, it is simply not open to the CMC, or anyone else acquainted with the facts, to conclude that there is no connection, let alone no evidence available, to suggest that "the events" referred to concerns the known abuse of children held in the care and custody of the State of Queensland; or, at the very least, gives reasonable rise to a suspicion that it was about covering up child abuse in exchange for taxpayers moneys.

We now know that the abuse involved the crime of criminal paedophilia[4]. Evidence of this is now held by you and your chief adviser, Queensland Premier and Minister for Trade the Hon Peter Beattie MP. We are both awaiting Mr. Beattie's position on the matter.

On senior counsel's advice, the only proper way forward for the Queensland Auditor-General, once having reached that threshold position that my complaint gave reasonable rise to suspected official misconduct, so as to avoid real or apprehended bias[5], was to refer the matter to the Queensland Parliament for appropriate resolution. The CMC was unavailable at law to

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[3] Now Stipendiary Magistrate – Brisbane Region

[4] See Answer to Question on Notice (No. 1471; 18 November 2004) from Member for Maryborough Mr. Chris Foley MP to Queensland Premier and Minister for Trade the Hon Peter Beattie MP.

[5] *Livesey v New South Wales Bar Association* [1983] 151 CLR 288 at 294; *Metropolitan Properties Co (FGC) Ltd v Lannon* (1969) 1 QB 577 at 599

receive and consider the referral being tainted and incapable of coming to the matter impartially.

Instead, the Queensland Auditor-General firstly referred the matter to the CMC, and then, secondly, to Parliament, but, against the facts, and law, it cannot be reasonably held that my complaint concerning the possible improper disbursement of public moneys as hush money to cover up known or suspected crime, by use of threats, menaces and collusion, is in any way settled.

In order that you may better consider this element of the affair, I am attaching copies of my solicitors letter of 5 November 2004 and my final letters of 10 and 19 November 2004 so that they may be considered in their entirety by you and your own counsel should you decide to seek advice beyond your Government knowing that such advice is clearly open to possible taint and self-interest.

In regard to the sought-after position statement from your Government, may I respectfully make this point. You hold compelling evidence that our system of government has collapsed in around an illegal shredding act by the Executive Government of Queensland. As a victim, I have been at the coalface for over 14 years constantly pursuing justice. I have alleged serious *prima facie* criminal conduct from the very beginning.

Beyond destroying documents known to be required in evidence in a judicial proceeding, it is now open to strongly suggest that in destroying the Heiner Inquiry documents, evidence of known or suspected abuse of children held in the care and custody of the State by court order, going to the unresolved crime of criminal paedophilia, was destroyed by Executive Government order when it should have been referred to the CJC or police. Such conduct may be a deliberate perversion of the administration of justice (See *R v Rogerson* (1992) 174 CLR 268; *R v Murphy* (1985) CLR 609; and *R v Selvage* [1982] QB 372).

One pack rape victim of that institutional abuse which occurred in the pre-Heiner Inquiry period is currently suing the State of Queensland, and your Government is contesting it as being time barred.

My position in respect of the proper interpretation of section 129 of the *Criminal Code 1899* is unassailable. I hold the judicial authority of the Queensland's Court of Appeal on my side. The contrived or otherwise misinterpretation of section 129 has prevented criminal charges being laid in my matter for close on 14 years, while at the same time, your Government has

been prepared to apply section 129 properly against a citizen for the same conduct in a matter arguably less serious than that which a Queensland Government engaged in (See *R v Ensbey; ex parte A-G (Qld)* [2004] QCA 335 17 September 2004).

It would not be open to your chief adviser (or your Attorney-General) to claim or seek any dispensation for Executive Government from breaches of the criminal law (including purportedly acting on legal advice which we know was wrong), and nor, with great respect, in light of your sworn duty and Heiner facts before you, is it open for you to accept any such claim as reasonable and to confer any understanding or clearance on it.

The Threshold Question

Within your Constitutional right to be informed so that you may encourage, advise and warn, your task, at this stage, appears to be solely about the threshold question of whether or not this matter gives rise to suspected official misconduct or possible criminal conduct.

Of course, any advice you receive from your chief adviser must be legal in ***all*** respects. Ignorance of the law is no excuse, and plainly no government may claim ignorance of the law as an excuse [See *Ostrowski v Palmer* [2004] HCA 30 (16 June 2004)] otherwise that would render government by the rule of law meaningless.

The Heiner affair is about the Crown in action supposedly exercising its power and privileges to ensure the peace, order and good government for all the people of Queensland within the Commonwealth of Australia.

If you reach that threshold view that abuse of power or *prima facie* criminal conduct may have occurred in this matter, it must be addressed immediately, painful though it may be.

With great respect, the law must be applied equally. This democratic principle rests at the heart of peace, order and good government. Should our system of government fail by placing itself above the law and become oppressive in its conduct - as it demonstrably has in the Heiner affair - you are our ultimate Constitutional safeguard in our system of government.

Yours sincerely

Lindeberg

KEVIN LINDEBERG

27

Queensland Government

Please quote 66975 KEH01 &JP

03 DEC 2004

Mr Kevin Lindeberg
11 Riley Drive
CAPALABA QLD 4157

Dear Mr Lindeberg

Thank you for your letter of 22 November 2004 referring again to the Heiner Inquiry and the report of the House of Representatives Standing Committee on Legal and Constitutional Affairs on its inquiry into crime in the community. I have been requested to reply to you on the Premier's behalf.

The matters you raise in your letter are currently under consideration. As advised in my letter to you dated 11 November 2004, the Premier will write to you in the near future responding to the matters you have raised.

Yours sincerely

Rob Whiddon
Chief of Staff

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Queensland Government

Please quote 64790 & 66975 MB23 LJP

17 DEC 2004

Mr Kevin Lindeberg
11 Riley Drive
CAPALABA QLD 4157

Dear Mr Lindeberg

Thank you for your letters of 15 October and 22 November 2004 concerning the Heiner inquiry and related matters. I have been requested to reply to you on the Premier's behalf.

As you are aware, the Government's view is that the matters you have raised have been exhaustively examined in the recent Commonwealth Parliamentary inquiries and in many other forums. Accordingly, the Government does not intend to devote yet more public resources to establishing a special prosecutor. For the same reason, there is no point in the Premier meeting with you and your solicitor.

On page 8 of your letter of 15 October 2004, you say that "evidence has been obtained revealing the rape of another female minor inmate at the [John Oxley Youth Detention] Centre in April 1991 during another bush outing by a male staff member who was never held to account". The Director-General of the Department of the Premier and Cabinet has referred this statement to the Crime and Misconduct Commission in accordance with his obligation to report suspected official misconduct under section 38 of the *Crime and Misconduct Act 2000*.

The Premier's answer on 18 November 2004 to the question on notice from the Member for Maryborough was correct. Any error about the girl's age in the 18 March 1989 article is a matter for the *Courier-Mail* or the then-Minister.

Yours sincerely

Rob Whiddon
Chief of Staff

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Kevin Lindeberg
11 Riley Drive
CAPALABA QLD 4157
22 December 2004

Your Excellency The Hon. Quentin Bryce AO. BA. LLB Qld.
Governor of Queensland
Government House
Fernberg Road
PADDINGTON QLD 4064

Your Excellency

RE: THE HEINER AFFAIR AND THE *LINDEBERG PETITION*

Please find attached an electronic copy of a letter dated 17 December 2004 from the Queensland Premier and Minister for Trade Hon Peter Beattie MP relating to the above matter.

The letter may be fairly described as the Beattie Government's official position on the above matter presumably after diligently and faithfully considering my letters of 15 October and 22 November 2004 and attachments pursuant to law. You hold copies of these letters and attachments.

Having been previously advised on 18 November 2004 that "*...some time ago*" you had sought advice from your Government concerning its official position on this matter but had not received a response as of 18 November 2004, and that when it arrived you would consider it and contact me again, I am of the view that you will receive the same position statement in the near future or may already hold it.

Your Government's official position, as expressed to me, gives rise to very serious matters relevant to my allegation that your Government is placing itself above the law.

I respectfully submit that I must address them so that you may better consider the position statement fully in carrying out your public duty so that any decision you may make within your Constitutional role, is safe.

Accordingly, I undertake to have my letter with you by close of business on Monday 27 December 2004.

Yours sincerely

KEVIN LINDEBERG

Kevin Lindeberg
11 Riley Drive
CAPALABA QLD 4157
30 December 2004

Your Excellency The Hon. Quentin Bryce AO. BA. LLB Qld.
Governor of Queensland
Government House
168 Fernberg Road
PADDINGTON QLD 4064

Your Excellency

RE: THE HEINER AFFAIR AND THE *LINDEBERG PETITION*

For over 14 years I have remained faithful and true, at great personal cost, to defending the democratic principle that no one is above the law – a fundamental legal dictum for any democracy - put at its most eloquent by Lord Denning in the following statement:

> *"...The law should be obeyed. Even by the powerful. Even by the Trade Unions. We sit here to carry out the law. To see that the law is obeyed. And that we will do. A subject cannot disregard the law with impunity. To every subject in this land, no matter how powerful, I would use Thomas Fuller's words over three hundred years ago 'Be you ever so high, the law is above you'".*

This democratic principle is well settled in Australian law, finding its greatest authority in *A v Hayden* (1984) CLR 532 which has compelling relevance to the different elements of this matter. Gibbs CJ at 2 ruled:

> *"..It is fundamental to our legal system that the executive has no power to authorize a breach of the law and that it is no excuse for an offender to say that he acted under the orders of a superior officer."*

It follows that it would be corrosive of the rule of law, and destructive of obedience to the law, if any arm of government in the Commonwealth of Australia did not themselves conform to, and uphold, clearly settled rules of law.

Within this unprecedented Constitutional situation in which you now find yourself, it is noteworthy to recall what Denning LJ famously found in *Lazarus Estate Ltd Vs Beasley*, (1956) 1 QB. 702 at 712:

> *"... No Judgement of a court, no Order of a Minister, can be allowed to stand if it has been obtained by Fraud. Fraud unravels everything."*

That responsibility now falls on your Office concerning the allegation that your Government has wilfully placed itself above the law, and is continuing in such conduct.

With respect, any decision you may make in this matter is not, must not and cannot been seen in the interests of any one person or sectional interest, including myself. It is about exercising your discretion, in the Constitutional context, that your Government must, in all things, not place itself above the law, or else the rule of law must unravel in Queensland.

It is respect for the rule of law that peace, order and good government is secured in a democracy, not faith in any government of the day which willfully places itself above the law in its action, no matter what its majority, its political complexion or popularity of its administration or leader.

Indeed, it may be argued here, or perhaps even settling for anyone confronted with the enormity of this challenge, to recall Psalm 146 vs. 3 "*...Put not your trust in princes, nor in the son of man, in whom there is no help.*"[1] Put in the secular vein, it is the law which sustains a civilized society, not grand assurances without legal substance from political leaders.

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[1] See *A v Hayden* (1984) CLR 532 Deane J at 1 "*...These five cases illustrate the abiding wisdom of the biblical injunction against putting one's "trust in men in power" (Psalms 146:3: Jerusalem Bible, p.927). The plaintiffs have been described without dissent as "upright, decent men serving their country". The two rocks upon which they founder are however propositions of law which are not to be moved to meet the exigencies of hard cases. Shortly and relevantly stated, those propositions are: (i) that neither the Crown nor the Executive has any common law right or power to dispense with the observance of the law or to authorise illegality and (ii) that the courts of this country will not enforce the terms of a promise not to disclose information in circumstances where such enforcement would obstruct the due administration of the criminal law.*"

By force of circumstances beyond our control, that most cherished principle of equality before the law looks for protection and compliance in this matter by your Constitutional role which, in my opinion, shall be seen, both now and in the future, as a watershed moment in the history of our unicameral system of government in Queensland.

This decision - undoubtedly within your Constitutional discretion to be consulted so that you may "encourage, advise or warn" your Government - is to be made against the background of your Government's official position statement to you on the facts relating to the Heiner affair (known by all the parties) that it finds no illegality with its own conduct, and that it shall not establish a Special Prosecutor to investigate comprehensively the matter because it believes that its conduct, and that of others, does not undermine peace, order and good government.

In short, it may be fairly said and reasonably projected, that such public policy, by your Government's knowing own hand, may not only exist legally unchallenged for itself, but may be repeated, over and over, while supposedly not vitiating open and accountable government within the rule of law.

Consequently - assuming we hold a similar position statement - your Government is forthrightly assuring you, both politically and legally, that its conduct in this matter does not affront this first duty of any government in a democracy, and it is that claim which you must, with great respect, weigh on the merits of the facts and the law before you, within your Constitutional role, consistent with your sworn duty to act in good conscience on behalf of the people as the Crown's representative.

THE BEATTIE GOVERNMENT'S POSITION STATEMENT ON THE HEINER AFFAIR

1. Your Government failed to address any of the key issues under consideration on their individual merits. Instead it made a blanket political claim that all my matters have been exhaustively investigated by Commonwealth Parliamentary inquiries and in other forums. The claim is demonstrably untrue. It has become a self-serving political mantra easily and repetitiously said by the faithful but, in reality, not sustainable on the facts or at law;
2. Of necessity, because your Government has relied on the so-called inquiries into my matter as a reason to do nothing now, without saying what they (allegedly) did and when

– as if to suggest that this matter has been exhaustively investigated with no wrongdoing ever being found - I am obliged to address each so that you may weigh all the evidence in order that any decision you make is safe.

3. Each so-called inquiry[2] is summarized below:

(a) **Electoral and Administrative Review Commission**. EARC never examined the Heiner affair. It has never made findings in respect of the matter. I hold a letter from former EARC Commissioner Brian Hunter stating this fact, and stating that Mr. Beattie was being misleading in making such a claim to Parliament. The Heiner affair's lessons/principles came to EARC, along with hundreds of other public submissions, in my response to Issue Papers, in the wake of the Fitzgerald Inquiry, relating to governance issues: (i) Code of Conduct for Public Officials: (ii) Whistleblower Protective Legislation: (iii) The Independence of the Office of Attorney-General; and (iv) archives legislation;

(b) **1991 Cooke Commission of Inquiry into Queensland Trade Unions:** I was summonsed to the Cooke Inquiry which took evidence on my sacking for 11 days in May 1991 as a potential whistleblower from a trade union employment environment. The Inquiry was prematurely closed down ***before*** completing its full investigation in my dismissal, but at a time when then Department of Family Services and Aboriginal and Islander Affair Minister the Hon Ann Warner and her CEO Ms. Ruth Matchett believed that they would be summonsed to give evidence on the shredding of the Heiner Inquiry documents. Commissioner Cooke QC recommended that all the evidence gathered into my dismissal – which included "the Coyne case" – be reviewed by the CJC once the (Goss) Queensland Government amended the *Criminal Justice Act 1989* to bring Queensland registered trade unions under its statutory reach. The recommendation was rejected by the (Goss) Queensland Government;

(c) **1992 Parliamentary Criminal Justice Committee:** This matter was put to the PCJC in 1992 (under the chairmanship of Mr. Beattie) wherein I alleged that the CJC's investigation into my complaint was "pseudo." My complaint was referred

[2] These so-called inquiries are taken from earlier statements to Parliament by Mr. Beattie and mentioned by others, like the CJC, in submissions to the Senate and the 1996/97 Connolly Ryan Judicial Review into the Effectiveness of the CJC. I presented complaints on 9 and 23 April 1999 to the Speaker of the Parliament alleging that Mr. Beattie had misled it and should be referred to the Members Ethics and Parliamentary Privileges Committee for consideration. He declined to advance the matter. On 10 June 1999, the Member for Broadwater Mr. Alan Grice MP moved the motion to have my grievance referred, but it was defeated 43-42, with the Independent Member of Nicklin Mr. Peter Wellington MP voting with the Beattie Government.

back to the CJC which caused it to be reviewed "*...purely by chance*[3]" by then barrister Mr. Noel Nunan (ALP activist/member and Queensland Labor Lawyers member)[4] upon the recommendation of CJC Chief Complaints Officer Mr. Michael Barnes, himself a member of Queensland Labor Lawyers. In respect of the PCJC itself, it has never conducted an independent inquiry into the matter or made findings to Parliament but in reporting to the PCJC in January 1993, the CJC found no official misconduct and/or criminality in this matter based on its erroneous interpretation of section 129 of the *Criminal Code* Qld and flawed findings in respect of archives law, *Public Sector Management and Employment Regulation 65* and the *ex gratia* special payment.

(d) **1994 Senate Select Committee on Public Interest Whistleblowing:** This Committee – chaired by Senator the Hon Jocelyn Newman - was established to gather evidence nationally on whistleblowing to aid in the formulation of foreshadowed federal whistleblower legislation introduced by then Western Australia Greens Senator Christabelle Chamarette on 5 October 1993. Together with 125 other Australians and various bodies[5], including the CJC, I placed my whistleblowing experience (in the Heiner affair) before the Committee in a detailed submission (No. 74). I did so in the public interest. I was invited to give oral evidence in support of my submission in the Queensland Parliament on 8 March 1994. The Select Committee was so concerned over the Heiner affair and its unresolved state that it unanimously recommended that the Queensland Government establish an independent investigation into the affair[6], and certain other unresolved Queensland whistleblower cases. The (Goss) Queensland Government rejected this recommendation:

(e) **1995 Senate Select Committee on Unresolved Whistleblower Cases:** When the (Goss) Queensland Government declined to review the Heiner affair, the Senate established the Senate Select Committee on Unresolved Whistleblower Cases (SSCUWC) in December 1994 to review the shredding of the Heiner

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[3] See page 38 February 1995 CJC submission to the Senate Select Committee on Unresolved Whistleblower Cases.
[4] Mr. Nunan's close relationship with the ALP was not declared to me before undertaking the review.
[5] Bodies such as the St. James Ethics Centre, Law Society of NSW, ICAC, Human Rights and Equal Opportunity Commission, Australian Press Council, National Crime Authority, Australian Institute of Company Directors (NSW), Whistleblowers Action Group, Australian Federal Police, Public Sector Union, Office of the Privacy Commissioner, Tasmanian Council for Civil Liberties provided written and or oral evidence pursuant to the Select Committee's terms of reference.
[6] See Point 1.13 pp4-5 "*In the Public Interest*" August 1994 Report of the Senate Select Committee on Public Interest Whistleblowing.

Inquiry documents (and several other cases). The SSCUWC took evidence throughout 1995. I was represented by Messrs. Ian Callinan QC and Roland Peterson. In oral evidence before the SSCUWC, Mr. Callinan QC advised that for any party to destroy documents when knowing that they may be required for a judicial proceeding was "*...unthinkable.*"[7] During the inquiry, compelling admissions[8] concerning the 5 March 1990 Goss Cabinet's state of knowledge and intent were made by CJC official Mr. Barnes in May 1995 in Canberra which caused my counsel to present a special submission to the Committee in August 1995. They argued that section 129 and/or section 132 of the *Criminal Code* Qld may apply to those who ordered the destruction of the Heiner Inquiry documents to prevent their use as evidence in a judicial proceeding (citing *R v Rogerson* (1992) 66 ALJR 500 as the leading authority). They also opined that the CJC's narrow/strict interpretation of "judicial proceedings" (section 119) was too significant to ignore.[9] The SSCUWC's October 1995 Report "*The Public Interest Revisited*" described the shredding as "*...an exercise in poor judgement*"[10] – See 2004 Senate Select Committee on the Lindeberg Grievance for further comment.

(f) **1994, 1996 and 2004 Queensland Police Service:** In April 1994, I lodged a complaint with the Queensland Police Service (QPS) in respect of the illegality surrounding the shredding of the Heiner Inquiry documents and related matters. (See Police File MS 93/25262 commenced on 3 September 1993). As part of that complaint, I alleged that certain CJC officials were engaging in a probable cover-up by deliberately misinterpreting the law to advantage another. I lodged my complaint pursuant to the *Police Service Administration Act* 1990 suggesting that the *Criminal Code* Qld had been breached in respect of the shredding. I was interviewed on three separate occasions. At all relevant times, the QPS was unquestionably aware that my allegations concerned alleged criminal conduct involving the Queensland Executive, certain senior bureaucrats and certain CJC

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[7] See Senate *Hansard* p39 23 February Senate Select Committee on Unresolved Whistleblower Cases.

[8] Example: Mr. Barnes at p682 29 May 1995 Senate *Hansard* Senate Select Committee on Unresolved Whistleblower Cases "*...There is no doubt that the documents were destroyed at a time when the cabinet well knew that Coyne wanted access to them. There is no doubt about that at all.*"

[9] The CJC attempted to argue that the term "judicial proceeding" could be, indeed, was "fettered" as to exclude a proceeding not yet on foot, but within the suspicion or foreknowledge of the doer. This view was summarily dismissed in *R v Ensbey* and arguably never available since 1899 and before (see *R v Crones*), but certainly not since *R v Selvage*, *R v Murphy* and *R v Rogerson*. ***all predating*** the CJC's findings in the Heiner affair.

[10] See Point 5.39 page 60 "*The Public Interest Revisited*" October 1995 Report of Senate Select Committee on Unresolved Whistleblower Cases.

officials[11]. (See The *Lindeberg Petition* pp53-59 and page 19). The truth is that police ***did not investigate*** my allegations of criminality but referred them back to CJC officials against whom I was alleging wrongdoing. At Point 145. of the *Lindeberg Petition*, I informed Parliament, that "*...having sworn an Oath to uphold its public duty pursuant to the Police Service Administration Act 1990 without fear, favour or ill will to none, and to investigate all complaints of suspected criminal conduct; the police officers did nothing to carry out their legal obligations in a matter which corrupted the administration of justice in the State of Queensland to its very core.*" In a recent submission to the Senate Select Committee on the Lindeberg Grievance, the QPS found no impropriety in its conduct. Consequently, while it is fair to say that this matter came before the Queensland Police Service, it is not open for anyone to claim that the police ever made definitive independent findings for itself because it was happy to defer to the CJC's handling and findings despite credible evidence, from senior counsel[12], suggesting that the CJC's findings were erroneous and deeply flawed, as the Queensland Court of Appeal in *R v Ensbey* has now shown to be true.

(g) **Senate Committee of Privileges:** It is correct to claim that this matter came before this Committee on two separate occasions[13], each time finding no contempt in respect of the Queensland Government and/or the CJC having provided deliberate false and misleading evidence. These earlier findings recently came under review by the Senate Select Committee on the Lindeberg Grievance – see further comment below - and a vote to re-establish that Committee again after its closure because of the October 2004 federal election, I understand, may occur in February 2005. The real point to be made here is that in exercising your Constitutional discretion "to be consulted" and then to (possibly) "encourage" your Government to act in this matter, does not substantially, if at all, turn on whether or not the Australian Senate did or did not find contempt on these occasions (notwithstanding the question is still under some dispute) because your responsibility resides and may be activated by whether or not your Government acts lawfully in Queensland according to law. Of undoubted relevance though - as will be later discussed - the Senate Select Committee on the Lindeberg

[11] This included "contracted" CJC pro temp official Mr. Nunan who found himself elevated, on or about 16 July 1994) to the Magistracy during the time my active complaint was before the police.
[12] Messrs. Callinan QC and Peterson special submission dated 7 August 1995 to Senate.
[13] See 63rd and 71st Reports

Grievance – by majority vote – did find that the interpretation of section 129 put to the Senate previously by the Queensland Government and CJC was "*...probably incorrect*"[14] but it could not be satisfied that it was "deliberately" put so as to mislead. Put simply, the interpretation was "certainly" wrong, not "probably" as the Queensland Court of Appeal in *R v Ensbey* ruled.

(h) **1996 Morris/Howard Investigation:** This investigation was commissioned by the (Borbidge) Queensland Government in May 1996. It required Queensland barristers Anthony Morris QC and Edward Howard to examine the so-called "Lindeberg allegations" – limited to an "on the papers" examination – and recommend to government, if sufficient evidence existed, whether or not a public inquiry should be held. Messrs. Morris QC and Howard recommended a public inquiry because the possible numerous offences found were of a more serious nature than those which brought about the Fitzgerald Inquiry in 1987[15]. Instead of establishing the inquiry, the Queensland Government referred their Report to the Office of the Director of Public Prosecutions in late 1996 to advise (a) the proper interpretation of section 129 of the *Criminal Code* Qld: (b) whether a public inquiry should be conducted; and (c) whether anyone should be charged immediately on what was already found. In citing the Morris/Howard Report without indicating that it found numerous serious possible criminal offences[16] and possible misconduct pursuant to the *Criminal Justice Act 1989*, your Government is engaging in a serious known omission of fact whose core finding in respect of a breach of section 129, in law and fact, holds good in the wake of the Queensland Court of Appeal verdict in *R v Ensbey*;

(i) **1997 Office of the Director of Public Prosecutions:** The (Borbidge) Queensland Government sought advice in late 1996 from then DPP, Mr. Royce Miller QC, in respect of the findings and recommendations in the Morris/Howard Report. On 6 January 1997, Mr. Miller QC provided the advice to then Queensland Attorney-General and Minister for Justice the Hon Denver Beanland

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[14] See Point 3.33 P20 - November 2004 Report Senate Select Committee on the Lindeberg Grievance.

[15] At page 215 of their report they made the following comment: "*...Whilst we are of the view that the events which occurred between January 1990 and February 1991 involve 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 now have cause to reconsider their confidence in the exhaustiveness - to say nothing as to the independence - of the Commission's investigation into this matter*"

[16] See Morris Howard Report pp203-205. The possible offences ranged with potential imprisonment terms between one to seven years. **(See Attachment B)**

MP, which was on-forwarded to the Premier's Department, and handled – it is understood – by Deputy Director-General Mr. John Sosso. The advice has never been open to public scrutiny. It is strongly recommended that Your Excellency might seek a special waiver from the Leader of the Queensland Opposition and Shadow Attorney-General the Hon Lawrence Springborg MP to permit your examination of it.

By special leave, Mr. Springborg has permitted me to peruse the DPP's advice to the (Borbidge) Queensland Government recently. **Of unassailable relevance here, I can say with absolute certainty that Mr. Miller QC's interpretation of section 129 is wrong**. It contradicts its correct interpretation in the Morris/Howard Report, since endorsed in *Ensbey*. Other advice is open to question. He advises that the relevant February/March 1990 Cabinet submissions might be needed, however, of relevance to the exercise of Your Excellency's discretion now in 2004/2005, it should be known that I hold those submissions. They were tabled by your chief adviser during the crucial vote-of-confidence debate on 29/30 July 1998 when this matter was a key element in winning the casting vote of the Independent Member for Nicklin Mr. Peter Wellington MP to achieve government.

The Cabinet submissions contain unequivocal sufficient inculpatory knowledge of the anticipated judicial proceedings (and intent in shredding), which reinforce the serious findings in respect of section 129 of the *Criminal Code* Qld (and other related provisions like sections 140 or 132) of Messrs. Morris QC and Howard, let alone earlier *prima facie* criminal findings of Messrs. Callinan QC and Peterson, and subsequent findings of Mr. Robert F. Greenwood QC, all now confirmed accurate by the Queensland Court of Appeal in *Ensbey*.

It has been suggested that because the (Borbidge) Queensland Government failed to adopt the finding in the Morris/Howard Report to establish a public inquiry, and that the former DPP, Mr. Miller QC did not concur with their findings, no wrongdoing is likely to be established through the appointment of a Special Prosecutor now. With respect, nothing could be further from the truth. In respect of Mr. Miller QC's erroneous view of section 129 (and 119), it must be held that

misinterpretation of the law equates to ignorance of the law which is no excuse. (See *Ostrowski v Palmer* [2004] HCA 30 16 June 2004; and *R v Cunliffe* [2004] QCA 293). Consequently, while it may be true for your Government to say that the Office of the DPP has considered this matter, it is not the whole truth. In reality, we have the same criminal law being applied by double standards out of that same State prosecuting Office to advantage the Queensland Executive over the people, and that is simply unacceptable.

I respectfully suggest that it is for this reason that the House of Representatives Legal and Constitutional Affairs Committee recommended that the January 1997 DPP's advice be made public.

With respect, it is another compelling reason why, in exercising your Constitutional discretion, Your Excellency ought to "encourage" your chief adviser to appoint a Special Prosecutor into this matter so peace, order and good government[17] may be restored in Queensland, especially in 2004/2005 and beyond because we can say with (unacceptable) certainty that our criminal justice system is functioning by double standards wherein different interpretations of the same criminal provision (i.e. section 129) are existing side by side in the wake of the Queensland Court of Appeal verdict in *Ensbey* with which the Office of the DPP concurred but not when it applied to your Ministers of the Crown; and that your Government is content to allow such undemocratic uncertainty to continue in the application of the criminal law, arguably in its own interest as public policy after having carefully considered the uncontested Heiner facts before it in my letters of 15 October and 22 November 2004 and attachments,[18] not forgetting the relevant *Lindeberg Petition*.

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[17] Gaudron J in *Nicholas v The Queen* [1998] HCA 9 (2 February 1998) at 74 also said: "*...In my view, consistency with the essential character of a court and with the nature of judicial power necessitates that a court not be required or authorised to proceed in a manner that does not ensure equality before the law, impartially and the appearance of impartiality, the right of a party to meet the case made against him or her, the independent determination of the matter in controversy by application of the law to facts determined in accordance with rules and procedures which truly permit the facts to be ascertained and, in the case of criminal proceedings, the determination of guilt or innocence by means of a fair trial according to law. It means, moreover, that a court cannot be required or authorised to proceed in any manner which involves an abuse of process, which would render its proceedings inefficacious, or which brings or tends to bring the administration of justice into disrepute.*" (My underlining)

[18] House of Representatives Legal and Constitutional Affairs Report into the Heiner affair, the Queensland Court of Appeal judgement in *R v Ensbey*, the 18 November 2004 Question on Notice answer, and relevant copies of *The Independent Monthly*.

(j) **The 1996/97 Connolly/Ryan Judicial Review into the Effectiveness of the CJC:** The Heiner affair did come before this Inquiry in July 1997. However, no findings were made before it was closed by His Honour Justice Thomas of the Queensland Supreme Court on the grounds of demonstrable bias in August 1997.[19] It is disingenuous in the extreme for your Government to cite this Inquiry as having found no official misconduct and/or criminality when no one knows what its findings may have been:

(k) **The 1998/99 Forde Commission of Inquiry into the Abuse of Children in Queensland Institutions:** It may be fairly argued that adverse criticism of the Queensland Government in the lead-up to the 1998 State election concerning the newly-found abuse of children at the John Oxley Youth Detention Centre because of the investigative work of journalist Mr. Bruce Grundy in particular, former Queensland Police Commissioner Mr. Noel Newnham (on my behalf) and Mr. Michael Ware of *The Courier-Mail* brought about this Inquiry. It was established by Order in Council on 13 August 1998 shortly after the minority Beattie Government came to office.

Of relevance here, while the Inquiry did investigate the maltreatment of children at the Centre in respect of excessive handcuffing to fences[20], – which was found to be unlawful but time barred from remedy in 1999[21] - it declined to investigate the shredding of the Heiner Inquiry documents (which ***knowingly*** covered up that abuse years earlier) claiming that its terms of reference, set by the Beattie Government, constrained it. I put two detailed submissions before the Forde Inquiry, and both were summarily rejected. I suggested that its terms of reference, if so limited, could be sought to be amended as occurred in the Fitzgerald Commission of Inquiry. That too was summarily rejected. I vigorously contested the significance of this "accountability gap" in writing with counsel assisting Ms. Cate Homes[22] but to no effect whereby she suggested that the Inquiry had to abide by its given terms of reference. Other serious questions

[19] *Carruthers v Connolly, Ryan & A-G.* [1997] QSC 132 (5 August 1997)
[20] See Point 7.8 Chapter 7 Forde Commission of Inquiry Report into the Abuse of Children in Queensland Institutions.
[21] These known breaches of the law were not time barred at the time the probative Heiner Inquiry documents were willfully destroyed by order of the Goss Cabinet to prevent their use in evidence against the careers of the staff involved in the abuse, and, arguably, because such an obstructionist shredding offence perverted the course of justice, its remedy may still be open under relevant provisions of the *Criminal Code* Qld.
[22] Subsequently elevated as Justice to the Supreme Court Bench of Queensland by the Beattie Government under then Minister for Justice, Attorney-General and Minister for the Arts the Hon Matt Foley MP.

concerning thoroughness - to say nothing of impartiality and independence - now hang like a dark cloud over the conduct of the Forde Inquiry because it demonstrably failed to (a) question certain Centre staff, when in the witness box, about other incidents of known child abuse and improper relationships between staff and female inmates; (b) investigate the circumstances surrounding the unresolved pack-rape of the 14-year-old indigenous female inmate on 24 May 1988, notwithstanding the file may have been (improperly) concealed or withheld by the Families Department from the Inquiry; (c) investigate the serious deception surrounding public information about the aforesaid rape in *The Courier-Mail* on 17/18 March 1989 despite other mention of the related riot in its Report[23]; and other abuses.

Put at its best, in mentioning the Forde Inquiry as one of the so-called inquiries, the Heiner affair can be said, with certainty, to be unfinished business in which interested parties played a hand[24], notwithstanding it is unarguable to conclude that in destroying the Heiner Inquiry documents the (Goss) Queensland Government, and certain senior bureaucrats, knowingly obstructed justice because the abuse, witnessed in the documents, was known beforehand, and another reason given for destroying the gathered evidence, was to prevent its use against the careers of the staff at the Centre[25];

(l) **1993, 1997 and 2004 Queensland Audit Office:** This matter may best be summarized by reference to my letter of 29 November 2004 to Your Excellency, and the attached Annual Report No 6 2004-05 *Results of Audits Performed for 2003-04 as at 30 September 2004* of the Queensland Auditor-General. In supposedly addressing my complaint, the relevant Queensland Auditors-General did not themselves find out what the term "*...the events leading up and surrounding Mr. Coyne's relocation from the Centre*" meant, and for which

[23] See Page 165 – Chapter 7 – John Oxley Youth Detention Centre and Question on Notice answer of 18 November 2004 from Queensland Premier and Minister for Trade the Hon Peter Beattie MP to Mr. Chris Foley MP.

[24] When the Beattie Government settled the Forde Inquiry's terms of reference, former Goss Cabinet Ministers (arguably in attendance at the 5 March 1990 Cabinet meeting) the Hon Hamill, Gibbs, Mackenroth, Braddy and Wells were present, and it was known that public agitation in May and June 1998 which forced the inquiry into existence, sprung from the unresolved Heiner affair in which those Ministers had a vested interest over the illegality of the shredding.

[25] See State *Hansard* 18 May 1993 – Statement to Parliament by then Family Services and Aboriginal and Islander Affairs Minister the Hon Ann Warner MP.

public moneys were disbursed to ensure his silence.[26] No one in authority in your Government, or previous Queensland Governments, has ever inquired what were "the events" despite compelling evidence suggesting that it was a euphemism for known "abuse of children" potentially involving the cover-up of the pack rape of a 14-year-old female indigenous inmate by other inmates during a supervised bush outing which is defined as "criminal paedophilia[27]."

In 2004, it can be fairly adduced that Mr. Scanlan reached the view that my 9 February 2004 complaint gave rise to suspected official misconduct as he referred the matter to the Crime and Misconduct Commission in February 2004 pursuant to his obligation under the *Crime and Misconduct Act 2002*. Notwithstanding my pleadings that the Commission was a protagonist[28] and could not be fairly or legally approached to adjudicate on any alleged wrongdoing, and that the only lawful option open to Mr. Scanlan, after reaching a view that suspected official misconduct was present in my complaint, was a referral to the Queensland Parliament asking it to consider the complaint by virtue of his authority under the *Financial Administration and Audit Act 19*** to do so, and being an officer of the Parliament, Mr. Scanlan still chose to report my complaint to Parliament but ***after*** a reference to the CMC which found no wrongdoing. Consequently, it is matter of record that it has been the CJC/CMC which has been the adjudicator as to whether or not the payment of $27,190 was lawful, not the Queensland Audit Office. Insofar as the CJC/CMC is an undoubted protagonist, it is open to conclude that its findings in respect of the payment of $27,190 are unsafe, if not even open to be fairly described as self-serving.

There is now compelling evidence to suggest that the disbursement of public moneys pursuant to the *ex gratia*/special payment provisions of the *Financial Administration and Audit Act 19*** - against the relevant provisions of the *Crime*

[26] See the *Lindeberg Petition* pp70-71.
[27] *Crime Commission Act 199*:* Section 6 (1) states: "Criminal paedophilia" means activities involving – (a) offences of a sexual nature committed in relation to children; or (b) offences relating to obscene material depicting children.
[28] [28] *R v Australian Broadcasting Tribunal: Ex parte Hardiman* (1980) 144 CLR 13. Gibbs, Stephen, Mason, Aickin and Wilson JJ at 55 is relevant: *"... If a tribunal becomes a protagonist in this Court there is the risk that by so doing it endangers the impartiality which it is expected to maintain in subsequent proceedings which take place if and when relief is granted."*

and Misconduct Act 2002 concerning the conduct of public officials to act always honestly, impartially and in the public interest - is open to be used as a "slush fund" to cover up known or suspected wrongdoing involving your Government whose sole concern shall be - in respect of those two accountability bodies - that the spending limits[29] of your Ministers of the Crown and Departmental Chief Executive Officers are not exceeded regardless of why and on what the money is disbursed. So while it is correct to name the Queensland Audit Office as a body to whom I have complained, it is also open to suggest that its findings – to date at least – are, if not unsafe, then certainly very disturbing, especially when it is well settled at law how the courts view contractual agreements between the State and public officials to cover up known or suspected wrongdoing for financial benefit, or which may have a tendency to obstruct or impair the administration of justice:[30]

(m) **Office of the Information Commissioner:** Over the last 14 years I have made several freedom of information applications[31] to seek access to relevant documents in this affair. Those applications have been against the Department of Family Services and Aboriginal and Islander Affairs, Department of Justice and Attorney-General, Department of Administrative Services and Department of Premier and Cabinet. Most of those documents I now hold after considerable time and, of relevance, dissembling on the part of the Office of the Information Commissioner.

Further to the purposes of the matter at hand, Your Excellency should appreciate that barristers Morris QC and Howard examined my allegations "*on the papers*" and found serious *prima facie* criminal conduct and official misconduct. Those

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[29] Ministers of the Crown may spend up to $1m, while CEOs may spend up to $500,000 under current Queensland Government guidelines.

[30] *Windhill Local Board of Health* v. Vint (1890) 45 Ch D 351) Cotton L.J. said, at p 363: "... *the Court will not allow as legal any agreement which has the effect of withdrawing from the ordinary course of justice a prosecution when it is for an act which is an injury to the public. It would be the case of persons taking into their own hands the determining what ought to be done; and that ought not to be taken into the hands of any individuals, ... but ought to be left to the due administration of the law* ...": and A. v. Hayden (1984) 156 CLR 532 Mason J at *16* "*... It is obvious that the public interest in the enforcement of the criminal law as an element in the administration of justice would be seriously impaired if the citizen were at liberty to assume in return for a benefit an obligation not to disclose information concerning the commission of a criminal offence. The enforcement of the criminal law cannot be allowed to hinge on the willingness of the citizen to make a profit out of his silence, whether the contract be made before or after the commission of the offence.*" ; In *Egerton v. Brownlow (Earl)* (1853) 4 HLC 1, at p 163 (10 ER 359, at p 424), Lord Lyndhurst stated the principle in broader terms:"*...It is admitted, that any contract or engagement having a tendency, however slight, to affect the administration of justice, is illegal and void.*" (My underlining)

[31] See the *Lindeberg Petition* pp59-65

same papers were held by this Office at all relevant times in an uncensored form. I was required pursuant to *O'Rourke v Darbshire* to give colour in clear and definitive terms to support my (known) claim that a conspiracy to pervert the course of justice was evident on certain of those papers in order to overcome the exemption of legal professional privilege. At all times, the Information Commissioner had an obligation under the *Criminal Justice Act 1989* to report ***all*** suspected official misconduct which came to his attention in the performance of his function to the CJC. At all times, I called on him to do so. The short point is that Messrs. Morris QC and Howard (at p19 of their Report) said "*...At a particular stage in the course of our investigation, it became apparent to us that there appeared to be considerable substance in Mr. Lindeberg's allegations, particularly as regards the destruction of the Heiner documents.*" In respect of the contents of certain documents central in this affair, the inculpatory *prima facie* evidence is clear and compelling, and yet, despite holding them from December 1994, at least, the Office of the Information Commissioner failed to refer such suspected official misconduct to the CJC as the law obliged. The Information Commissioner, his Deputy and certain reviewing officers (with whom I have dealt) are all qualified solicitors who hold a duty to obey the law and respect of Rules of the Supreme Court[32]. At issue, in the main, was the shredding of the Heiner Inquiry documents to prevent their use as evidence in an anticipated judicial proceeding. My mission, in terms of *O'Rourke v Darbshire*, was to demonstrate that those involved in the shredding were aware that the Heiner Inquiry documents were required and that their destruction was for the purpose of preventing their use in evidence. Put simply, I did not have to prove a thing because all those facts were before them. And yet, the suspected official misconduct – so easily and quickly found by Messrs. Morris QC and Howard - was not referred to the CJC but doggedly concealed through inordinate delay and dissembling.

By way of earlier concern, the involvement and improper conduct of Department of Families FOI Reviewing official Mr. Donald A. C. Smith in respect of my freedom of information application warrants comments. It demonstrates in

[32] It is the duty of the Court and not the privilege of the executive government to decide whether evidence will be admitted: *Sankey v Whitlam* (1978) 142 CLR 1, at pp 38-45, 68-69.

compelling terms the type of dissembling and lack of impartiality I experienced in trying to access relevant documents, over an inordinate period, which had indisputable evidence of wrongdoing "on the papers" which not only must have Mr. Smith himself known (because he was the alleged wrongdoer), and so too would have his Departmental CEO Ms. Matchett (as she was party to the alleged wrongdoing), but the Office of the Information Commissioner must have seen when my application came under external review. It concerned the unlawful destruction of the photocopies of the original complaints on 23 May 1990 at a time when Ms. Matchett and Mr. Smith ***knew*** Mr. Coyne had a lawful right of access to them, and a relevant hand-written notation and signature by Mr. Smith of their destruction of the Crown Solicitor's advice of 18 April 1990 was plain for all to see who were working inside government. The Department denied me access to these incriminating documents at the time. It is beyond question that both Ms. Matchett and Mr. Smith had a vested interest in denying access because the suspected official misconduct and *prima facie* criminal conduct evident "on the papers" directly concerned themselves. This conduct was contrary to the proper impartial processing of FOI applications and open to be seen in 1994 as a serious breach of section 96 of the *Freedom of Information Act 1991*. It was subsequently found by Messrs Morris QC and Howard in 1996[33] as breaching section 92(1) of the *Criminal Code* Qld and sections 31 and 32 of the *Criminal Justice Act 1989*. However, the Office of the Information Commissioner failed to refer this improper conduct to the CJC pursuant to its statutory obligation at all relevant times.

By way of current concern, over and above what is said in the *Lindeberg Petition* which still remains safe, I recently sought access to the January 1997 DPP's advice alleging that it was unlawful advice covering up crime and could not be exempted from disclosure under section 36(1) of the *Freedom of Information Act 1992* dealing with Cabinet exemption because it had the effect of the Cabinet covering up crime. (See Applications 493/03 &247/04) The debate took place against the background of the interpretation of section 129 ruled in *R v Ensbey*, with the Office of the Information Commissioner refusing access and describing

[33] See pp59-65 the *Lindeberg Petition*; See pp74-76 Morris Howard Report – The "Smoking Gun."

the Mr. Miller QC's advice in the following terms: "*...I am constrained from discussing the contents of Mr. Miller QC's advice (see s.8" of the FOI Act). Moreover, the issues for determination in this case do not require me to assess the correctness or otherwise of that advice. The fact that Mr. Miller QC may have given s.129 of the Criminal Code a particular interpretation, which differed from a view[34] expressed some years later by a District Court judge, does not render Mr. Miller QC's advice "unlawful." Lawyers are frequently called upon to provide advice about issues of statutory interpretation and often reach differing views in that regard. I find it difficult to accept that an objective reader of Mr. Miller QC's advice would find it other than a careful, reasoned and detailed analysis of the complex issues about which he had been asked to advise, in light of the evidence available to him at the time.*" The simple point here is that while it is accepted that lawyers may differ on certain points of law without being dishonest, section 129 was never available to variation, moreover other aspects of Mr. Miller QC's so-called "*...careful, reasoned and detailed analysis*" advice concerning the interpretation of section 119, and that the Schedule (purportedly) colours the Code[35] are simply unarguable, and yet he did. **The point remains, be it "unlawful", "misconceived" or "erroneous," it was certainly wrong in 1997, and remains so in 2004/05**. It covers up unresolved crime involving the Executive Government of Queensland and certain senior bureaucrats, and the Office of the Information Commissioner knows that, and yet remains inactive despite being one of the key accountability arms of "post-Fitzgerald" Queensland and obliged to refer *all* suspected official misconduct to the CMC;

(n) **Ombudsman – Office of the Parliamentary Commissioner:** See The *Lindeberg Petition* pp66-69.

(o) **2003/2004 House of Representatives Legal and Constitutional Affairs Committee:** In 2003 and 2004, as part of its national inquiry into crime in the community, this Committee conducted public hearings into the Heiner affair and handed down its findings on 11 August 2004. I provided some four detailed submissions and gave sworn evidence on two occasions in Brisbane. The

[34] It might be noted that His Honour Judge Samios "***ruled***" from the Bench, and appropriate appreciation of the distinction by officers of the Crown should have been given and recognized at all times in all writings. His Honour's ruling was subsequently endorsed unanimously by the Queensland Court of Appeal on 17 September 2004.
[35] *R v His Honour Judge Morley and Mellifont* [1990] 1 Qd R 54 at 56.

Committee revisited earlier submissions to the Senate, the findings of Morris QC and Howard, new evidence revealing what was really happening to children at the Centre as discovered by investigative journalist Mr. Bruce Grundy, and the significance of the Queensland District Court *Ensbey* guilty verdict to this affair. It summonsed Mr. Noel Heiner to answer questions after he refused its invitation to appear voluntarily.

I furnished Your Excellency with a copy of the Report, together with the Queensland Court of Appeal judgement in *Ensbey* on 20 September 2004. You will know that the Committee recommended that all members of the Goss Cabinet of 5 March 1990 who ordered the destruction of the Heiner Inquiry documents face criminal charges pursuant to section 129 of the *Criminal Code* Qld, and possibly other relevant criminal charges concerning obstruction of justice.

In my opinion, your Government ought to have answered such serious charges made out in the Report in any position statement on this affair provided to me or Your Excellency, but it has failed to do so, in respect of myself at least.

(p) **2004 Senate Select Committee on the Lindeberg Grievance:** This Committee was established on 1 April 2004 out of a grievance lodged with the Senate on 9 May 2001 by my then counsel, Mr. Robert F. Greenwood QC. He provided a detailed submission setting out key areas where compelling evidence existed suggesting that previous committees of the Senate had been deliberately misled in order to prevent the Senate from making full and proper findings on the Heiner affair. Mr. Greenwood QC advised, *inter alia*, that the interpretation of section 129, put by the Queensland Government and CJC, was untenable, and that the Senate could not properly describe the shredding act of the Goss Cabinet which obstructed justice as "*...an exercise in poor judgement*" without bringing the rule of law into disrepute. He suggested that the possible contempt undermined Australia's international human rights obligations concerning (a) civil and political rights; (b) the right to organize and collective bargain; and (c) the rights of the child. Subsequent to Mr. Greenwood QC's submission, additional evidence emerged through Mr. Grundy's work revealing that child sexual abuse had occurred at the Centre and never been properly addressed. This too was put

to the Senate throughout 2002 and 2003, against the unexpected controversy and double standards surrounding the former Governor-General, Dr. Peter Hollingworth in respect of his handling of child abuse allegations when Anglican Archbishop of Brisbane – and his accusers - which eventually brought about his resignation to avoid further damage – perceived or otherwise – to the Office of the Governor-General. (See **Attachment A** – Open Letter to the Commonwealth Parliament 30 May 2003)

It should be noted that while a majority of members of the Senate Select Committee could not find contempt in respect of my grievance and suggested that the illegality or otherwise of the shredding fell within Queensland's criminal jurisdiction and its law-enforcement authorities, Queensland Senator the Hon Santo Santoro and Senator Len Harris both dissented from the findings calling on the Committee to be re-established because its commission was incomplete and all relevant evidence had not been heard or tested. I understand that a notice of motion to re-establish this committee shall occur when the Senate resumes its business in February 2005 or shortly thereafter.

Notwithstanding the above, but of relevance to matters under consideration here, the Senate Select Committee did find that the interpretation of section 129 provided to the Senate by the Queensland Government and CJC was "*...probably incorrect.*" While this matter does not and simply cannot stand or fall on the significance of the one word "probably" – as if to suggest this codified offence might have been "half-right" at some unspecified time since its enactment around 1899 – the unavoidable fact before Your Excellency is that their interpretation was certainly wrong, and consequences ought to flow therefrom. The evidence shows that this erroneous interpretation has been contested consistently by me from the outset, others at a later stage including eminent senior counsel, but none of us just since *Ensbey*.

Put simply, what the Queensland Court of Appeal judgement in *Ensbey* did was to confirm "the obvious" meaning of section 129 - not reveal some "legally-oblivious" meaning which no one ever considered before. Queensland's highest judicial authority sealed their fate by exposing the absurdity of their erroneous

interpretation, even more emphatically when Jerrard J applied the key definition of "judicial proceeding" to the sister administration of justice offence of "perjury" showing that it always had to be an "unfettered" definition in order to comply with the plain words of that offence. It follows that while there are laws which are indeed arguable in their interpretation, section 129 was never one.

The counter, so-called "legally oblivious" view of section 129 before *Ensbey* would simply have invited complete legal chaos into our justice system. It would have rendered useless and scandalized the discovery/disclosure rules of the Supreme Court by permitting documents in the possession or control of a party, or Government, to be wilfully destroyed to prevent their use as evidence in foreseeable/anticipated/foreshadowed judicial proceedings just so long as the expected writ/plaint had not been filed or served, albeit in the next hour, day and fortnight.

It cannot go unsaid that many Ministers of the Crown and public officials caught up in this matter are qualified lawyers unlike me. In short, professional training and caution ought to have stayed their hand at the time, or obliged them to accept that in respect of the shredding and section 129 they have always been defending the indefensible. Taken together, it is now impossible to draw any distinction between the initial shredding and its aftermath which may now be described as a cover-up.

To suggest that one of our nation's greatest jurists Sir Samuel Griffith could have been so completely reckless in drafting Queensland's Criminal Code and rules of court - as if to suggest that he knowingly drafted section 129 to permit unfettered document destruction known to be required in evidence in a judicial proceeding up to the moment of a plaint/writ being filed and served - was always against all common sense, the plain reading of the section, and laughable if it weren't so serious here. While *McCabe v British American Tobacco* [2002] VSC 73 enlivened this whole "preservation of evidence/discovery/disclosure" debate[36]

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[36] In *Davies v Eli Lilly & Co.*[1987] 1 All ER 801 Lord Donaldson MR gave what has become one of the most oft-quoted descriptions of the modern common law process of civil discovery. He said. *"...The right [to discovery] is peculiar to the common law jurisdictions. In plain language, litigation in this country is conducted 'cards face up on*

nationally and internationally in recent times. it was never a "new" debate for a civilized society like Australia because without evidence the Judiciary could not serve the ends of equal justice pursuant to its Constitutional obligations.

4. In essence, your Government is relying solely on the findings of no wrongdoing by the Criminal Justice Commission (CJC) on 20 January 1993, purportedly flowing from an alleged "nth degree" investigation and review carried out by then CJC officials Messrs. Michael Barnes and Mr. Noel Nunan[37], and subsequently endorsed by Mr. Mark Le Grand, then Director of the Official Misconduct Division and Mr. Rob S O'Regan QC, then CJC Chairman. **These findings are utterly discredited and indefensible**. At their core is the erroneous interpretation of section 129, which simply cannot stand if equal justice means anything in Queensland:[38]
5. The CJC, and now the CMC, under the chairmanship of Mr. Brendan Butler SC, has consistently failed to address this malaise, save to suggest that it is a statutory body independent from Government whose credibility and findings must therefore, in some way, be beyond criticism;
6. In the 20 January 1993 findings, Messrs. Barnes and Nunan actually misquote and misinterpret *Public Service Management and Employment Regulation 65* giving it an entirely different purpose and scope from that which is practised throughout the Queensland public service, and known by public sector trade union officials. So glaring is this critical misquotation and misrepresentation that a subsequent CJC Handbook on "*Exposing Corruption: A CJC Guide to Whistleblowing in Queensland*" actually repudiates it by encouraging would-be whistleblowers to use the same regulation to check "*any*

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the table". Some people from other lands regard this as incomprehensible. "Why", they ask, "should I be expected to provide my opponent with the means of defeating me?" The answer, of course, is that litigation is not a war or even a game. It is designed to do real justice between opposing parties and, if the court does not have all the relevant information, it cannot achieve this object."

[37] Mr. Nunan was contracted by the CJC, upon the recommendation of Mr. Barnes (now State Coroner), to review "*...purely by chance*" the CJC's initial 1991 findings of no official misconduct in respect of the shredding of the Heiner Inquiry documents which was oversighted by then CJC Official Complaints Office Mr. Bevan (now Queensland Ombudsman and Information Commissioner).

[38] Flowing out of undisclosed visit to the Department of Family Services and Aboriginal and Islander Affairs in either late 1994 or early 1995, Mr. Barnes later recorded in a "highly protected internal CJC memorandum" dated 11 November 1996 to his CJC superiors (i.e. Messrs. Clair and Le Grand) in response to the findings of the Morris Howard Report of October 1996, that he had examined certain memoranda between Minister Warner and Ms. Matchett which strongly inculpated all members of the Goss Cabinet in the shredding if Messrs. Morris QC and Howard's interpretation of section 129 was correct. In this memorandum the CJC also "internally agreed" that it could not properly come to the Heiner affair again because its independence had been impinged/impugned by the Queensland Parliament in October 1996 upon the tabling of the Morris Howard Report. Despite this sound legal constraint, both the CJC and CMC have never complied with their own understanding of what the law obliges them to do, and have continued to make pronouncements of no wrongdoing when (improperly), revisiting the affair as new evidence has been found or previous flawed findings – as in *Ensbey* – been exposed

departmental file or record held on the officer" to see whether other adverse comment is being held on them (after blowing the whistle) without their knowledge away from their personal file.[39] That is precisely what Mr. Peter Coyne, his solicitor Mr. Ian Berry, fellow public servant Ms. Ann Dutney, the Queensland Professional Officers' Association, the Queensland Teachers' Union were doing when the evidence was destroyed. As a trade union official, I was carrying out my duty and asserting their rights under *Public Service Management and Employment Regulation 65*, and ultimately lost my job for doing so when I challenged the shredding[40];

7. The Office of Crown Law in fact advised that Mr. Coyne had a right under that law to access the documents he was seeking in its advice of 18 April 1990 to Ms. Matchett, the acting Director-General of the Department of Family Services and Aboriginal and Islander Affairs. She did not inform him of that right, nor obey it. It took me years to break through the deception by the Goss Government (including the Office of Crown Law), CJC and others, to discover that conspiratorial conduct preventing him enjoying his rights.
8. I hold a tampered tape of interview between myself and Mr. Nunan conducted at the CJC Headquarters on 12 August 1992.[41] Words going to demonstrable bias spoken by Mr. Nunan have been erased. The tape has been professionally and independently examined by Professor Miles Moody of the QUT on 27 March 1995, who advised that for the erasure to have occurred where it did, it was a "1 in 2,500 chance."[42] The CJC had its copy examined, and was satisfied that it was coincidental:
9. I was subsequently threatened with defamation action in an unsolicited phone call to my home by Mr. Nunan on 11 September 1993. He objected to suggestions that he may have been biased when handling my complaint. He confirmed that the decision to shred was "political." When I complained of harassment and intimidation of myself as a witness to the CJC, it declared that Mr. Nunan made his call in a private capacity, and was none of its affair[43].

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[39] This mischief was first exposed in *Edward P. Wixted vs State of Queensland* 1983

[40] In the wake of discoveries about the unresolved child pack rape incident which occurred in the lead up to the Heiner Inquiry, it is now open to suggest that certain of these parties may have been acutely interested in knowing was said about their roles in that cover-up at the Inquiry.

[41] See the *Lindeberg Petition* pp44-45.

[42] Relevantly Professor Moody advised "... *The gap starts at the end of a sentence and a new sentence starts at the end of the gap. The coincidence of this occurring at each end of the gap would be approximately equal to the square of the ratio of the length of a phoneme to the length of the gap. Since a phoneme lasts for about one fifth of a second, the ratio would be about 1 to 50. The probability of this occurring twice (once at each end of the gap) would be therefore about 1 in 2,500.*"

[43] By letter dated 24 September 1993 from Mr. David Bevan, CJC Deputy Director of the Official Misconduct Division.

10. Mr. Nunan failed to declare his active membership of the ALP, and his former working relationship with Mr. Wayne Goss at the Caxton Street Legal Service. He failed to declare his membership of Queensland Labor Lawyers. It is reasonable to suggest that such associations gave rise to perceptions of apprehended bias of which I was entitled to be informed, however, when I subsequently discovered this close political affiliations, and the CJC became aware of my concerns, it coloured me in the stain of "McCarthyism" before the Australian Senate[44] and ultimately deferred to his (Nunan's) rights not mine to have a serious matter addressed without giving rise to possible bias on the part of a decision-maker.[45] There is little doubt that Mr. Barnes ***knew*** that Mr. Nunan was a member of the ALP at the time my case was given to him to review;

11. The CJC/CMC has become a blockage in the system of justice in Queensland, insofar as this matter is concerned, and it ought to be addressed by the only means now open, namely the appointment of an independent Special Prosecutor to examine all aspects of the Heiner affair, including the operation of those accountability arms of government before which this matter came over the last 14 years;

12. In regard to your Government having confirmed in its position statement (to me) that it has referred the April 1991 alleged rape incident to the CMC pursuant to its obligation under the *Crime and Misconduct Act 2002*, I have informed the alleged victim's husband of this matter because I believed that the family had a right to know. The family knew nothing of what your Government had done. Given that the August 2004 edition of *The Independent Monthly*[46] revealed that the alleged victim was threatened with her life at the time by other female inmates if she pressed ahead with her complaint against the staff member, and that three months later the Department advised the CJC of the incident with the Commission declining to act because the staff member had taken the Departmental option of resigning rather than being sacked, what they decide to do now shall be their call in the pursuit of justice;

13. In regard to the deceit exposed in the Question on Notice answered by your chief adviser on 18 November 2004, going to covering up the crime of criminal paedophilia in the

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[44] See p38-40 CJC's February 1995 Submission to the Senate Select Committee on Unresolved Whistleblower Cases authored by CJC Chief Complaints Officer Mr. Barnes.

[45] Vakauta v Kelly (1989) 167 CLR 568 F.C. 89/040 Dawson J said: "...The relevant principle is that laid down in Reg. v. Watson; Ex parte Armstrong (1976) 136 CLR 248, at pp 258-263, and applied in Livesey v. New South Wales Bar Association (1983) 151 CLR 288, at pp 293-294, namely, that a judge should not sit to hear a case if in all the circumstances the parties or the public might entertain a reasonable apprehension that he might not bring an impartial and unprejudiced mind to the resolution of the question involved in it."

[46] "*Another John Oxley Outrage – Death threats latest detention centre scandal*" pages 1-2
http://justiceproject.net/content/TheDeathTheatsI.asp

Centre, wherein he has declared to me that it is a matter for *The Courier-Mail* and the then Minister, and not his Government. I suggest that such callous disregard flies in the face of all notions of open and responsible government. It is made all the more poignant knowing that the victim is currently suing the State of Queensland over the assault in a claim for damages over breach of duty of care and your Government is seeking to apply the statute of limitations, and that certain public officials are still working in the system who have lived with this dreadful lie for 15 years and said nothing.[47] With great respect, Your Excellency ought not confer your good Office's prestige on such indifference to governance principles of decency, fairness and accountability from your chief adviser by finding it acceptable yourself;

14. For your information, and in the public interest, I am attaching the Department of Families file on the May 1988 pack rape incident[48] so that you may judge for yourself as to whether it was treated appropriately at the time, or since. Of considerable significance, it should be noted that certain passages in the file have been blanked out which reasonably appear to give additional substance and weight to the assault of the victim. Additional evidence concerning assault and failure by the Crown to provide the victim with a safe environment is contained on *The Justice Project* webpage. Evidence is also available showing that two children, who were rape victims while at the Centre and who were subsequently assaulted and/or threatened with their life into not proceeding with their desire to have charges laid, had that known endued "change of mind" used by the authorities to do nothing at the time against known alleged rapists. It should also be noted that the CJC, in late 2001, found that the handling of the May 1988 pack rape incident gave no rise to official misconduct on the part of anyone despite knowing that a delay of three days occurred ***after*** the assault before the police were notified, and for the first time the child was medically examined.

CONCLUSION

It is beyond dispute that Your Government has failed to address the key finding, namely Recommendation 2 of the House of Representatives Legal and Constitutional Affairs Committee

[47] http://www.justiceproject.net/content December2004.asp

[48] There is now additional evidence to hand (See *The Justice Project* & February 2004 edition of *The Independent Monthly*) that one of the alleged rapists killed a man point-blank with a sawn-off shotgun in September 1990 in Newmarket Brisbane and escaped justice until 2003 after having admitted to the crime by giving himself up to the police on 1 January 2002. He is now behind bars. It has since been discovered that no coronial inquest into the shooting ever took place. http://justiceproject.net/content/February2004.asp

that all members of the Goss Cabinet of 5 March 1990 be charged pursuant to section 129 of the *Criminal Code* Qld, and why it is not legally applicable in respect of its decision to destroy documents, (i.e. "public records" known as the Heiner Inquiry documents) in its possession or control, to prevent their use as evidence in a foreshadowed/anticipated judicial proceeding.

This matter was put in this stark form to your chief adviser in my letter of 22 November 2004:

> *"...It has involved the State of Queensland covering up the crime of criminal paedophilia and, in order to escape accountability and the equal application of the law, it has been prepared to shred evidence, bribe a public servant, abuse power and parliament, and misinterpret the criminal law for self-serving purposes, aided by a network of well-placed mates."*

Plainly, your Constitutional function, under these circumstances, ought not be satisfied by blanket political mantras from your chief adviser based on myths, omissions and half-truths when issues of such legal and Constitutional importance are at stake.

This issue also strikes at the very heart of proper public recordkeeping, and is seen in the archives world as one of the 20th century's 14 great shredding scandals[49].

Notwithstanding the general duty of the Crown to prosecute when sufficient *prima facie* evidence exists to effect a successful prosecution and conviction against any law-breaker, I submit that the other recognized discretion of the Crown in certain cases not to prosecute is simply not available in this matter if equal justice means anything[50] in the wake of the conviction of Pastor Douglas Ensbey.

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[49] See July 2002 United States archives academic book "*Archives and the Public Good: Accountability and Records in Modern Society*" published Quorum Books Westport Connecticut & London July 2002, edited by Professor Richard Cox of the University of Pittsburgh and Assistant Professor David Wallace of the University of Michigan – archives schools. It cites 14 of the 20th century's greatest shredding recordkeeping scandals which places the Heiner Affair alongside Iran/ContraGate affair *et al*. Heiner's chapter is authored by renown Australian archivist Mr. Chris Hurley: See July/September 2003 edition of *Image and Data Manager* magazine cover story "*When Proof Goes Missing*". & September/October 2004 edition p36 "*Heiner Revisited - the battle goes on*": See May 2003 edition of Australian Society of Archivists' scholarly academic journal *Archives & Manuscripts* "*The Rule of Law: Model Archival Legislation in the Wake of the Heiner Affair*" by Kevin Lindeberg in conjunction with Dr. Terry Cook of the University of Manitoba Canada.

[50] Mason CJ, Deane and Dawson JJ in *Ridgeway v The Queen* (1995) 184 CLR 19 at 44 observed: "*If it be desired that those responsible for the investigation of crime should be freed from the restraints of some provisions of the criminal law, a legislative regime should be introduced exempting them from those requirements. In the absence of such a legislative regime, the courts have no choice but to set their face firmly against grave criminality on the part of anyone.*

In my opinion, your Government has also placed itself in fundamental breach of the doctrine of the separation of powers over the shredding, impacting directly on the Judiciary. The fact that your Government intends to persist in the insupportable claim of legality in respect of such shredding conduct, shows that it intends to continue in this fundamental breach mode even in the face of the ruling by the Queensland Court of Appeal - our highest judicial authority - in *Ensbey*.

That, in my view, has placed your Government, by its own decision, outside the law.

In simple terms, your Government has turned this affair into a high-stakes game of bluff. This is highly regrettable. For my part, I have acted always in good faith trusting that Ministers of the Crown and public officials would always do the right thing, especially that the Crown would always act as a model litigant. It has not done so, using its majority votes on the floor of Parliament to override its legal obligations. As a result, the peace, order and good government of Queensland, embracing the welfare of children in its care and custody involving child sexual abuse, are now at stake. With great respect, now at your Constitutional table, your Government sits bluffing with an empty hand. That bluff, I humbly submit, you should call in order to restore public confidence in government and equality before the law.

In coming to this endpoint in my 14-year struggle for justice, I took the liberty of examining your speeches as Governor of Queensland, because I am aware of your previous impressive career in law, human rights, and advocacy for child welfare. I was taken by these words at the conferral of an honorary Degree of Doctor of the University and Graduation Ceremony, Griffith University – Gold Coast Campus – on 4 October 2003:

> *"...I recall that my own (aspirations and ideas) were quite grand. I wanted to change the world. I was imbued with noble ideals of truth and justice. I thought that law was the best course for me to follow to achieve my aims."*

I understand where you were coming from; just as I am acutely aware of where you are now.

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regardless of whether he or she be government officer or ordinary citizen. To do otherwise would be to undermine the rule of law itself."

It is my earnest plea, that within your Constitutional discretion, you encourage your chief adviser to appoint an independent Special Prosecutor to lance, finally and properly, this septic boil which has poisoned our public administration and justice system, and if he declines, then your good conscience shall have to be your guide as to what you do next.

I shall end this submission with the opening words of the *Lindeberg Petition*[51], which you and your chief adviser hold. If nothing else, they speak of my aspirations and ideas of what Queensland should be, but isn't; and for myself, my family and future generations, only a proper resolution of this matter can correct and guarantee.

> *"...The rights of the Parliament of Queensland, and of the sovereign people of Queensland who empower it, have been abused by a disregard of the laws of its Parliament. Disregard of law by executive branches of governments in any nation or state, when and where it may occur, amounts to tyranny and a mockery of democracy."*

Yours sincerely

KEVIN LINDEBERG

30 December 2004

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[51] See Attachment C

ATTACHMENT A

OPEN LETTER TO THE COMMONWEALTH PARLIAMENT OF AUSTRALIA

THE HEINER AFFAIR & UNRESOLVED CHILD ABUSE

The Hon John Howard MP, Prime Minister of Australia and Leader of the Liberal Party of Australia
The Hon John Anderson MP, Deputy Prime Minister of Australia, Minister for Transport and Leader of the National Party of Australia
The Hon Simon Crean MP, Leader of the Opposition and Leader of the Australian Labor Party
Mr Peter Andren MP, Independent Member for Clare
The Hon Bob Katter MP, Independent Member for Kennedy
Mr Tony Windsor MP, Independent Member for New England
Senator Andrew Bartlett, Leader of the Australian Democrats
Senator Bob Brown, Leader of the Greens
Senator Brian Harradine, Independent Senator for Tasmania
Senator Len Harris, One Nation Senator for Queensland
Senator Meg Lees, Leader of the Australian Progressive Party
Senator Shayne Murphy, Independent Senator for Tasmania

I write in the public interest on a matter of the utmost gravity.

In May 2003 our national Parliament engaged in an historic debate on the controversy surrounding then Governor-General Dr. Peter Hollingworth, failure of people in authority to do their duty (which reasonably embraces respect for the rule of law) in properly addressing allegations of child abuse, and declarations by all MPs of their abhorrence of all forms of child abuse, especially paedophilia.

I write on the same issue of an unresolved case of sexual child abuse while under the care of State authorities which now confronts the Commonwealth Parliament.

Because of the seriousness of the so-called Heiner Affair (Heiner) and the confluence of events beyond my control or influence, I am obliged to construct this letter as an open communication to the Commonwealth Parliament of Australia so that all may know what the other has been told in an open and transparent manner.

I attach to this open letter a copy of a letter dated 9 May 2003 to Senate President Senator the Hon Paul Calvert. I requested that it be tabled so that the Senate might consider its contents and take whatever action it thought appropriate. By return letter of 14 May 2003, as President of the Senate, he declined suggesting that I should request another senator to do so as he was rightly concerned about protecting the independence of his position as Senate President. No adverse inference should be drawn in respect of his decision.

The content of the Calvert letter stands. It complements and reinforces other public records held by both Federal Houses on Heiner. Those records may be found at:

- Public submission 142 dated 5 March 2003 to the Standing Committee on Legal and Constitution Affairs chaired by the Hon Bronwyn Bishop MP: and http://www.aph.gov.au/house/committee/laca/crimeinthecommunity/subs/sub142.pdf
- The Robert F Greenwood QC submission dated 9 May 2001 to the Australian Senate setting out the Lindeberg Grievance. http://www.uow.edu.au/arts/sts/bmartin/dissent/documents/Heiner01.pdf

So that this open letter's timing, form and relevance is understood, I cite some of the views expressed in both Houses in May 2003 for current and historic reference.

The Hon Simon Crean on 26 May 2003 (at p14563 *Hansard*) said this "*...you cannot have people in authority who have covered up for child sex abuse. It is as simple as that...*" and "*...Isn't a person of authority who failed to act on issues of child sexual abuse guilty of moral turpitude? Of course he is. This is a person in authority. This was a person to whom the allegations were made, and he failed to act...*"

The Opposition's Shadow spokesperson for Children and Youth and the Status of Women, Ms Nicola Roxon on 13 May 2003 (at p139979 *Hansard*) said:"*...We cannot afford to brush it aside, keep it behind closed doors or say it is someone else's issue. We need to be prepared to take a leadership role here. It might be awkward for the government. We need to take some action so this terrible issue is dealt with. The community thinks that leaders in this country are covering up what has happened in the past. Whether they think it is church leaders, politicians or other powerful people, we must make sure that we are never part of that conspiracy. We on this side of the House and, I am sure, the people on the other side of the House do not want to cover up this issue...*"

The Minister for Children and Youth Affairs the Hon Larry Anthony MP on 13 May 2003 (at p13979 *Hansard*) said "*...I will say that all of us in this House, no matter what our political persuasion, are absolutely appalled by the increasing level of child abuse in this country and, in particular, by the issue of child sex abuse. No-one of any right mind can give any type of sympathy to those individuals who abuse children or who follow a path of paedophilia...*"

South Australian Senator the Hon Nick Bolkus on 14 May 2003 (at p10883 Senate *Hansard*) said "*...In our performance, in our response, we also will be judged on whether and how we respond to this important challenge. If we as a national parliament do not take the right and proper moral stand on issues relating to paedophilia that affect our children, then we too could be condemned – and I think quite fairly so – by the public of Australia for turning a blind eye to paedophilia, its victims and those who tolerate it....*" (emphasis added)

Victorian Senator Stephen Conroy on 14 May 2003 (at p 10873 Senate *Hansard*) said "*...Victims, parents and the community do not want any more cover-ups. They want their stories told, they want perpetrators brought to justice and they want further generations of children to be protected from such suffering...*"

It cannot be said now or later that those of us who heard or read such public affirmations are not entitled to believe that those high standards, expressed to the nation by both Houses of the Commonwealth Parliament, would surely apply equally if a matter of child sexual abuse and obstruction of justice were to come before either House. Otherwise, people would be entitled to view the current serving representatives in the Senate and the House of Representatives as

hypocrites and driven by grand convenient platitudes, and who govern this nation by double standards. In short, what they demand of others morally, ethically and legally, they must also demand of themselves.

Paradoxically, and without invention on my part, history had placed Heiner before both Houses when the aforesaid debate took place, and Heiner remains unresolved and unfinished business for both, and deals directly with covering up sexual abuse of children.

At Point 2.3 of my public submission No 142, Heiner's epicenters are:

> "1. The pack-rape of a 14-year-old Aboriginal female inmate of the John Oxley Youth Detention Centre by four male inmates during a supervised bush outing in May 1988 which was covered up and not properly investigated;
> 2. The shredding of the Heiner Inquiry documents - which included evidence of the aforesaid unresolved pack-rape incident and other child abuse - by order of the members of the (Goss) Executive Government on 5 March 1990 when it was known that:
> (a) the records were required in anticipated judicial proceedings;
> (b) the records contained evidence about the abuse of children;[52]
> (c) the Cabinet's intent was to (i) prevent the records being used as evidence in those anticipated judicial proceedings; (ii) prevent the information gathered by Inquiry Head Mr Noel Heiner (Rtd Stipendiary Magistrate) being used against the careers of the JOYC staff who owed a duty of care to the children sentenced into the care and custody of the State by the Judiciary; and, it is open to conclude, (iii) prevent the gathered evidence concerning the abuse of children (including the pack-rape incident) being available in any future damages legal action against the State of Queensland by the known victims.
> 3. A widespread cover-up by Queensland's system of government of the Executive's (i.e. Cabinet) unlawful act by the exercise of systemic corruption in manifest forms."

It goes on:

> "13.8. In Heiner, the public interest issues at stake concern:
> (a) the right to a fair trial without wilful interference by the State in the administration of justice in the form of destroying known relevant evidence held in its possession and control and known to be accessible pursuant to the rules of the Supreme Court of Queensland in discovery upon the commencement of judicial proceedings;
> (b) equality before the law;
> (c) the upholding of Parliamentary propriety and the doctrine of the separation of powers;
> (d) the State not engaging in covering up crime, going to the offence of criminal paedophilia against a child held in the care and custody of the State;
> (e) the lawful disbursement of public monies not to be used as "hush money" to cover up criminal conduct perpetrated by the State and/or its officials."

In unequivocal terms it says that the Federal Parliament was deliberately misled by the Queensland Government for an improper purpose to cover up obstruction of justice in respect of a judicial proceeding and known child abuse – going to the crime of criminal paedophilia involving an indigenous female minor placed in State care and control by court order.

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[52] Public admission made by former Goss Cabinet Minister the Hon Pat Comben MLA in February 1999 on Channel 9's *Sunday* programme "Queensland's Secret Shame."

In misleading the Federal Parliament, the Queensland Government (i.e. its Cabinet) and others have escaped culpability by the twisting of the criminal law in respect of the offence of destruction of evidence while being prepared to have that same provision [section 129 of the *Criminal Code (Qld)*] properly apply to a citizen of the Commonwealth residing in Queensland in materially similar circumstances.

I invite your attention to *The Justice Project* webpage at University of Queensland on Heiner. (Amongst others see http://www.uq.edu.au/~uqggrund/justice/still_be_charged.htm)

Section 129 of the *Criminal Code (Qld)* 1899 is mirrored in section 132 of the *Criminal Code (WA) 1913*, section 102 of *Criminal Code Act (NT)* and section 39 of the *Crimes Act 1914 (Cwlth)*. Heiner therefore gives rise to serious questions for the Commonwealth Parliament pertinent to Chief Justice of the High Court of Australia the Hon Murray Gleeson's public understanding (see the Calvert letter) of what the rule of law means and requires: Does our Constitution guarantee that the criminal law shall apply equally in material similar circumstances in Queensland and in other States and Territories within our Commonwealth where the relevant law mirrors the other in wording and/or intent; and, are Australian citizens living in the Queensland entitled to enjoy the same Constitutional right to fair trial as other Australian citizens do in other States and Territories within our Commonwealth without interference by the State and its law-enforcement bodies?

It is suggested that the Federal Government's Constitutional jurisdiction for indigenous affairs may be enlivened here as the pack-rape victim is such a person and has been denied justice in matters associated with Heiner. (See section 51(XXVI) The Constitution). Through the improper conduct of the Queensland Government and its various administrative and law-enforcement arms in Heiner now touching on the Commonwealth Parliament, it appears to have placed Australia's obligations to its international and Commonwealth of Nations treaties and conventions in jeopardy (see the Greenwood QC submission), and, at the same time, damaged our standing in the eyes of the international community.

Against the backdrop of the public declarations denouncing the horror of child sexual abuse earlier cited in both Houses of the Commonwealth Parliament, I am imploring honourable Members to remember famous parliamentarian Edmund Burke's saying: "It is necessary only for the good man to do nothing for evil to triumph."

By your own standards, enunciated during the May 2003 debates cited above, Heiner is now your litmus test about handling effectively and seriously allegations of child sexual abuse, thereby carrying out of your public duty.

This open letter respectfully seeks relief from the Commonwealth Parliament in all matters associated with Heiner through appropriate Federal means as a matter of urgency and in the public interest.

Kevin Lindeberg
11 Riley Drive
CAPALABA QUEENSLAND 4157
30 May 2003

ATTACHMENT B

OCTOBER 1999 CONCLUSIONS AND RECOMMENDATIONS OF BARRISTERS MORRIS QC AND HOWARD IN RELATION TO THE LINDEBERG ALLEGATIONS

Criminal Offences

2. It is open to conclude that Section 129 of the *Criminal Code* was breached by an officer or officers of the Department of Family Services, to the extent that they were involved in:

   2.1. The destruction of the Heiner documents; and
   2.2. The destruction, on 23 May 1990, of photocopies of certain statements which had been originally furnished to the Department of Family Services by the Queensland State Service Union on 10 October 1989.

3. It is open to conclude that Section 123 and/or Section 140 of the *Criminal Code* was breached by an officer or officers of the Department of Family Services, to the extent that they were involved in:

   3.1 The destruction of the Heiner documents; and
   3.2 The destruction, on 23 May 1990, of photocopies of certain statements which had originally been furnished to the Department of Family Services by the Queensland State Services Union on 10 October 1989.

4. It is open to conclude that an officer or officers of the Department of Family Services breached Section 55(1) of the *Libraries and Archives Act 1988*, by their conduct in:

   4.1. Returning to the Queensland State Services Union, on 24 May 1990, original statements which had been furnished to the Department by the QSSU on 10 October 1989; and
   4.2. Destroying photocopies of those statements on 23 May 1990.

5. It is open to conclude that an officer or officers of the Department of Family Services breached sub-section 92(1) of the *Criminal Code* by:

   5.1 Their failure, in the period 18 January 1990 to 23 May 1990, to accede to Mr. Coyne's lawful requests to inspect records held by the Department on himself in accordance with Regulation 65 of the *Public Service Management and Employment Regulations;*
   5.2 Their conduct in returning such documents to the Queensland State Service Union on 22 May 1990, with the intended consequences of preventing Mr. Coyne from exercising his rights under Regulation 65; and
   5.3 Their conduct in causing the destruction of photocopies of the same documents on 23 May 1990, with the same intended consequence.

6. It is not open to conclude that any such offences were committed by the Crown Solicitor or by any officer of the Crown Solicitor's Office.

7. In view of the fact that we have been denied access to relevant Cabinet documents, we are unable to express a view – one way or the other – as to whether any such offences may have been committed by any member of State Cabinet in the period February to May 1990.

Official Misconduct

8. It is open to conclude that "official misconduct", within the meaning of ss. 31 and 32 of the *Criminal Justice Act*, was committed by an officer or officers of the Department of Family Services, in:

    8.1. Denying Mr. Coyne's lawful right, under Reg. 65 of the *Public Service Management and Employment Regulations*, to peruse and obtain copies of departmental files and records held on Mr. Coyne, and in responding to him and his representatives in a way which was "not honest" for the purpose of achieving delay pending the disposal of those documents;
    8.2. Returning statements to the Queensland State Service Union on 22 May 1990; and
    8.3. Destroying photocopies of those statements on 23 May 1990.

9. It is not open to conclude that any such "official misconduct" was committed by the Crown Solicitor, or by any officer of the Crown Solicitor's Office;
10. In view of the fact that we have been denied access to relevant Cabinet records, we are unable to express any conclusion as to whether such "official misconduct" may have been committed by any member of State Cabinet in the period February to May 1990.

Payment to Mr. Coyne

11. It is open to conclude that the payment of $27,190.00 to Mr. Coyne in February 1990:

    11.1. Was illegal; and
    11.2. Involved the commission of an offence under section 204 of the *Criminal Code*, by the Minister and an officer or officers of the Department of Family Services who participated in the making of that payment.

12. It is not open to conclude:

    12.1. That any other offence was committed by the Minister, or any officer of the Department of Family Services, in connection with the making of the payment;
    12.2. That any offence was committed by the Crown Solicitor, or any officer of the Crown Solicitor's Office, in connection with the making of that payment; or
    12.3. That any offence was committed by Mr. Coyne, or by any person acting on his behalf, in connection with his seeking and receiving the payment.

13. It is, in our opinion, open to conclude that "official misconduct", within the meaning of ss. 31 and 32 of the *Criminal Justice Act*, was committed by the Minister and an officer

or officers if the Department of Family Services in connection with the making of the payment of $27,190.00 to Mr. Coyne, in that their conduct:

13.1. Constituted or involved the discharge of their functions or the exercise of their powers or authority, as holders of appointments in units of public administration, in a manner that was not impartial;

13.2. Further or alternatively, constituted or involved a breach of trust placed in them by reason of their holding appointments in units of public administration;

13.3. Constituted or could constitute a criminal offence under s.204 of the *Criminal Code*; and

13.4. Except in the case of the Minister, constituted or could constitute a disciplinary breach providing reasonable grounds for termination of the officer's or officers' services in the Department of Family Services.

Conclusions

34. For the reasons stated, we are of the view that there are very compelling considerations in favour of the establishment of a public inquiry in relation to the matters which we have identified as being matters of concern arising out of Mr. Lindeberg's allegations.

35. The only countervailing consideration, against establishing a public inquiry, is the cost of that exercise. In considering this question, we imagine that the Government will have regard to the significant public expenditure which previous governments – and other bodies, such as the Criminal Justice Commission – have committed to inquiries in relation to matters of comparable seriousness. For example (and we mention these instances only as examples):

35.1 The recent Carruthers Inquiry, established by the Criminal Justice Commission, involved allegations of possible criminal offences very much less serious than those raised by Mr. Lindeberg's allegations. As we understand the situation, at the conclusion of the Carruthers Inquiry, a submission was made by counsel assisting that the evidence may disclose offences under s.155 of the *Electoral Act 1992*, involving the maximum penalty of 85 points units or two years' imprisonment. By contrast, the offences which may arise in respect of Mr. Lindeberg's allegations include offences attracting maximum penalties of seven years' imprisonment (*Criminal Code*, s.132) and three years' imprisonment (*Criminal Code*, s. 129). The analogy is, we think, a relevant one, given that both the Carruthers Inquiry and Mr. Lindeberg's allegations raise the possibility of the commission of criminal offences by persons who were at the relevant time, or subsequently became, Ministers of the Crown.

35.2 Matters canvassed at the Fitzgerald Inquiry, which subsequently gave rise to the prosecution and conviction of Mr. Austin, Mrs. Harvey, and Mr. Lane, involved allegations of misuse of public funds in amounts comparable with, and in some instances less than, the sum of $27,190.00 paid to Mr. Coyne. Again, the analogy is a relevant one, since those payments were made by Ministers of the Crown.

35.3 The so-called "Travel Rorts Inquiry" by the Criminal Justice Commission, relating to the expenditure of Parliamentary travelling allowances, involved – in most

instances – very much smaller amounts than the sum of $27,190.00 paid to Mr. Coyne.

36 In our view, it is appropriate for the Government to have regard to matters which previous governments, and bodies like the Criminal Justice Commission, have regarded as being sufficiently serious to justify the establishment of public inquiries. In a comparative sense, we are of the view that the seriousness of the matters of concern which we have identified, based on Mr. Lindeberg's allegations, is comparable with the seriousness of matters which previous governments, and which bodies like the Criminal Justice Commission, have regarded as sufficiently serious to justify the establishment of public inquiries.

37 Accordingly, we are of the opinion that:

37.1 It is in the public interest of the State of Queensland that a public inquiry be conducted to investigate and report on the matters of concern which we have identified arising out of the allegations made by Mr. Kevin Lindeberg; and

37.2 Such a public inquiry should be established.

COMMENT: Since Messrs. Morris QC and Howard reported to the Queensland Government in October 1996 suggesting that the aforesaid criminal and official misconduct offences may have been committed, we have accessed and/or discovered:

(a) the relevant February/March 1990 Cabinet submissions (to which Mr. Beattie, as Opposition Leader, denied Messrs. Morris QC and Howard access) showing that the same inculpatory state of knowledge and intent was enjoyed by all members of the 5 March 1990 Goss Cabinet when they ordered the destruction of the Heiner Inquiry documents which Messes. Morris QC and Howard found sufficient to conclude that criminal offences may have been committed certain Departmental officers;

(b) evidence showing that at least one Cabinet Minister the Hon Ann Warner knew and/or suspected that the Heiner Inquiry documents contained evidence of the abuse of children at the Centre;

(c) evidence in the form of a public admission in February 1999 on Channel 9's *Sunday* by Goss Environment and Heritage Minister the Hon Pat Comben MP that at the time of ordering the destruction of the Heiner Inquiry documents, ***all*** members of the Goss Cabinet were aware that their contents – in general terms- concerned the abuse of children at the Centre; (See cover story "*Queensland's Secret Shame*")

(d) evidence revealing the Office of Crown Law knowingly assisted in advice of 18 May 1990 to Ms. Matchett to obstructing Mr. Coyne's access right pursuant to *Public Service Management and Employment Regulation 65*. It is an open question going to a charge that this document was withheld from Messrs Morris QC and Howard during their "*on the papers*" investigation, or oddly overlooked;

(e) evidence that when the February of Deed of Settlement was mooted, formulated and settled with the inclusions of the phrase "*...the events leading up and surrounding Mr. Coyne's relocation from the Centre*" that it covered known abuse of children of and on which Messrs. Morris QC and Howard had no knowledge or failed to properly consider respectively.

(f) Evidence strongly suggesting that the Office of Crown Law also knew what the full scope of the term "the events" meant when drawing up the Deed of Settlement with the assistance of certain departmental officials.

(g) The May 1988 pack rape file (and other serious abuse of children) and its serious ramifications on this matter in terms of the shredding of such evidence bringing another layer of criminality on it.

In short, if it was in the public interest in 1996 according the independent opinion of Messrs. Morris QC and Howard to hold a public inquiry into my allegations, then it may be reasonably said with greater strength, certainty and concern in 2004/2005, that it is still warranted save that now it should be in the form of an independent Special Prosecutor.

ATTACHMENT C

Heiner Inquiry: Kevin Lindeberg 28 October 1999 State *Hansard* p4502

Given the enduring relevance of the *Lindeberg Petition* to Your Excellency's consideration of this matter in 2004/2005, now reinforced by the Queensland Court of Appeal's judgement in *R v Ensbey* and new supporting evidence, and in light of the Beattie Government's Position Statement on the affair furnished to me on 17 December 2004, it may be relevant to revisit the Petition's reception on the floor of Parliament when it was tabled in late 1999.

Mr. FELDMAN: I refer the Premier to the *Lindeberg petition* tabled yesterday, and I ask: given that each and every one of us in this place is compromised until the serious allegations contained in the petition are examined, what action will he take to have those allegations investigated properly and restore confidence in the parliamentary process and this Parliament?

Mr. BEATTIE: I thank the honourable member for the question. I must admit that I have not had an opportunity to study the petition in detail. When I have an opportunity, I will study it in detail and examine all of the signatures on it. I understand that there is only one signature on the petition. That is an overwhelming petition—one signature!

Mr. Hamill: Who was it? The Duke of Wellington, perhaps?

Mr BEATTIE: The petition from Mr. Grice had one signatory.

A Government member: That would be a record, wouldn't it?

Mr. BEATTIE: It will go down in the record of this Parliament as the petition with the least number of signatures on it.

Mr. Mackenroth: Maybe someone shredded the other names.

Mr. BEATTIE: I take that very seriously. Were the other names shredded? I want the honourable member to tell this House—

Ms. Bligh: They ate them.

Mr. FELDMAN: I rise to a point of order. In relation to the comment made by the Minister for Families, perhaps we should look in the bowels of the Premier for the rest of those?

Mr. SPEAKER: Order! There is no point of order.

Mr. BEATTIE: Mr Speaker, the Minister for Tourism did a good job of whetting my appetite earlier, and the member for Caboolture just did a good job of getting rid of it. I think I will go without food for the rest of the day. I think the interjection by the Minister for Families was quite appropriate. Someone may have eaten them. We cannot seriously give huge weight to a petition with one signatory, bearing in mind the context of this whole issue. This issue has gone on like Blue Hills—it has gone on and on. But do honourable members know the difference?

Mr. FELDMAN: And it will not go away.

Mr. SPEAKER: Order! The honourable member will resume his seat.

Mr. BEATTIE: The difference between this issue and Blue Hills is that at least Blue Hills was funny sometimes.

Mr. Schwarten: And it had an audience.

Mr. BEATTIE: That is right; it had an audience. There is no audience for this issue. There have been more inquiries into this issue than we have had hot dinners. The answer is :no, no, no, no, no and no. It is done. It is finished. It is over.

Mr. FELDMAN: It was one of the best rating shows on the *Sunday* program.

Mr. SPEAKER: Order! The member for Caboolture! This is not a debate.

Mr BEATTIE: I missed that. This is an historic petition, because it has the least number of signatures. That says it all.

Kevin Lindeberg
11 Riley Drive
CAPALABA QLD 4157
30 December 2004

The Hon Peter D Beattie MP
Queensland Premier and Minister for Trade
Level 15
Executive Building
100 George Street
BRISBANE QLD 4000

Dear Premier

RE: THE HEINER AFFAIR AND RESTORING PUBLIC CONFIDENCE IN THE GOVERNANCE OF QUEENSLAND

I am in receipt of your letter of 17 December 2004 which purports to answer the serious legal and constitutional issues set out, in good faith, in my letters of 15 October and 22 November and various attachments[1].

Beyond the unacceptability of your Government's decision to allow these issues to remain unaddressed by your refusal to appoint an independent Special Prosecutor, your claim that my allegations have been "exhaustively investigated" is simply untrue.

This claim has become a self-serving political mantra based on myth, omissions and half-truths.

You have not addressed the issues factually and legally, in face your sworn duty to uphold the law and govern for all Queenslanders, because you cannot. Clearly, you have been reduced to a tawdry mantra which amounts to nothing of legal or factual substance.

[1] House of Representatives Legal and Constitutional Affairs Committee Report into the Heiner affair (August 2004); Queensland Court of Appeal judgement in *R v Ensbey* 17 September 2004, *The Independent Monthly*, and copy of Question on Notice No 1471 18 November 2004.

I have noted that your Director-General has referred the April 1991 incident to the Crime and Misconduct Commission pursuant to his obligation under the *Crime and Misconduct Act 2002* to refer all suspected official misconduct. Out of courtesy and the right to know, I have informed the family of this fact. What they now do shall be their call.

I also note that the ramifications of the deception covering up the crime of criminal paedophilia at the John Oxley Youth Detention Centre in 1988/89 foisted on *The Courier-Mail* and the public are, as far as you as first Minister of the Crown are concerned, a matter for the newspaper and the former Minister of the Crown. You have taken this view despite the fact that there are still public servants working in your Government who have known about this critical lie covering up serious crime going go criminal paedophilia for 15 years and never said a thing.

I find your position in this matter as unacceptable and contrary to open and accountable government.

Your Government is, in effect, shielding itself from the full force of the law by an empty mantra backed up by your huge majority on the floor of Parliament and a compliant mainstream media. You are abusing your power. I remind you that this power was given to you by the people of Queensland in good faith, and allowed to be exercised over them upon your swearing of an Oath before Her Excellency the Governor that you would respect and uphold the law in all matters.

Regrettably, against the relevant facts and law, I can interpret your letter of 17 December 2004 in no other way than this: You are placing your Government above the law.

I hold true to a different view of public duty and government in the Commonwealth of Australia. My view lines up with respect for the rule of law where no one is above it, and the criminal law is applied equally and consistently, not for and by social or political advantage.

This matter remains unfinished business.

Yours sincerely

KEVIN LINDEBERG

32

Kevin Lindeberg
11 Riley Drive
CAPALABA QLD 4157
4 January 2005

Your Excellency The Hon. Quentin Bryce AO. BA. LLB Qld.
Governor of Queensland
Government House
168 Fernberg Road
PADDINGTON QLD 4064

Your Excellency

RE: THE HEINER AFFAIR AND THE *LINDEBERG PETITION*

For the sake of completeness, please find enclosed a copy of my last letter dated 30 December 2004 to Queensland Premier and Minister for Trade the Hon Peter Beattie MP in response his position statement on the above affair.

Yours sincerely

KEVIN LINDEBERG

Queensland Government

Please quote: 69378/KH10 L&JP

18 JAN 2005

Mr Kevin Lindeberg
11 Riley Drive
CAPALABA Q 4157

Dear Mr Lindeberg

Thank you for your letter of 30 December 2004 concerning the Heiner inquiry and other matters. I have been requested to reply to you on the Premier's behalf.

The Premier has nothing further to add to his response to you of 17 December 2004.

Yours sincerely

Rob Whiddon
Chief of Staff

Executive Building
100 George Street Brisbane
PO Box 185 Brisbane Albert Street
Queensland 4002 Australia
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Kevin Lindeberg
11 Riley Drive
CAPALABA QLD 4157
5 March 2005

Your Excellency The Hon. Quentin Bryce AC
Governor of Queensland
Government House
Fernberg Road
PADDINGTON QLD 4064

Your Excellency

RE: THE HEINER AFFAIR AND THE *LINDEBERG PETITION*

Thank you for your letter of 7 February 2005 in which you acknowledge receipt of my last letter of 4 January 2005, and in which you thank me for keeping you informed.

With due respect, I am being placed at considerable disadvantage in this matter because of the delay being experienced which I must bring to your attention.

You may already be aware that a Question on Notice (No 47) to the Queensland Premier and Minister for Trade the Hon Peter Beattie MP by the Independent Member for Gladstone Mrs. Liz Cunningham MP was put on the Notice Paper on 23 February 2005 relating to this matter. For the record, the Question on Notice is:

> *"With reference to the August 2004 Report of the House of Representatives' Standing Committee on Legal and Constitutional Affairs into the "Heiner Affair" and the Queensland Court of Appeal verdict in R v Ensbey (17 September 2004)—*
>
> *(1) Has Her Excellency the Governor requested a report from the Government on the Heiner matter; if so, when did Her Excellency request this report?*
>
> *(2) When was the report provided by the Government?*

(3) Will a copy of the report and the Governor's letter of request be tabled: if not, why not?

(4) If the report has not been provided to date, why not, and when will it be provided to Her Excellency to allow her to carry out her constitutional duties without hindrance or delay?

I believe that it is fair to suggest that this matter is seen as being serious otherwise you would not have exercised your discretion to be properly consulted by requesting an official report from your Government on the matter.

Obviously, as the Head of the Government in the State of Queensland, I know you are fully aware of your Constitutional responsibilities. Those responsibilities, by the exercise of your discretionary powers in extreme circumstances, oblige you to be the ultimate safeguard of maintaining lawful government in Queensland.

The decision to exercise those powers, and its timing, obviously resides completely within your discretion, but, with respect, it is not reasonably open to a never-ending delay when compelling evidence may exist capable of triggering that discretion otherwise your role as the guardian would be rendered meaningless.

It is my respectful submission that sufficient compelling evidence has been placed before you by me, and is supported by other public, court and parliamentary records.

However, in suggesting that further delay is not warranted, I am disadvantaged by not knowing whether or not your chief adviser has provided you with the report on this matter which you requested of him, potentially some 5 to 6 months ago.

While it is for you alone to exercise all the power and discretion of your Office, I respectfully submit, that as Head of State, I find it hard to believe that your Government would not have provided a report on the Heiner affair by now, or, that you have not insisted on it being provided given the unprecedented gravity of the governance issues embodied in the affair.

KEY GOVERNANCE ISSUES OF CONCERN

In regard to the administration of the criminal law in Queensland and the conduct of certain Crown legal practitioners and elected and/or appointed Crown officials, it is my respectful submission that it is now reasonably open to conclude, on compelling evidence, that:

1. certain Queensland public officials (i.e. Ministers of the Crown, MPs and public servants) collectively have themselves misinterpreted and/or know that the criminal law (i.e. section 129 of the *Criminal Code*) has been erroneously interpreted (in the Heiner affair) which has had the effect of preventing serious criminal and/or disciplinary charges being brought against certain of them (i.e. Ministers of the Crown, MPs and senior bureaucrats) for their shredding-of-evidence conduct, but, in the case of a private citizen (i.e. Pastor Ensbey), some of those same public officials have knowingly applied and/or now know that the same provision was applied correctly to the full extent of the law for the citizen's similar shredding-of-evidence conduct with a jury of his peers in the Queensland District Court and a subsequent Queensland Court of Appeal ruling had him found guilty of the crime of destruction of evidence;

2. certain Queensland public officials (i.e. Ministers of the Crown, MPs and public servants) in respect of Point 1 have abused and continue to knowingly abuse their power and place themselves beyond the reach of the law by not applying the criminal law equally and consistently in a materially similar circumstance;

3. the Executive and Legislative arms of government in the State of Queensland have confirmed by the Cabinet's own shredding-of-evidence action in the Heiner affair - and its preparedness to continue to defend such obstructionist conduct - that both will interfere with the Judicial arm of government to prevent evidence in the Executive's possession and/or control being used in known or reasonably anticipated proceedings by deliberately destroying it - even when knowing that in said records is suspected and/or known evidence concerning the abuse of children in State

care - thereby breaching the doctrine of the separation of powers so fundamental to any civil society governed by the rule of law:

4. certain Crown legal officers (officers of the court) held an allegedly considered impartial view (of section 129) that known evidence required for a judicial proceeding may be deliberately destroyed by Executive Government up to the moment of an expected writ/plaint being filed and/or served when on any reasonable view such *pima facie* obstructionist conduct to cover up known and/or suspected criminal and/or disciplinary activity may, at the very least, invite disciplinary action against any legal practitioner in private practice by relevant statutory authority empowered to enforce professional standards in the public interest in order to maintain public confidence in the administration of justice.

5. certain Crown legal officers (officers of the court) held an allegedly considered impartial view (of section 129) - and in some cases, actioned same by deed and/or sanction - that known evidence required for a judicial proceeding, and known to be discoverable pursuant to the Rules of the Supreme Court of Queensland[1] upon the commencement of the expected proceedings, may be deliberately destroyed up to the moment of an expected writ/plaint being filed and/or served thereby knowingly scandalizing the discovery/disclosure Rules when on any reasonable view such *prima facie* obstructionist or contempt conduct may, at the very least, invite serious disciplinary action against any legal practitioner in private practice by relevant statutory authority empowered to enforce professional standards in the public interest in order to maintain public confidence in the administration of justice: and

6. the Queensland Executive, together with the CJC/CMC, are claiming that the disposal authority pursuant to section 55(1) of the *Libraries and Archives Act 1988* – now the *Public Records Act 2001* – may override section 129 of the *Criminal Code* thereby affording another reason for finding no official misconduct and/or criminality in respect of the

[1] Order 35 Rule 28 of the Rules of the Supreme Court of Queensland.

destruction-of-evidence conduct in this matter: and, in respect of the CJC, the Commission has declared that the State Archivist[2] was ***not obliged*** to take into account the "legal value" of public records when appraising said records for disposal/retention purposes,[3] and that there was no offence of misleading the State Archivist under the *Libraries and Archives Act 1988*.[4]

7. the *ex gratia*/special payment provisions of the *Financial Administration and Audit Act 19*[77] may be used by Ministers of the Crown and Departmental Chief Executive Officers for whatever purpose so long as they remain within the spending limits applicable to them, and may be disbursed under the shield of a Deed of Settlement requiring silence on the parties about known certain conduct, even involving suspected official misconduct and/or possible criminality concerning the abuse of children in the care and custody of the State of Queensland.

Adding to the gravity of the aforesaid governance issues of concern, as part of a Crown prosecutor's duty to act "*...fairly and impartially, and to assist the court to arrive at the truth*", and in respect of any decision to prosecute or not to prosecute, prosecution by the Crown of any and all offenders must be based upon the evidence, the law and prosecuting guidelines, and must never be influenced by:-

(a) race, religion, sex, national origin or political views;

(b) personal feelings of the prosecutor concerning the offender or the victim;

(c) possible political advantage or disadvantage to the government or any political group or party; or

(d) *the possible effect of the decision on the personal or professional circumstances of those responsible for the prosecution.*[5]

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[2] It is a matter of record that the CJC *has never questioned* the State Archivist at any time regarding this matter despite claiming my allegations have been investigated to "*the nth degree*."

[3] See Senate *Hansard* p108 23 February 1995 Senate Select Committee on Unresolved Whistleblower Cases.

[4] [4] On the papers, the State Archivist ***was not informed*** by the Executive on 23 February 1990 that the Heiner Inquiry documents were being sought as evidence in an anticipated judicial proceeding when her permission was sought to destroy the records despite knowing their legal-evidentiary status.

[5] 14 November 2003 Guidelines of the Office of the Director of Public Prosecutions under Section 11(1)(a)(i) of the *Director of Public Prosecutions Act 1984*. Also see: http: www.justice.qld.gov.au/odpp/home.htm

On the face of the self-serving double standards used in this matter advantaging your Government over the people in regard to equality before the (criminal) law, it is open to conclude that public confidence in the Crown's prosecuting authority cannot be guaranteed.

Under these extraordinary circumstances, may I respectfully cite the expert opinion of former Tasmanian Chief Justice and former Tasmanian Governor the Hon Sir Guy Green on the role of the Governor which may assist in your unprecedented deliberations relevant to the Heiner affair. In his 1999 Sir Robert Menzies Oration entitled *"Governors, Democracy and the Rule of Law"*[4] the Hon Sir Guy Green relevantly said this:

> *"...the principle of responsible government is not the sole or even the main principle upon which our system is founded. An even more important principle is the rule of law."*

He went on:

> *"...It is certainly the case that if one has regard to the principles of responsible government alone it can be persuasively argued that a Governor must always follow the advice of the Ministry. But the application of the principles of the rule of law leads to a different conclusion. The rule of law also imposes an obligation upon a Governor to see that the processes of the Executive Council and the action being taken are lawful and to refuse to act when they are not. That duty is not confined to refusing to be a party to an action which is unlawful in the sense of being contrary to say the criminal law but includes acts which are beyond power or acts which are within power but are being exercised irregularly as was the case for example in FAI v. Winneke"* (My underlining)

In this matter your Government is quite happy to accept the findings of no wrongdoing by the Criminal Justice Commission[5] and Office of the Director of Public Prosecutions when knowing that both Crown law-enforcement authorities have based their findings on an erroneous interpretation of section 129 of the *Criminal Code*. **This is beyond this dispute**.

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[4] http://www.unimelb.edu.au/speeches/sirguygreen99oct29.html

[5] First promulgated by CJC officers Messrs. Noel Nunan and Michael Barnes in January 1993, and subsequently endorsed by Messrs. Mark Le Grand, David Bevan, Frank Clair, Rob O'Regan QC and Brendan Butler SC

As a lawyer yourself, well experienced in criminal and constitutional law, you have the professional advantage - apart from other advice you may have sought and/or obtained on this matter - of understanding the legal strength of my position. It enjoys the unanimous support of the Queensland Court of Appeal in *R v Ensbey*.

The Right Hon Sir Ninian Stephen in a speech on the rule of law in November 1999 for the Lawyers' Lecture for the St James Ethics Centre, said this which I suggest is highly relevant here:

> *"...the rule of law is in effect an institutional morality which requires certain ethical values to be observed by those who govern and those who administer public affairs. These values are very general ones and clearly enough include, in most general terms, equality of treatment of citizens in public affairs, procedural fairness and a requirement that governments operate under and act within the established law, exercising their powers for lawful purposes."*

Beyond the unacceptable immoral position in which your Government is happy to place itself as outlined in Point 1 above, we know that this matter concerns the abuse of children in State care. It extends from physical, psychological abuse to the unresolved sexual assault and pack rack of an 14-year-old indigenous female inmate; and, more recently, to proof from an answer provided to Parliament by your chief adviser showing that an untruthful public statement was issued (wittingly or unwittingly) in March 1989 by a former Minister of the Crown concerning the victim's age which deceived the public. In a letter to me, your chief adviser has dismissed as irrelevant in 2005 this serious deceptive conduct despite some public officials involved at the time still working in Queensland's public administration.

On advice, each potential and/or *prima facie* constitutional crisis carries its own features and dynamics relevant to the jurisdiction within the Commonwealth of Australia where it may unexpectedly surface. The Heiner affair is no different, and, in being addressed, it may not be made strictly subject to the conduct of earlier incidents such as the Whitlam and Lang Dismissals.

Given that the reserve powers of the Crown in Queensland rest entirely within "your discretion" – and are not justiciable – the aforesaid incidents may act as a guide, not a determinant.

All key public office holders in this affair, as it is currently being played out, have sworn an Oath or Affirmation to the Queensland Crown[8] to carry out their public duty according to law[9], without fear or favour. Some relevant laws requiring obedience are the *Criminal Code*, the *Crime and Misconduct Act 2001*, and *Constitution of Queensland Act 2001*.

Under Queensland law, it is plainly available for you to reach "a suspicion" that possible official misconduct and/or criminality exists in this matter, as such conduct exists "at law". When and if a reasonable suspicion of such conduct existing has been reached in your mind concerning the conduct of your Government in this matter - which has not been properly addressed and is knowingly being continued in this state - it may trigger your undoubted authority to act, pursuant to your reserve powers, to restore public confidence in our democratic system by encouraging your chief adviser to appoint a Special Prosecutor, and, if he declines, your *Constitutional* discretion, as Head of Government on behalf of the Queensland Crown, allows you to act as far as necessary pursuant to sections 34, 35 and 43 of the *Constitution of Queensland Act 2001*.

With due respect, I submit that the key triggering element of your reserve powers' discretion in this matter, in the wake of *Ensbey*, the Report of the House of Representatives Standing Committee on Legal and Constitutional Affairs into the Heiner affair and other inculpatory and/or disturbing facts, is the January 1997 DPP's advice on the findings and recommendations of the October 1996 Morris/Howard Report.

I have the advantage of having read the advice on 23 September 2003.

In earlier submissions, I have respectfully suggested that you might request access to this advice from either your chief adviser or the Leader of the Opposition and Shadow Minister for Justice and Shadow Attorney-General the Hon Lawrence Springborg MP. Notwithstanding that ought to be the preferred access-route, I point again to my submission of 30 December 2004 (pp16-17) referring in particular to the section headed of "Office of the Information Commissioner."

You may have access to the Information Commissioner's public decision relating to my freedom of information application seeking access the DPP's January 1997 advice. (See Applications 493/03 & 247/04). Deputy Information Commissioner Rachel Moss confirms in this decision that

[8] Sections 31 (1) (b) and 43 (6) of the *Constitution of Queensland Act 2001* regarding Your Excellency and Ministers of the Crown respectively.
[9] Section 33 of the *Constitution of Queensland Act 2001* - General Power of Governor

the interpretation of section 129 of the *Criminal Code* offered by the Office of the Director of Public Prosecutions is erroneous and contrary to judicial ruling.

It is this incorrect interpretation which your Government is knowingly happy to accept for itself, but which it has knowingly rejected when concerning the similar destruction-of-evidence conduct by a Queensland citizen, namely (former) Pastor Douglas Ensbey.

Under these circumstances I respectfully submit that the ruling by Deane J in *A v Hayden*[10] applies:

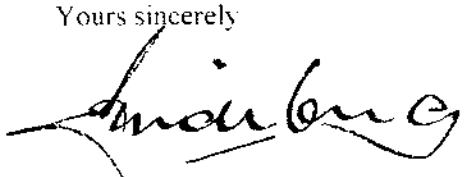
> *"...neither the Crown nor the Executive has any common law right or power to dispense with the observance of the law or to authorise illegality."*

When and if further new evidence comes to my attention, I shall obviously provide it for your consideration. However, I humbly submit that you are in a position to make a decision now and ought not be delayed any further, not unless your Government is yet to deliver the report you requested.

I am confident that your Government cannot provide you with any report which properly and legally addresses the issues of concern here. I am assuming here that your Government will repeat the same response in its report to you as it provided to me on 17 December 2004, and therefore, your Government shall be relying on the empty mantra that my allegations have been exhaustively investigated, and no wrongdoing found. This view is insupportable.

Your Government shall be engaging in a game of bluster and bluff with the proper governance of Queensland in the balance, and, again, I humbly submit, you simply cannot – and no doubt would not - play that game because the rule of law must prevail over Executive decree if democratic government is to survive in Queensland.

Yours sincerely



KEVIN LINDEBERG

[10] *A v Hayden* (1984) CLR 532

GOVERNMENT HOUSE

35

7 March 2005

Mr K. Lindeberg
11 Riley Drive
CAPALABA QLD 4157

Dear Mr Lindeberg

Re: The Heiner Affair and the Lindeberg Petition

Her Excellency has asked me to acknowledge receipt of your letter of 5 March 2005 and to advise you that we have not received advice from the Attorney-General in relation to your request.

We will advise you of the outcome as soon as possible.

Yours sincerely

Annette Bastaja
Official Secretary

lbc

Kevin Lindeberg
11 Riley Drive
CAPALABA QLD 4157
23 March 2005

Your Excellency The Hon. Quentin Bryce AC
Governor of Queensland
Government House
Fernberg Road
PADDINGTON QLD 4064

Your Excellency

RE: THE HEINER AFFAIR AND THE *LINDEBERG PETITION*

Thank you for your letter of 7 March 2005 in which you acknowledge receipt of my letter of 5 March 2005.

I note that you are ***still waiting*** for a report on the Heiner affair from your Government requested pursuant to your constitutional right to be consulted. Assuming you are not awaiting another report with further and better particulars after an initial report was supplied, it appears to be close on 6 months since you made the initial request.

For myself, as a citizen of Queensland committed to constitutional government and the rule of law, I find the fact that your Chief Adviser has not responded yet to be insulting to your Office and a dereliction of duty, especially as your Government informed me on 17 December 2004 that it intended to do nothing because the matter had been "*...exhaustively investigated.*" The Queensland Premier is happy to accept the Criminal Justice Commission's finding of no wrongdoing despite knowing that its clearance is based on an erroneous interpretation of section 129 of the *Criminal Code*. He also knows that the Queensland Government has ***since*** applied a different interpretation of that section to itself as opposed to a common citizen of the State.

I respectfully submit that the delay in this matter gives rise to issues of considerable concern going to the heart of the proper governance of Queensland.

As the *Constitutional* Head of Government for the State of Queensland as the Queensland's Crown representative, you need only ask ***once*** of your Government on any matter upon which you want to be consulted and informed. Having asked once to be informed, it is the sworn duty of your Ministers of the Crown to comply - swiftly, accurately and fully.

Delay of this nature, on all the parties involved, places Queensland's constitutional government itself in unmitigated jeopardy.

The unacceptable prolonged delay which Your Excellency is experiencing is open to be seen as an affront to your Office by your own Government which, I respectfully submit, is unbelievable and untenable, and, with great respect, ought not be allowed to persist.

I note in your letter of 7 March 2005 that the Queensland Attorney-General and Minister for Justice the Hon Rod Welford MP is responsible for providing the report on behalf of your Government.

Notwithstanding material already in your possession which covers all related legal points, in the interests of your constitutional decision-making process, it is appropriate that I should make the following observations so that any decision you ultimately make is safe and well founded:

1. Should your Government in the following days provide a report - before the Question on Notice put by Mrs. Liz Cunningham MP on 23 February 2005 is required to be answered in State Parliament on 29 March 2005 - which the Queensland Solicitor-General Mr. Walter Sofronoff QC may have authored or offered advice on, it would not be free from a conflict of interest because he acted as senior counsel in this matter for the Criminal Justice Commission before the Senate Committee of Privileges[1] in 1996. This is not to suggest any impropriety on his part but to alert you to a clear conflict of interest which obviously would and/or should disqualify him from advising your Office.

2. Should your Government provide a report authored by or involving advice from the Office of Crown Law, then it would be open to a reasonable disqualifying

[1] See 63rd Report of the Senate Committee of Privileges – December 1996

charge of taint and conflict of interest because of this Office's highly questionably role in this affair throughout its life.

3. Your Government's Attorney-General the Hon Rod Welford MP authorised the appeal to the Queensland Court of Appeal on 25 March 2004 against leniency of sentence in *R v Ensbey* because of the seriousness of the crime of destroying evidence against the administration of justice in which the (proper) interpretation of section 129 of the *Criminal Code* carried it forward with demur from all parties, including Davis, Williams and Jerrard JJA.

It is beyond dispute that your Government knows that an erroneous interpretation of section 129 of the *Criminal Code* allowed no criminality to be found in the shredding of the Heiner Inquiry documents, notwithstanding other breaches of provisions of the *Criminal Code*, *Crime and Misconduct Act 2001* may also be open.

The criminal law only carries a moral and constitutional basis of authority and respect in a democracy if it is applied equally by government against all citizens who transgress it. That is government by the rule of law. If, however, the law becomes an instrument of sectional application by government for government, such conduct is unfair and oppressive and sets government in conflict with democracy itself and the rule of law. That is tyranny.

Consequently, as first Law Officer of the State of Queensland (i.e. of the Queensland Crown), it would not be open for the Attorney-General in any credible report to have the same criminal law provision being applied in a known contradictory/wrong manner for destruction-of-evidence conduct engaged in by Queensland Ministers of the Crown and senior bureaucrats to advantage them by offering a clearance to their *prima facie* wrongdoing, while, at the same time, applying the same criminal law provision properly against the people for the same conduct to full extent our system of justice allows.

Once the double standards are known - as they undoubtedly are here - then appropriate remedial action must take place expeditiously to restore public confidence in our system of justice if the rule of law is to be respected.

Failure on the part of your Government to act under such circumstances, will be to knowingly place itself outside the law and into fundamental conflict with constitutional government and the Queensland Crown for its own sectional interests.

In his response to me on 17 December 2004 on the same facts before you, that is what your Chief Adviser appears to have done.

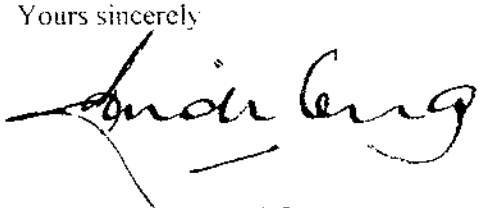
Notwithstanding that it is right and proper for your Government to be given every opportunity to explain itself in a report to Your Excellency – although it cannot be unreasonably delayed in its coming or empty in its content - I am sure that it is not lost on Your Excellency that any response, factually or legally, can hardly be anything but self-incriminating, especially in the wake of *Ensbey*.

Consequently, it is open to conclude that your Government appears to be delaying the moment of truth in having to recognise that this long cover-up of mates looking after mates has run its course. The Queensland Crown, through your good Office, has now intervened and is demanding accountability for all the actions of government in this affair to the demands of the rule of law and adherence to the Oath of Office sworn before you by your Ministers which permitted the power of the people, vested in the Queensland Crown, to be conditionally exercised by them over the people so long as they remained within the law.

In the extreme circumstances which this affair represents to constitutional government in Queensland, there appears to be no doubt at law that the reserve powers of the Queensland Crown permit you to act on your own initiative to restore public confidence in good government.

I trust that this letter assists you in fulfilling your *Constitutional* Oath of Office "*...to duly and impartially administer justice in Queensland*"[2] as your skill and conscience see fit.

Yours sincerely



KEVIN LINDEBERG

[2] Section 31 of *the Constitution of Queensland* 2001.

Kevin Lindeberg
11 Riley Drive
CAPALABA QLD 4157
3 April 2005

Your Excellency The Hon. Quentin Bryce AC
Governor of Queensland
Government House
Fernberg Road
PADDINGTON QLD 4064

Your Excellency

RE: THE HEINER AFFAIR AND *THE LINDEBERG PETITION*

Thank you for your letter of 23 March 2005 in which you acknowledge receipt of my letter of the same date.

I draw your attention to the Question on Notice No 47 answered on 29 March 2005 by the Queensland Premier and Minister for Trade the Hon Peter Beattie MP (See Attachment A). Due to its contents, I seek to make the following observations.

Notwithstanding proper limitations placed on public knowledge concerning the content of correspondence which flows between your Office and that of your Government, I am astounded to now know, in light of the above answer, the true extent of the delay period Your Excellency has been experiencing in seeking a report on this affair. It now amounts to some 18 months.

What makes this even more disturbing to constitutional government and proper respect to Your Excellency, as the representative of the Queensland Crown, by your Government is that I, as a mere citizen, have been told what your Government's official position is on the same facts on 17 December 2004, and yet, Your Excellency is kept waiting. Under constitutional government, requests from the Head of State of Ministers of the Crown should be handled expeditiously. It is not happening here.

In my opinion you exercised your constitutional discretion correctly to be fully informed of this matter after receiving my letter of 13 October 2003. However, it becomes more difficult to accept that it is reasonable that you should have been required to wait to be informed until *R v Ensbey* was settled.

Legally, the interpretation of section 129 of the *Criminal Code* did not need *Ensbey* before its purpose could be properly understood. Its force and clear understanding was within the *Criminal Code* itself, and in *R v Rogerson* (1992) 174 C.L.R. 269, R v Murphy (1985) 158 C.L.R. 596, *R v Selvage & Anor* [1982] 1 All E.R. 96, *R v Bailey* [1956] N.I. 15 at p16, *R. v Thomas* [1979] Q.B. 326 at p300, and *R v Vreones* [1891] 1 QB 360. All these authorities ***predate*** the Criminal Justice Commission's (CJC) official finding of 20 January 1993 in this matter.

Nevertheless, the Queensland Court of Appeal settled *R v Ensbey* on 17 September 2004, and any appeal rights to the High Court of Australia have well and truly lapsed for all parties involved. The Queensland Court of Appeal unanimously endorsed all my points of law. It emphatically made clear that the term "judicial proceeding" ***was never open to be fettered*** by the simple reading of the provision itself, and the wording of the sister-provision of "perjury." This erroneous fettering has been relied on by the CJC and Queensland Government in this affair to prevent charges being brought.

So fundamental and elementary is this statutory interpretation to the proper application of the criminal law, let alone the plain reading of the relevant provisions, that the erroneous interpretations of sections 119 and 129 of the *Criminal Code* by the public officials involved in this matter suggests something beyond implausible incompetence on their part, which, as a direct consequence, just happened to advantage the Executive over the people in materially similar destruction-of-evidence conduct.

My letter of 13 October 2003 has been confirmed by subsequent events laid out in my 2004 and 2005 correspondence to your Office and Premier Beattie, including the August 2004 Report into the Heiner affair by the Federal Government Standing Committee on Legal and Constitutional Affairs.

In other words, your initial concern of 21 October 2003 in itself has been vindicated, but, disturbingly, your Government appears not prepared to address the facts and the law because of

the potential legal and constitutional ramifications it faces itself. Your Government's only defence weapon now appears to be delay.

I note that Queensland's Attorney-General and Minister for Justice the Hon Rod Welford MP is currently considering advice from the Crown Solicitor on this matter. Accordingly, I wish to make two observations.

First, while I do not infer any impropriety or lack of professionalism on the part of the Crown Solicitor, Mr. Conrad Lohe, I respectfully submit that it is simply not possible to differentiate between the Office of Crown Law and the post of Crown Solicitor in this matter because of what has gone before. At the very least, a perception of apprehended bias reasonably exists.

Under these extraordinary circumstances, for the sake of protecting the integrity of the Queensland Crown and your good Office, it is essential that all information from your Government, upon which a safe decision may be drawn, is free from taint or self-interest especially when the issue concerns possible criminal conduct and/or official misconduct involving the governance of Queensland. Accordingly, advice on this matter emanating from the Crown Solicitor may have to be seen as tainted, and ought to be handled cautiously, or, even rejected.

Second, I am aware that the Attorney-General is the first law officer of the Queensland Crown. He is also the guardian of the public interest and of the administration of justice. In light of the answer to the Question on Notice, I must add to my known concerns about the role of Attorney-General Welford in this matter.

I point you to a letter dated 20 July 2004 (See Attachment B) from Attorney-General Welford to certain e-petitioners who sought the appointment of a Special Prosecutor to address the Heiner affair (No 264-03).[1] Of relevance, he said this on behalf of your Government in dismissing the e-petitioners' plea:

> *"...The petition also asks that the House take all steps to ensure the appointment of an independent Special Prosecutor to investigate matters relating to the so-called "Heiner Affair". The "Heiner Affair" has already been the subject of*

[1] http://www.parliament.qld.gov.au/EPetitions_QLD/cgi-bin/Petitions.cgi?PetNum=264&PetType=1

numerous investigations and inquiries, including by the then Criminal Justice Commission. A former Director of Public Prosecutions advised that no charges could be laid."

When Attorney-General Welford dismissed that plea because the CJC and a former Director of Public Prosecutions had advised that no charges could be laid, it is open to conclude that he ***knew***, at the very least, that the CJC's advice was based on an erroneous interpretation of section 129.

Earlier, on 29 March 2004, he had appealed the leniency of the sentence against convicted Pastor Ensbey for his destruction-of-evidence conduct to the Queensland Court of Appeal on the back of "my" correct interpretation of section 129 which the same Queensland Government law-enforcement authorities constantly said was incorrect regarding those involved in the shredding of the Heiner Inquiry documents.

Now, in April 2005, Attorney-General Welford, and the Crown Solicitor, ***know*** that then Director of Public Prosecutions Mr. Royce Miller QC erroneously interpreted section 129 in his 6 January 1997 advice while barristers Morris QC and Howard in their October 1996 Report had it correct and suggested that charges could be brought accordingly. *Ensbey* has now sealed everything.

The same facts still under consideration by Attorney-General Welford, have already been addressed by the Queensland Government in Premier Beattie's reply to me on 17 December 2004 in which he indicated that a Special Prosecutor would not be appointed. In declaring this position, Premier Beattie ***was fully aware*** that the CJC and DPP's findings were based on an erroneous interpretation of section 129 of the *Criminal Code*.

It is hard to believe that Premier Beattie did not first consult Attorney-General Welford before replying to me on 17 December 2004 because the issues involved the administration of justice.

As the first law officer of the State of Queensland, it is clear that Attorney-General Welford is duty bound to apply the law properly, predictably and equally. He must not act in a politically partisan manner if the rule of law is to prevail. Equally, the administration of justice ought never be unreasonably delayed. If he fails in his sworn duty in this matter, then, as the last resort, the remedy appears to rest with your Office.

Under these circumstances, I respectfully submit that further delay is unwarranted and untenable. Delay in this context may be considered a deliberate contempt of the Queensland Crown and of your Office because it appears that your Government knows that its position in this matter is indefensible. It cannot be justified nor explained at law.

As the representative of the Queensland Crown and Head of State, I respectfully submit that your constitutional authority does not oblige you to tolerate any further delay from your Ministers in this matter. Ample time has been accorded them to comply with your request. A serious breakdown in law and order is plain to see. Justice is being delayed for all concerned.

I respectfully submit that Queensland's administration of justice is being brought into unacceptable disrepute by your Ministers' inaction out of their own self-interest, and consequently, the remedy plainly rests within your constitutional discretion and good conscience.

Yours sincerely

KEVIN LINDEBERG

3 April 2005

ATTACHMENT A

Question on Notice

No. 47

Asked on 23 February 2005

MRS CUNNINGHAM asked the Premier and Minister for Trade (MR BEATTIE) -

QUESTION:

With reference to the August 2004 Report of the House of Representatives' Standing Committee on Legal and Constitutional Affairs into the "Heiner Affair" and the Queensland Court of Appeal verdict in *R v Ensbey* (17 September 2004)—

(1) Has Her Excellency the Governor requested a report from the Government on the Heiner matter; if so, when did Her Excellency request this report?

(2) When was the report provided by the Government?

(3) Will a copy of the report and the Governor's letter of request be tabled; if not, why not?

(4) If the report has not been provided to date, why not, and when will it be provided to Her Excellency to allow her to carry out her constitutional duties without hindrance or delay?

ANSWER:

(1) Her Excellency requested a situation brief on the Government's position with respect to the so-called "Heiner Affair" on 21 October 2003 in response to correspondence from Mr Kevin Lindeberg of 13 October 2003.

(2) The request was referred to the Attorney-General for advice on 28 October 2003. A brief was delayed pending the verdict in *R v Ensbey* and to allow for the subsequent assessment of the implication of that case. The Attorney-General is currently considering the Crown Solicitor's advice on this issue with a view to providing a brief to Her Excellency.

(3) There is no intention to table the brief to the Governor nor the Governor's original request. There is no constitutional provision or convention which would necessitate such a tabling. It is a matter for Her Excellency as how she responds to Mr Lindeberg upon receipt of the brief from the Government.

(4) The report should be provided to Her Excellency in the near future.

-oOo-

Kevin Lindeberg
11 Riley Drive
CAPALABA QLD 4157
12 April 2005

Your Excellency The Hon. Quentin Bryce AC
Governor of Queensland
Government House
Fernberg Road
PADDINGTON QLD 4064

Your Excellency

RE: THE HEINER AFFAIR AND *THE LINDEBERG PETITION*

As part of my undertaking to keep your Office informed, please find enclosed a copy of my paper delivered to the 17th Annual Conference of *The Samuel Griffith Society* on Saturday, 9 April 2005 at the Greenmount Resort Coolangatta.

I was invited by the Society to deliver a paper on the Heiner affair in the session *"The Constitutional State of Queensland."*

For your information, a copy of the program may be found on the Society's webpage.

Yours sincerely

KEVIN LINDEBERG

Kevin Lindeberg
11 Riley Drive
CAPALABA QLD 4157
29 April 2005

Your Excellency The Hon. Quentin Bryce AC
Governor of Queensland
Government House
Fernberg Road
PADDINGTON QLD 4064

Your Excellency

RE: THE HEINER AFFAIR AND *THE LINDEBERG PETITION*

As part of my undertaking to keep your Office informed, I wish to place before you new relevant material pertinent to the above matter so that you may carry out your Constitutional function safely.

The material is as follows:

1. A facsimile sent on 13 October 2003 to Queensland's Director of Public Prosecutions Ms. Leanne Clare from Mr. Douglas Roy Ensbey's legal team in respect of *R v Douglas Roy Ensbey*;

2. Copy of letter dated 6 November 2003 from Queensland's Director of Public Prosecutions Ms. Leanne Clare to Dibbs Barker Gosling addressing the contents of the 13 October 2003 facsimile in respect of *R v Douglas Roy Ensbey*. (A copy is enclosed).

3. Legal opinion dated 15 April 2005 by President of *The Samuel Griffith Society* the Right Honourable Sir Harry Gibbs GCMG AC KBE, former Chief Justice of the

High Court of Australia, on the contents of my paper[1] on the "Heiner affair" to be published in the Society's 2005 "record of Proceedings" of its 17th Annual Conference.

This year, on 6 April, Mr. Ensbey provided me with certain material (See above Points 1 & 2) relevant to his criminal trial, waiving associated legal professional privilege.

Of relevance, at Point 4 on pages 7 and 8 in the submission, Mr. Ensbey's counsel cited the opinion of 23 November 1995 provided by (then) Queensland Director of Public Prosecutions Mr. Royce Miller QC to then Shadow Minister for Justice and Attorney-General Mr. Denver Beanland.

Mr. Miller QC's advice addressed the shredding of the Heiner Inquiry documents as part of the Heiner affair on the relevance of section 129 to the facts surrounding the destruction of that evidence when knowing that the documents were required for a known foreshadowed judicial proceeding.

Mr. Miller QC was responding to Mr. Beanland's citing of advice offered by my (then) counsel Mr. Ian Callinan QC on 7 August 1995 to the Senate Select Committee on Unresolved Whistleblower Cases in respect of the Heiner affair. In Mr. Callinan QC's advice, he opined that it was open to conclude that persons involved in the order to destroy the Heiner Inquiry documents to deliberately prevent their use as evidence in a judicial proceeding may be in breach of section 129 of the *Criminal Code*, or, in the alternative, section 132 of the *Criminal Code*.

Mr. Callinan QC cited *Rogerson* as the leading authority. A copy of his advice is available if required. Mr. Callinan QC opined that section 129 ***did not require*** a judicial proceeding to be on foot as a trigger. He also advised that the CJC's strict, narrow interpretation of "judicial proceeding" (i.e. fettering it to exclude a judicial proceeding not yet on foot but within the knowledge, contemplation or legal accountability of the doer) was too significant to ignore.

In dismissing Mr. Callinan QC's interpretation of sections 129 and 119, Mr. Miller QC advised that the Form of the Indictment (No 83) dictated the meaning of the provision. With due respect

[1] Supplied by letter dated 12 April 2005

to Mr. Miller QC, this is unquestionably wrong at law as *R v His Honour Judge Morley and Mellifont* [1990]1 Qd R 54 at 56 had earlier ruled.

You will note that Ms. Clare rejected the application to have Pastor Ensbey relieved of the charge under section 129 after carefully considering the submission's contents. She suggested that the ambit of section 129 was sufficiently wide to capture his destruction-of-evidence conduct ***before*** the relevant judicial proceeding had commenced, and that the wording of the Form supported the charge going forward.

Like Mr. Callinan QC before, she cited *Rogerson* as the leading authority.

It is now a matter of judicial record that Pastor Ensbey's shredding conduct was successfully prosecuted by the State under section 129. In short, Ms. Clare was right, and Mr. Miller QC was wrong.

The Ensbey counsel submission of 13 October 2003 to Queensland's Director of Public Prosecutions, Ms. Clare, is also available on certain assurances that the name of the sexual assault victim will be treated with appropriate discretion.

Consequently, it may be said with absolute certainty that when your Government prosecuted one of Queensland's citizens, namely Pastor Douglas Ensbey, it ***knew*** that certain Ministers of the Crown and senior bureaucrats escaped the same fate for the same destruction-of-evidence conduct in this affair by the same criminal provision (i.e. section 129 of the *Criminal Code*) being interpreted differently and incorrectly.

In respect of the enclosed Right Honourable Sir Harry Gibbs' opinion, it speaks for itself. You will note that he suggests that at least a *prima facie* breach of the law (i.e. section 129) exists in this matter.

I note that your Government has recently appointed prominent barrister Mr. Anthony Morris QC to head the commission of inquiry into events surrounding the practice of Dr. Jayant Patel – the so-called "Dr. Death" - at the Bundaberg Base Hospital.[2]

In announcing Mr. Morris QC's appointment to head this most important inquiry to restore public confidence in our health system which may see criminal charges being recommended against certain persons, Queensland Premier the Hon Peter Beattie publicly lauded Mr. Morris QC's much respected standing in the legal world and his unquestioned integrity and independence. I do not cavil with that description.

I respectfully remind you that it is the same Mr. Morris QC who inquired into my allegations in 1996. It is the same Mr. Morris QC:-

- who found that it was open to conclude that serious criminal charges could be laid against certain persons associated with the shredding of the Heiner Inquiry documents and related matters:[3]
- who recommended the holding of a public inquiry because the issues involved in this matter were far more serious than the allegations which brought the famous Fitzgerald Commission of Inquiry into existence in 1987; and
- whose findings of potential criminality was based primarily on section 129 of the *Criminal Code* wherein he correctly argued that a judicial proceeding did not have to be on foot ***before*** it could be triggered.

It is the same Mr. Morris QC who said these words in his report at page 215:

> *"...Whilst we are of the view that the events which occurred between January 1990 and February 1991 involve 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*

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[2] http: www.smh.com.au/news/National/Former-Skase-lawyer-to-head-Dr-Death-inquiry/2005/04/26/1114462041612.html?oneclick=true; And http: www.theaustralian.news.com.au/common/story_page/0,5744,15098622%255E2702,00.html

[3] See attachment *The Courier Mail* 29 April 2005 "***Race to protect Dr Death papers***" by Hedley Thomas

by senior public officials cannot go undetected. Even the Criminal Justice Commission's strongest supporters, like Mr. Clair and Mr. Beattie, must now have cause to reconsider their confidence in the exhaustiveness - to say nothing as to the independence - of the Commission's investigation into this matter."

Mr. Morris QC's findings and recommendations were subsequently undermined by then DPP, Mr. Royce Miller QC, when he erroneously interpreted section 129 in his January 1997 advice to the Borbidge Queensland Government. ***I know this to be true because I have read the advice.***

I have earnestly suggested that this advice be made public, as indeed did the House of Representatives Standing Committee on Legal and Constitution Affairs in its August 2004 report into this matter.

In light of these indisputable facts, the Morris/Howard Report findings and recommendations must arguably remain "unfinished business" in themselves as they stood at October 1996. However, in 2005, the governance issues associated with this unresolved affair have become far more grave and widespread.

Now we know, at the time of the order to shred, those involved ***knew*** that the Heiner Inquiry contained evidence about the known and/or suspected abuse of children in the care and protection of the State which, by any reasonable duty imposed on Ministers of the Crown and Crown officials involved, should have been referred to the police or CJC for independent examination, or retained for related judicial proceedings.

It is now beyond dispute that your Government and your Office know that the clearance of no wrongdoing in this matter stands on the law being erroneously applied.

Furthermore, on the face of compelling evidence in your possession and your Government's, it is open to conclude that the law may have been deliberately misinterpreted to advantage the Executive by preventing serious *prima facie* criminal conduct being put before the courts.

That is, section 129 was never properly open to such an interpretation otherwise it would have invited a "world without evidence."

It follows that it is reasonably open to suggest that a conspiracy to pervert the course of justice may have been engaged in by certain public officials, some of whom now hold judicial office, and is being knowingly continued by your Government to advantage itself while, at the same time, your Government properly applies the same criminal law to its full extent against the people for known similar destruction-of-evidence conduct, and continues to delay, for over 18 months, its report to you of facts of which it is also in full possession.

CONCLUSION

With great respect, I reiterate my concern expressed in correspondence you already hold. Your Government is delaying its report on this matter to your Office because it cannot explain its own conduct without incriminating itself if the law is to be applied equally in accordance with your Ministers sworn duty to obey the law in all things at all times.

I note that Queensland's Attorney-General the Hon Rod Welford is purportedly considering a report on the matter provided by the Crown Solicitor. With respect, it ought not be overlooked that both public officials are officers of the court and obliged to obey the law. This duty also includes respecting the Rules of the Supreme Court of Queensland and legal professional standards. *Ensbey's* judgement and knowing about the erroneous interpretation previously applied to my matter by Mr. Miller QC leaves no room whatsoever other than to reach the position expressed by the Right Honourable Sir Harry Gibbs. Mr. Welford is the first law officer of Queensland, and is obliged to protect the administration of justice. In carrying out that duty, he is obliged to apply the law equally without fear or favour otherwise he would be in fundamental breach with his Oath of office.

My position at law in this matter is unassailable.

To repeat, over and above the Queensland Court of Appeal ruling in *R v Ensbey*, the Right Honourable Sir Harry Gibbs, after examining my paper to *The Samuel Griffith Society* that sets forth the same arguments in this letter and in others you already hold, has advised that the position embraced by Queensland Government and Criminal Justice Commission in respect of section 129 was erroneous, and that a *prima facie* breach of the criminal law exists concerning those involved in the shredding of the Heiner Inquiry documents. It follows that if the criminal law is breached, a remedy is required if the *Criminal Code* is to be respected by all.

This is not just about respect for the rule of law, constitutional government but upholding fundamental human rights because this affair also involves the improperly-addressed sexual assault of a female indigenous minor in the care of the State at the John Oxley Youth Detention Centre. It goes to the *prima facie* offence of criminal paedophilia being covered up by the Executive in the interests of the Executive at the expense of those aforesaid democratic values.

Delay in acting in this matter, on the part of any party with authority to act, is untenable if constitutional government is to exist in Queensland.

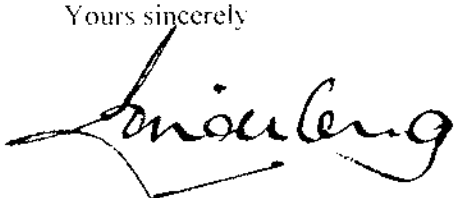
Delay now means that your Government is wilfully placing itself beyond the reach of the law to wilfully obstruct justice, and as a consequence is in fundamental conflict with the tenets of constitutional government.

Delay now means that your Government is wilfully placing itself in contempt of the Queensland Crown, which Your Excellency, as the Crown's representative and duty bound to protect its integrity, ought not tolerate.

Accordingly, if, upon your encouragement, your Government declines to appoint a Special Prosecutor to thoroughly and independently investigate all elements of the Heiner affair because other law-enforcement arms are tainted through their previous handling of the matter, and given that the criminal law must be enforced equally and promptly when and where breaches occur in a society governed by the rule of law so that public confidence is maintained in government, then the remedy, as a last resort, rests within Your Excellency's constitutional discretion to ensure constitutional government by the rule of law prevails over abuse of power. With respect, this may unavoidably mean dismissing your current advisers.

I humbly plead that appropriate action not be delayed any longer.

Yours sincerely



KEVIN LINDEBERG

THE COURIER-MAIL

Race to protect Dr Death papers

Hedley Thomas

29 April 2005

DR Death inquiry investigators have moved to lock down crucial Queensland Health documents amid fears a senior manager has been shredding material at Bundaberg Hospital.

Inquiry commissioner Tony Morris, QC, issued a stern warning yesterday against anyone involved in destroying evidence about core issues including patients, staff, complaints and surgical procedures.

Mr. Morris told *The Courier-Mail* he was aware of the concerns of hospital staff that a senior manager had been in an executive office in recent days and that paperwork had been destroyed.

"I have received a confidential communication relating to that matter," he said.

Mr. Morris, whose appointment by Premier Peter Beattie has been commended by the Opposition and other stakeholders, said there were "serious penalties under the Criminal Code for destroying evidence".

"And I would warn anyone who is thinking of adopting that course to think very carefully because I will not hesitate to recommend prosecution to the full extent of the law if any evidence of that emerges," he said.

"I would also like to say the Crime and Misconduct Commission also has an interest in similar types of records, and I have no doubt that they would also be using their resources to ensure that the truth is not suppressed."

The CMC is holding a separate inquiry into alleged bullying and intimidation of staff who had concerns and complaints about the hospital's chief surgeon, overseas-trained Jayant Patel.

The CMC confirmed that it was aware of concerns about document shredding at the hospital.

"We have written to (Queensland Health) advising them of the action we expect them to take in terms of providing relevant documents," a spokeswoman for CMC chairman Robert Needham said.

As the two inquiries developed their strategies yesterday, the bed-ridden mother of the surgeon dubbed Dr. Death described him yesterday as "brilliant".

"There has been some misunderstanding," 84-year-old Mrudulaben Patel told reporters near her home in Jamnagar, northwest India.

She expressed pride that there were 14 doctors among her children, grandchildren, nieces and nephews "and Jayant is the best of them all".

Her son telephoned regularly but had not mentioned his troubles as Bundaberg Hospital's director of surgery, where he has been linked to more than 20 deaths after botched or inappropriate surgery.

Mr. Morris declined to comment on whether Dr Patel, who lives in Portland, Oregon, would be returning to Brisbane to answer questions at the inquiry, saying he did not want to jeopardise the "steps in progress".

The Morris inquiry is tipped to start public hearings by mid-May in Brisbane and then move to Bundaberg for at least two weeks before returning to Brisbane.

Mr. Morris said he also wanted to conduct evening sittings "so that those appearing are not too inconvenienced".

The CMC has said it would hold public hearings into whether Queensland Health officials ignored complaints received about the activities of Dr Patel and had threatened reprisals against hospital staff who complained about him.

Mr. Needham and Mr. Morris have met to work out ways of ensuring a minimum of duplication and to arrange a flow of information between the inquiries.

GOVERNMENT HOUSE

40

24 May 2005

Mr Kevin Lindeberg
11 Riley Drive
CAPALABA QLD 4157

Dear Mr Lindeberg

I am directed to refer to the correspondence you forwarded to the Governor requesting that Her Excellency take some action in relation to the so-called Heiner Affair.

Her Excellency the Governor has noted the matters you raised and has been informed of the result of enquiries made following receipt of your correspondence.

After giving consideration to all the material before her in relation to this matter, the Governor has directed me to inform you that she does not propose to take any further action.

Yours sincerely

Annette Bastaja
Official Secretary and Chief of Staff

Kevin Lindeberg
11 Riley Drive
CAPALABA QLD 4157
30 May 2005

The Hon Peter D Beattie MP
Queensland Premier and Minister for Trade
Level 15
Executive Building
100 George Street
BRISBANE QLD 4000

Dear Premier

RE: THE HEINER AFFAIR AND RESTORING PUBLIC CONFIDENCE IN THE GOVERNANCE OF QUEENSLAND

I place before you new information showing that your Government's position of not appointing an independent Special Prosecutor to investigate all aspects of the Heiner affair is misplaced at best or improperly self-serving at worst.

I ask you to consider these documents and arguments so that you may do the right thing for Queensland as you have in the parallel Bundaberg Hospital case, to your credit.

The material is as follows:

1. A facsimile sent on 13 October 2003 to Queensland's Director of Public Prosecutions Ms. Leanne Clare from Mr. Douglas Roy Ensbey's legal team in respect of *R v Douglas Roy Ensbey*.
2. Copy of letter dated 6 November 2003 from Queensland's Director of Public Prosecutions Ms. Leanne Clare to Dibbs Barker Gosling addressing the contents of the 13 October 2003 facsimile in respect of *R v Douglas Roy Ensbey*. (A copy is enclosed).

3. Legal opinion dated 15 April 2005 by President of *The Samuel Griffith Society* the Right Honourable Sir Harry Gibbs GCMG AC KBE, former Chief Justice of the High Court of Australia, on the contents of my paper[1] on the "Heiner affair" to be published in the Society's 2005 "Record of Proceedings" of its 17th Annual Conference. (See enclosed *The Independent Monthly* May 2005 edition).

I refer you to earlier correspondence on this matter, which remains current and relevant.

Since my last letter of 30 December 2004, further information has come to hand via certain circumstances, including your answer of 29 March 2005 to Question on Notice No. 47 put by Mrs. Liz Cunningham MP on 23 February 2005.

On 6 April 2005 this material (Points 1 and 2) was provided to me by Mr. Ensbey who waived legal professional privilege.

In respect of Point 1 above, of relevance at Point 4 on pages 7 and 8 in the submission, Mr. Ensbey's counsel cited the opinion of 23 November 1995 provided by (then) Queensland Director of Public Prosecutions Mr. R. N Miller QC to then Shadow Minister for Justice and Attorney-General Mr. Denver Beanland. A copy of the document is available on an undertaking of confidentially concerning the person's name who was involved in a sexual assault.

Mr. Miller QC's advice addressed the shredding of the Heiner Inquiry documents as part of the Heiner affair on the relevance of section 129 to the facts surrounding the destruction of evidence when knowing that the documents were required for a known foreshadowed judicial proceeding.

Mr. Miller QC was responding to Mr. Beanland's citing of advice offered by my counsel Mr. Ian Callinan QC on 7 August 1995 to the Senate Select Committee on Unresolved Whistleblower Cases in respect of the Heiner affair. In Mr. Callinan QC's advice, he opined that it was open to conclude that persons involved in the order to destroy the Heiner Inquiry documents to deliberately prevent their use as evidence in a judicial proceeding may be in breach of section 129 of the *Criminal Code*, or, in the alternative, section 132 of the *Criminal Code*.

[1] Supplied by letter dated 12 April 2005

Mr. Callinan QC cited *Rogerson* as the leading authority. A copy of this advice is available if required. He advised that section 129 ***did not require*** a judicial proceeding to be on foot to trigger it, and went on to advise that the CJC's strict, narrow interpretation of "judicial proceeding" (i.e. fettering it to exclude a judicial proceeding not yet on foot but within the knowledge of the doer) was too significant to ignore.

This is consistent with my opinion of the alleged breach of the *Criminal Code* relating to the shredding which I put to the Parliamentary Criminal Justice Committee when you were its chairman in 1992.

In dismissing Mr. Callinan QC's interpretation of sections 129 and 119, Mr. Miller QC advised that the Form of the Indictment (No 83) dictated the meaning of the provision. With due respect to Mr. Miller QC, this was wrong at law as *R v His Honour Judge Morley and Mellifont* [1990]1 Qd R 54 at 56 had earlier ruled, and he ought to have known that.

You will note that Ms. Clare rejected the application to have Pastor Ensbey relieved of the charge under section 129 after carefully considering the submission's contents. She suggested that the ambit of section 129 of the *Criminal Code* was sufficiently wide to capture Pastor Ensbey's destruction-of-evidence conduct, and that the wording of the Form supported the charge proceeding. Like Mr. Callinan QC before, she cited *Rogerson* as the leading authority.

It is now a matter of judicial record that Pastor Ensbey's shredding conduct was successfully prosecuted by the State under section 129 of the *Criminal Code*.

Consequently, it may be said with certainty that when the State of Queensland prosecuted one of its citizens, namely Pastor Douglas Ensbey, the State ***knew*** that certain Ministers of the Crown and senior bureaucrats escaped the same fate for the same destruction-of-evidence conduct in this affair by the same criminal provision (i.e. section 129) being interpreted differently.

I simply add, if maintaining public confidence in Queensland's administration of justice and its legal practitioners - as officers of the court – is a high duty, and knowing that the (erroneous) interpretation of sections 129 and 119 held by certain legal practitioners as officers of different Crown law-enforcement authorities and Offices ***was never reasonably available,*** it therefore gives rise to the urgent need to find out how such a wrong view, which just happened to prevent

criminal charges involving Ministers of the Crown and senior bureaucrats being put before the court, could have ever been reached on:

(a) the law itself;

(b) while respecting the legal profession's code of conduct and the discovery/disclosures Rules of the Supreme Court of Queensland; and

(c) the facts of this case.

To repeat, the cumulative effect in this matter saw Executive Government (i.e. members of the Queensland Cabinet of 5 March 1990 in attendance) and certain senior bureaucrats not have their deliberate destruction-of-evidence conduct ever placed before a court of law for impartial resolution by a jury in the same manner as occurred to a Queensland citizen by having the same law interpreted wrongly.

In respect of Point 3 above, you will note from the enclosed copy of the May 2005 edition of *The Independent Monthly* that Australia's pre-eminent authority on the *Criminal Code*, former Chief Justice of the High Court of Australia, Sir Harry Gibbs GCMG AC KBE advised me on 15 April 2005 that, on the elements of this case, a *prima facie* breach of section 129 of the *Criminal Code* at least exists on those involved in the order to destroy the Heiner Inquiry documents on 5 March 1990, and that the interpretation adopted by the Queensland Government and Criminal Justice Commission was erroneous.

The elements put to Sir Harry are precisely the same as those put to your Government and Her Excellency.

Also, it is now a matter of public record, as revealed in State Parliament in your answer to Mrs. Cunningham MP's Question on Notice, that Her Excellency requested a report on this affair on 21 October 2003 from your Government. As of 29 March 2005, Her Excellency was still waiting for the report.

On 23 March 2005, in one of my letters to Her Excellency, I put the significance of Heiner affair in these terms (see extract of letter below) and highlighted certain legal concerns in the interests of Her Excellency's constitutional decision-making function, so that any decision made was safe and well founded: (quote)

1. Should your Government in the following days provide a report - before the Question on Notice put by Mrs. Liz Cunningham MP on 23 February 2005 is required to be answered in State Parliament on 29 March 2005 - which the Queensland Solicitor-General Mr. Walter Sofronoff QC may have authored or offered advice on, it would not be free from a conflict of interest because he acted as senior counsel in this matter for the Criminal Justice Commission before the Senate Committee of Privileges[2] in 1996. This is not to suggest any impropriety on his part but to alert you to a clear conflict of interest which obviously would and/or should disqualify him from advising your Office.

2. Should your Government provide a report authored by or involving advice from the Office of Crown Law, then it would be open to a reasonable disqualifying charge of taint and conflict of interest because of this Office's highly questionably role in this affair throughout its life.

3. Your Government's Attorney-General the Hon Rod Welford MP authorised the appeal to the Queensland Court of Appeal on 25 March 2004 against leniency of sentence in *R v Ensbey* because of the seriousness of the crime of destroying evidence against the administration of justice in which the (proper) interpretation of section 129 of the *Criminal Code* carried it forward with demur from all parties, including Davis, Williams and Jerrard JJA.

I summarized the Heiner affair's relevance to good governance and the rule of law in Queensland in these terms to Her Excellency, which, I respectfully suggest, ought to be of equal concern to you, as first Minister of the State of Queensland:

> *"...The criminal law only carries a moral and constitutional basis of authority and respect in a democracy if it is applied equally by government against all citizens who transgress it. That is government by the rule of law. If, however, the law becomes an instrument of sectional application by government for government, such conduct is unfair and oppressive and sets government in conflict with democracy itself and the rule of law. That is tyranny."*

[2] See 63rd Report of the Senate Committee of Privileges – December 1996

I have suggested to Her Excellency that your Government is now engaging in unreasonable delay by not providing a report on a serious governance matter. The delay was arguably self-serving on the part of your Government because, on the same facts, you had earlier informed me on 17 December 2004, that you intended to do nothing about the matter by claiming that it had been "*...exhaustively investigated*" and no wrongdoing found. In making this claim, you ***knew*** that the CJC and DPP clearance was based on an erroneous interpretation of section 129 of the *Criminal Code*.

It is a matter of law as ruled in *R v Cunliffe*,[3] that ignorance of the law offers no relief for the wrongdoers in the Heiner affair.

I have respectfully suggested to Her Excellency that your Government's position is indefensible at law, while my position enjoys the strength of the binding authority of the Queensland Court of Appeal in *R v Ensbey*.

I submit that if the rule of law and equality before the law matters in Queensland to your Government, then these glaring double standards undermining public confidence in government and the administration of justice simply cannot stand without proclaiming that Executive Government is above the law.

If, in the meantime, your Government has provided Her Excellency with the requested report, then I respectfully request that it be made public by tabling it in Parliament.

Normal confidentiality protocols ought to be waived in this instance because it involves serious questions touching on the rule of law concerning equal justice, as well as the protecting the integrity of the Office of the Governor whose prime Constitutional duty is to ensure, as Head of State, that her Government obeys the law, and therefore, the report ought to be the subject of public scrutiny to ensure that Her Excellency is not misled, and whatever her decision may be, it is constitutionally sound.

[3] *R v Cunliffe* [2004] QCA 293

The Bundaberg Hospital Commission of Inquiry

I note that your Government has recently appointed prominent barrister Mr. Anthony Morris QC to head the commission of inquiry into events surrounding the practice of Dr. Jayant Patel – the so-called "Dr. Death" - at the Bundaberg Base Hospital.[4]

In announcing Mr. Morris QC's appointment to head this most important inquiry to restore public confidence in our health system which may see criminal charges being recommended against certain persons, you have lauded his much respected standing in the legal world and his unquestioned integrity and independence. I do not cavil with that description.

For the record, one of Dr. Patel's alleged victims was my first cousin. His name has appeared on several occasions in *The Courier-Mail*. I understand that his death is to be investigated by State Coroner Mr. Michael Barnes.

This is the same Mr. Barnes, the former Queensland Labor Lawyer, who, together with ALP member and known activist (then) barrister Mr. Noel Nunan, found no wrongdoing in destroying evidence required for judicial proceedings and containing known or suspected material about abuse of children when he was working for the CJC as its chief complaints officer, by:

- erroneously interpreting section 129 of the *Criminal Code*;
- misrepresenting the role of State Archivist pursuant to the *Libraries and Archives Act 1988* and misinterpreting the relevant provision, and
- misquoting and misinterpreting *Public Service Management and Employment Regulation 65*

which your Government is still happy to use and stand by.

There are compelling parallels in the Heiner affair with respect to certain matters under consideration by Commissioner Morris QC which give rise to great concern.

[4] http://www.smh.com.au/news/National/Former-Skase-lawyer-to-head-Dr-Death-inquiry/2005/04/26/1114462041612.html?oneclick=true; And http://www.theaustralian.news.com.au/common/story_page/0,5744,15098622%255E2702,00.html

On 29 April 2005, *Courier-Mail* journalist Mr. Hedley Thomas wrote a front page article headed "*Race to protect Dr Death Papers*" wherein concerns were expressed that a Bundaberg Hospital senior manager may have been destroying relevant files. Commissioner Morris QC was quoted as saying that such (shredding) activity was a serious offence under the *Criminal Code* that anyone caught engaging in destroying evidence would be prosecuted to the full extent of the law. On the same matter in another media outlet on the same day, you are cited as confirming Commissioner Morris QC's fierce independence, and that destroying evidence would be an offence and people would be charged.

I remind you that this is the same Mr. Morris QC who inquired into my allegations in 1996. It is the same Mr. Morris QC:-

- who found that it was open to conclude that serious criminal charges could be laid against certain persons associated with the shredding of the Heiner Inquiry documents and related matters;[5]
- who recommended the holding of a public inquiry because the issues involved in this matter were far more serious than the allegations which brought the famous Fitzgerald Commission of Inquiry into existence in 1987; and
- whose findings of potential criminality were based primarily on section 129 of the *Criminal Code* wherein he correctly argued that a judicial proceeding did not have to be on foot ***before*** it could be triggered.

It is the same Mr. Morris QC who said these words in his report at page 215:

> *"...Whilst we are of the view that the events which occurred between January 1990 and February 1991 involve 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 now have cause to reconsider their confidence in the exhaustiveness - to say*

[5] See *The Courier Mail* 29 April 2005 "***Race to protect Dr Death papers***" by Mr Hedley Thomas

nothing as to the independence - of the Commission's investigation into this matter."

Mr. Morris QC's findings and recommendations were based on an accurate interpretation of section 129. They were subsequently undermined by then DPP, Mr. Royce Miller QC, when he erroneously interpreted section 129 in his January 1997 advice to the Borbidge Queensland Government. ***I know this to be true because I have read the advice.***

I have earnestly suggested that this advice be made public, as indeed did the House of Representatives Standing Committee on Legal and Constitution Affairs in its August 2004 report into this matter.

Unfinished Business

In light of these indisputable facts, the Morris/Howard Report findings and recommendations must arguably remain "unfinished business" in themselves as they stood at October 1996. However, in 2005, the governance issues associated with this unresolved affair, involving serious wrongdoing, have become far more grave and widespread, and now touch the Office of Governor of the State of Queensland and the Office of Premier and Cabinet.

There is nothing to suggest that should Commissioner Morris QC make equally serious findings and recommendations in the Bundaberg Hospital Commission of Inquiry that they will not be dismissed when he hands his report over to the Queensland Government if his sound findings in my matter can summarily dismissed with the Government obtaining and hiding behind the criminal law being erroneously applied afterwards for its own purpose.

Since late 1996, we now know, at the time of the order to shred on 5 March 1990, those involved ***knew*** that the Heiner Inquiry contained evidence about the known and/or suspected abuse of children in the care and protection of the State which, by any reasonable duty imposed on Ministers of the Crown and Crown officials involved, should have been referred to the police or CJC for independent examination, or retained for related judicial proceedings.

You are aware that the indigenous female pack-rape victim, mentioned in material you and Her Excellency hold, is currently suing the State of Queensland in an action of damages for breach of

duty of care. The Heiner Inquiry records plainly would have represented probative contemporaneous records had they not been destroyed, and those in authority could have easily or reasonably foreseen that prospect at the time of their destruction which, I remind you, was done for the specific purpose of "*...reducing the risk of legal action.*"

This order was made and executed when such action was (a) anticipated because the Queensland Government had been placed on notice: and (b) in reasonable prospect because the Queensland Government and some of its senior bureaucrats were aware that the gathered public records contained probative evidence about abuse of children in the care and protection of the Crown.

All these are incontestable facts. They go to the elements necessary to trigger section 129 of the *Criminal Code*, as well as sections 132 and 140 in the alternate.

It is now beyond dispute that your Government, the Office of the Director of Public Prosecutions, and the Office of Governor of the State of Queensland know that the clearance of no wrongdoing in this matter, involving members of your government, your political party and senior bureaucrats, stand on the law being erroneously applied.

As Premier of the State of Queensland, you are constitutionally bound to obey the law. These serious matters concerning the good governance of Queensland are put before you in good faith trusting that your sworn public duty shall not be deflected by other considerations such as political self-interest.

You have made a courageous decision regarding the Bundaberg Hospital tragedies in terms of appointing an independent Commissioner and strongly condemning publicly any records destruction. Will you not do the same for the Heiner affair, which, far from being investigated to "the nth degree", has very close parallels to the Bundaberg Hospital situation and new evidence involving indisputable binding legal authorities that cry out for an independent proper investigation?

Would it not be better for you to take this decision yourself, and be seen as a defender of democracy, accountability and the rule of law, rather than being forced into it by public opprobium of these matters, or by the encouragement of Her Excellency?

Accordingly, I urge you to reconsider your earlier decision concerning the appointment of a Special Prosecutor so that this sceptic boil may be lanced once and for all in order that justice may be served, and so that confidence in good governance and the rule of law may be restored to Queensland.

Yours sincerely

KEVIN LINDEBERG

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Kevin Lindeberg
11 Riley Drive
CAPALABA QLD 4157
7 June 2005

Your Excellency The Hon. Quentin Bryce AC
Governor of Queensland
Government House
Fernberg Road
PADDINGTON QLD 4064

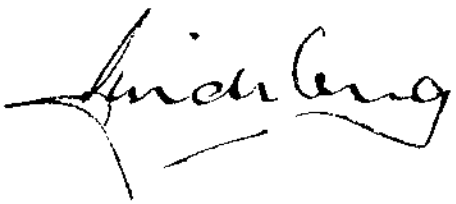
Your Excellency

RE: THE HEINER AFFAIR AND *THE LINDEBERG PETITION*

In keeping with my undertaking to keep you informed, please find enclosed a copy of my last letter dated 30 May 2005 to Queensland Premier and Minister for Trade the Hon Peter Beattie MP.

I invite your consideration of it.

Yours sincerely



KEVIN LINDEBERG

Kevin Lindeberg
11 Riley Drive
CAPALABA QLD 4157
16 June 2005

Your Excellency The Hon. Quentin Bryce AC
Governor of Queensland
Government House
Fernberg Road
PADDINGTON QLD 4064

Your Excellency

RE: THE HEINER AFFAIR AND *THE LINDEBERG PETITION*

I am in receipt of your letter dated 24 May 2005.

I also note Queensland Premier and the Minister for Trade the Hon Peter Beattie supplied the Queensland Legislative Assembly on the afternoon of 14 June 2005 with his answer to Question on Notice No 643 put by Independent Member for Gladstone Mrs. Liz Cunningham MP.

For record purposes this is what was asked and the answer provided:

> **Mrs. E. Cunningham asked the Premier and Minister for Trade the Hon Peter Beattie on 11 May 2005 —**
>
> **QUESTION:**
>
> (1) Has the Governor's request of 21 October 2003 for the report from the Queensland Government on the Heiner affair been complied with, if not, why not?
>
> (2) What date did the Crown Solicitor provide the Attorney-General with a report on the matter?

(3) Why did the Queensland Government delay its report to the Governor pending the outcome of *R v Ensbey* when section 129 of the *Criminal Code* was never open to a different interpretation made in the case?

(4) Has he been informed in correspondence from Mr. Kevin Lindeberg that the Criminal Justice Commission and Office of the Director of Public Prosecutions based their findings of no wrongdoing in respect of the destruction of the Heiner Inquiry documents on an erroneous interpretation of section 129 of the *Criminal Code*?

ANSWER:

(1) Yes.

(2) 2 March 2005.

(3) In his letter to Her Excellency of 21 October 2003, Mr. Lindeberg specifically sought to contrast the position of the Queensland Government over the Heiner inquiry with the approach taken in the Ensbey case (then before the District Court). In order to provide a comprehensive report to Her Excellency on the issues raised by Mr. Lindeberg, it was considered prudent to delay the provision of the advice until that matter (i.e. Ensbey) had been finally resolved.

(4) Mr. Lindeberg's misconceived assertions regarding the interpretation of section 129 of the *Criminal Code*, by the Criminal Justice Commission, and Office of the Director of Public Prosecutions, were contained in his letter to Her Excellency of 21 October 2003, and in subsequent correspondence addressed to me.

By way of an immediate reaction to Premier Beattie's (misleading) claim concerning my "misconceived" interpretation of section 129 of the *Criminal Code*, others who are similarly "misconceived" may be fairly cited as being:

- Justice the Honourable Ian Callinan AC of the High Court of Australia; former Chief Justice of the High Court of Australia The Right Honourable Sir Harry Gibbs GCMG AC KBE, Justices of the Queensland Court of

Appeal Davies, Williams, Thomas and Jerrard, His Honour Judge Nick Samios of the Queensland District Court, current Queensland Director of Public Prosecutions Ms. Leanne Clare, barristers Tony Morris QC, Robert F Greenwood QC, Edward Howard, Roland Peterson, senior QUT law lecturer Alastair MacAdam, Bond University Law Professor David Field, and the House of Representatives Standing Committee on Legal and Constitutional Affairs and the Australian Senate.

That said, before I respond to your letter of 24 May 2005 in greater detail because it plainly gives rise to the most serious of questions concerning the state of constitutional government in Queensland, I respectfully seek Your Excellency's response to the follow.

So that my respond is soundly based, and so that it cannot be said now or at any future time that Your Excellency was unaware of certain material facts and the law, I seek confirmation that the following letters (some personally hand-delivered and others by registered post) and documents were received and considered:

1. *The Lindeberg Petition*;
2. Letter dated 13 October 2003;
3. Letter dated 11 November 2003, enclosing information concerning evidence provided under oath to House of Representatives Standing Committee on Legal and Constitutional Affairs as part of its national inquiry into "crime in the community";
4. Letter dated 14 May 2004;
5. Letter dated 20 September 2004 enclosing:
   (a) judgement R v *Ensbey; ex parte A-G (Qld)* [2004] QCA 335;
   (b) Volume Two Report on the Heiner Affair by the House of Representatives Standing Committee on Legal and Constitutional Affairs; and
   (c) September 2004 edition of *The Independent Monthly*;
6. Letter dated 23 November 2004, enclosing:
   (a) Copy of my letter dated 22 November 2004 to Queensland Premier and Minister for Trade the Hon Peter Beattie MP;
7. Letter dated 29 November 2004, enclosing Queensland Audit Report No. 6 2004-05 relating to the *ex gratia* special payment of $27,190;

8. Letter dated 9 December 2004 enclosing the December 2004 edition of *The Independent Monthly*;
9. Letter dated 22 December 2004 enclosing a copy of a letter dated 17 December 2004 from Queensland Premier and Minister for Trade the Hon Peter Beattie MP setting out his Government's position;
10. Letter dated 27 December 2004 comprehensively addressing the Beattie Government's position statement (supplied to me on 17 December 2004) in which it intended to do nothing on the assertion that the affair had been "*...exhaustively investigated.*" The letter comprehensively deals with the so-called inquiries and alleged findings of no wrongdoing;
11. Letter dated 4 January 2005 enclosing a copy of my letter dated 30 December 2004 to Queensland Premier and Minister for Trade the Hon Peter Beattie MP;
12. Letter dated 23 March 2005 acknowledging that Your Excellency was still waiting for the requested report, and pointing out certain legal impediments which may adversely attend any report;
13. Letter dated 3 April 2005 addressing the legal and constitutional ramifications flowing out of Premier Beattie's answer to Question on Notice No 47 supplied to the Queensland Legislative Assembly on 29 March 2005;
14. Letter dated 7 April 2005 enclosing the April 2005 edition of *The Independent Monthly*;
15. Letter dated 12 April 2005 enclosing a copy of my paper on "The Heiner affair" delivered to *The Samuel Griffith Society* at Greenmount Resort Coolangatta on 9 April 2005;
16. Letter dated 29 April 2005 enclosing:
    (a) A facsimile sent on 13 October 2003 to Queensland's Director of Public Prosecutions Ms. Leanne Clare from Mr. Douglas Roy Ensbey's legal team in respect of *R v Douglas Roy Ensbey*;
    (b) Copy of letter dated 6 November 2003 from Queensland's Director of Public Prosecutions Ms. Leanne Clare to Dibbs Barker Gosling addressing the contents of the 13 October 2003 facsimile in respect of *R v Douglas Roy Ensbey*; and,
    (c) The legal opinion dated 15 April 2005 by President of *The Samuel Griffith Society* the Right Honourable Sir Harry Gibbs GCMG AC KBE, former Chief Justice of the High Court of Australia, on the contents of

my paper on the "Heiner affair" to be published in the Society's 2005 "Record of Proceedings" of its 17th Annual Conference.

17. Letter dated 5 May 2005 enclosing the May 2005 edition of *The Independent* Monthly;
18. Letter dated 7 June 2005 enclosing a copy of my letter dated 30 March 2005 to Queensland Premier and Minister for Trade the Hon Peter Beattie MP;
19. Letter dated 9 June 2005 enclosing the June 2005 edition of *The Independent Monthly*.

Furthermore, I respectfully seek the following:

1. What date did Your Excellency receive the Beattie Government's Report setting out its position in respect of alleged criminal/suspected official misconduct allegations associated with the Heiner affair;
2. Owing to its significance to the constitutional government of Queensland and the rule of law, will a copy of the Report be supplied to me or the Queensland Legislative Assembly, and, if not, will Your Excellency give a statement of reasons for withholding it from public scrutiny given that the confidentiality privilege resides within your constitutional discretion?

Thank you in anticipation of your prompt reply.

Yours sincerely

KEVIN LINDEBERG

Kevin Lindeberg
11 Riley Drive
CAPALABA QLD 4157
6 July 2005

The Hon Peter D Beattie MP
Queensland Premier and Minister for Trade
Level 15
Executive Building
100 George Street
BRISBANE QLD 4000

Dear Premier

RE: THE HEINER AFFAIR AND RESTORING PUBLIC CONFIDENCE IN THE GOVERNANCE OF QUEENSLAND

On 14 June 2005 you provided the following answer to the Queensland Legislative Assembly to Question on Notice No 643 put by Mrs Liz Cunningham MP on 11 May 2005:

QUESTION:

(1) Has the Governor's request of 21 October 2003 for the report from the Queensland Government on the Heiner affair been complied with, if not, why not?

(2) What date did the Crown Solicitor provide the Attorney-General with a report on the matter?

(3) Why did the Queensland Government delay its report to the Governor pending the outcome of *R v Ensbey* when section 129 of the *Criminal Code* was never open to a different interpretation made in the case?

(4) Has he been informed in correspondence from Mr. Kevin Lindeberg that the Criminal Justice Commission and Office of the Director of Public Prosecutions based their findings of no wrongdoing in respect of the destruction of the Heiner

Inquiry documents on an erroneous interpretation of section 129 of the *Criminal Code*?

ANSWER:

(1) Yes.

(2) 2 March 2005.

(3) In his letter to Her Excellency of 21 October 2003, Mr. Lindeberg specifically sought to contrast the position of the Queensland Government over the Heiner inquiry with the approach taken in the Ensbey case (then before the District Court). In order to provide a comprehensive report to Her Excellency on the issues raised by Mr. Lindeberg, it was considered prudent to delay the provision of the advice until that matter (i.e. Ensbey) had been finally resolved.

(4) Mr. Lindeberg's misconceived assertions regarding the interpretation of section 129 of the *Criminal Code*, by the Criminal Justice Commission, and Office of the Director of Public Prosecutions, were contained in his letter to Her Excellency of 21 October 2003, and in subsequent correspondence addressed to me.

I seek clarification on the following six matters.

1. On what date did the Queensland Government provide Her Excellency with the Report?

2. Will you seek a waiver from Her Excellency so that the Report may be tabled in Parliament to allow public scrutiny? If not, why not?

3. At the time of providing Her Excellency with the Report, did the Queensland Government (i.e. either yourself, the Queensland Attorney-General or the Crown Solicitor) personally examine the January 1997 DPP's advice to the (Borbidge) Queensland Government concerning the findings and recommendations of the Morris/Howard Report?

4. Has the Queensland Government received confirmed from the Queensland Opposition that the January 1997 DPP's advice erroneously interprets section

129 of the *Criminal Code*, and if so, when and has this information been provided to Her Excellency. If not, why not?

5. By informing Parliament that my interpretation of section 129 of the *Criminal Code* is "misconceived", you are plainly declaring that my interpretation is wrong. Can you inform me how such a view could be properly and honestly held given that my interpretation is the same as the Queensland Court of Appeal, our State's highest judicial authority?

6. Why did you not confirm in your answer that the clearance of wrongdoing for those involved in the shredding of the Heiner Inquiry documents (as put forward by the Criminal Justice Commission and the Office of the Director of Public prosecutions) was based on an erroneous interpretation of section 129 of the *Criminal Code*?

Your prompt reply to these questions would be appreciated.

Yours sincerely

KEVIN LINDEBERG

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Queensland Government

Please quote 79347/mb23/LJP

11 Jul 2005

Mr Kevin Lindeberg
11 Riley Drive
CAPALABA QLD 4157

Dear Kevin

Thank you for your letter of 30 May 2005 concerning the destruction of the documentation from the Heiner Inquiry. I have been requested to reply to you on the Premier's behalf.

As you have been advised in previous correspondence, the Government view is that the matters you have raised have been exhaustively examined in the recent Commonwealth Parliamentary inquiries and in a number of other inquiries and investigations.

There is nothing in the additional material provided that alters the Premier's view that no further public funds should be expended investigating or inquiring into this matter.

The best legal advice available at the time the decision was taken to destroy the Heiner materials, was that there was no breach of section 129 of the *Criminal Code*. As the Senate Select Committee on the Lindeberg Grievance found: "...the interpretation [of section 129] made at the time of the relevant inquiries was not unreasonable, given the lack of precedence and the eminence of the lawyers [including the DPP] who held that view. The Committee therefore cannot conclude that the interpretation was clearly incorrect and untenable" [para 3.36].

Thank you for writing to the Premier to express your views on this matter.

Yours sincerely

Bob Whiddon
Chief of Staff

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(46)

Kevin Lindeberg
11 Riley Drive
CAPALABA QLD 4157
11 September 2005

Your Excellency The Hon. Quentin Bryce AC
Governor of Queensland
Government House
168 Fernberg Road
PADDINGTON QLD 4064

Your Excellency

RE: THE HEINER AFFAIR AND THE *LINDEBERG PETITION*

I refer to correspondence on the above matter, in particular to my letter of 16 June 2005.

In your letter of 25 May 2005, Your Excellency confirmed that you had received a report on the Heiner affair from your Government, considered it and had decided that no action pursuant to your Constitutional function was warranted.

From information provided to me by Queensland Premier the Hon Peter Beattie MP on 5 August 2005, I understand that you received the report on or about 26 April 2005.

On 16 June 2005, I requested that Your Excellency might confirm receipt of the listed correspondence and exhibits placed before you by me over a period before I made a formal response to your decision. I wanted to be sure that no dispute could arise now or later concerning your state of knowledge about any material fact, law or judicial ruling relevant to this matter.

I also requested that a copy of the report be supplied either to me or the Queensland Legislative Assembly because of its significance to the state of constitutional government in Queensland. In his letter of 5 August 2005, the Premier has informed me, upon a similar request, that he does not intend tabling the report, nor permitting Your Excellency to do so because it was a confidential communication. I shall address this point later.

On 7 July 2005 Your Excellency confirmed receipt of my letter of 16 June 2005. I was assured that my requests were being actively considered. Two months have since passed with no response forthcoming.

While this should not be considered as being my final formal response to your 25 May 2005 decision, I am obliged to make certain comment now because of what I have recently learnt in correspondence from the Premier and the Leader of the Opposition, and out of grave concern regarding the foreshadowed amendment to section 34 of the *Constitution of Queensland 2001* as set out in the omnibus *Constitutional and Other Legislation Amendment Bill 2005*.

For your benefit, I am enclosing a copy of the September 2005 edition of *The Independent Monthly*. It highlights concern about this amendment expressed by constitutional experts Clerk of the Australian Senate, Mr. Harry Evans, and Professor David Flint, National Convener of Australians for Constitutional Monarchy. Mr. Evans has described the proposed amendment as "*...dangerous and unnecessary.*"

It therefore appears, by the independent assessment of others with considerable constitutional expertise, that the amendment impinges on or eliminates your reserve power concerning the appointment or dismissal of your Ministers, and your Government appears intent on passing the omnibus Bill in the very near future.

Under the circumstances, I cannot reasonably ignore this new development.

You would be aware that I have suggested in correspondence between us that this affair carries the necessary extraordinary elements which may warrant Your Excellency exercising your reserve powers pursuant to section 34 of the *Constitution of Queensland 2001*. While it has not been confirmed, I believe that it is reasonably open for me to assume that my correspondence to Your Excellency has, either in full or in part, been forwarded to your Government in order that its report would be comprehensive.

In short, your Government would be aware that the use of section 34 of the *Constitution of Queensland 2001*, in terms of seeking other independent advice, possibly from Queensland's Chief Justice the Hon Paul de Jersey AC, which may, in turn, trigger your reserve dismissal

powers, has been suggested because any advice you may receive from the Beattie Government is likely to be self-serving and therefore unsafe.

THE HEINER AFFAIR AND LINDEBERG PETITION REPORT

I turn firstly to the report, and what your Government appears to have told you as of 26 April 2005.

Assuming that consistency applies, I am able to deduce what may be in the report because of relevant information contained in correspondence in my possession from Premier Beattie and the Leader of the Opposition, the Hon Lawrence Springborg MP.

It is crystal clear that Your Excellency must have been informed that the former Director of Public Prosecutions, Mr. Royce Miller QC, erroneously interpreted section 129 of the *Criminal Code* in his 6 January 1997 advice to the Borbidge Queensland Government thereby undermining its correct interpretation by Messrs. Morris QC and Howard.

In his letter of 5 August 2005, the Premier said:

> *"...the Crown Solicitor confirms that the advice rendered to the Borbidge Government in 1997 by then Director of Public Prosecutions, Mr R N Miller QC was examined in the process of preparing advice to the Attorney-General on this issue. The advice to Her Excellency included reference to the views of Mr. Miller QC about the effect of section 129 of the Criminal Code."*

It is beyond dispute that Mr. Miller QC's interpretation of section 129 of the *Criminal Code* and his belief that Indictment Form 83 of the Schedule dictated section 129's meaning were erroneous. In regard to the latter argument concerning the *Criminal Code* prevailing over the Schedule, it was settled in *R v His Honour Judge Morley and Mellifont* [1990] 1 Qd R 54 at 56, and Mr. Miller QC was obliged to know that.

In short, his advice is deeply flawed at its commencement, and is not subsequently recoverable from such contamination.

Mr. Miller QC could not make findings about the members of the Goss Cabinet of 5 March 1990 who ordered the destruction of the evidence, as indeed neither could Messrs. Morris QC and Howard, because the relevant February and March 1990 Cabinet submissions were not made available by then Opposition Leader the Hon Peter Beattie. However, we now hold these submissions. Their contents reveal an inculpatory state of knowledge showing that all members of the Goss Cabinet ***were aware*** that the Heiner Inquiry documents were required as evidence in an anticipated judicial proceeding at the time they ordered their destruction to prevent their use as evidence in those anticipated judicial proceedings.

These indisputable facts are sufficient to trigger section 129 of the *Criminal Code*, or, in the alternate, sections 132 or 140 of the *Criminal Code*.

Any suggestion that such conduct by Executive Government which deliberately obstructed the administration of justice did or does not offend "the public interest" would make a mockery of respect for the rule of law.

Queensland's Director of Public Prosecutions, Ms. Leanne Clare, in the exercise of her prosecutorial discretion, saw it as being in the public interest to prosecute Pastor Douglas Ensbey in 2003/04 for his 1995/96 shredding conduct. As equality before the law is the foundation stone of democratic constitutional government, it must matter when members of Executive Government and senior bureaucrats are knowingly treated differently for similar, if not worse, shredding conduct and escape justice.

This situation is only made worse when the Head of State - the guardian of the *Constitution* - becomes party to such goings-on and claims it does not breach the law, or matter.

Your Excellency was aware of these indisputable facts when deciding to take no action within your Constitutional discretion pursuant to section 34 of the *Constitution of Queensland 2001*.

However, it is still open to Your Excellency to change your mind upon a further and better consideration of these facts on constitutional government in Queensland – and your Government would know that which makes the proposed "restricting" amendment to section 34 so ominous.

In light of Premier Beattie's information regarding the involvement of the Crown Solicitor and Attorney-General in the construction of the report, I also respectfully remind Your Excellency again that neither could come to the matter with clean hands. In this regard also, the report must be considered unsafe.

It is unclear as to whether or not your Government ever provided Your Excellency with a copy of the DPP's January 1997 advice after the Leader of the Opposition gave the Premier approval to do so on 19 May 2005 given that you received the report earlier on or about 26 April 2005. Studying the chronology of events, it therefore appears that Your Excellency has not had the benefit of examining it for yourself.

I remind Your Excellency that this advice was interpreted afresh by the Crown Solicitor and Attorney-General of the Beattie (Labor) Government against whom its contents were and remain potentially adverse; whereas, it was originally provided to Borbidge (Coalition) Government with its findings based on the criminal law being erroneously applied which had the effect of curtailing *prima facie* criminal charges being brought against certain public officials and a public inquiry established which may have adversely affected the Labor side of politics.

With respect, Your Excellency could have been most unwise if, in fact, you did not seek alternative advice (pursuant under section 34 of the *Constitution of Queensland 2001*) in this serious matter than that which was provided by your Government because in accepting it, it may be open to suggest that Your Excellency may have contaminated the integrity of the Office of State Governor and the Queensland Crown which can not do otherwise than to respect and uphold the rule of law.

Sir Guy Green, former Tasmanian Chief Justice and Governor of Tasmania, in his 1999 speech on the role of the Governor, to the Sir Robert Menzies Oration on Higher Education, said this concerning the role of the Governor:

> *"...The rule of law antedates the emergence of democratic institutions and the principles of responsible government and is a condition of their effective operation. A fully representative parliament, free elections, universal suffrage*

and bills of rights mean nothing unless the rule of law prevails and the executive government is itself subject to the law."[1]

I make the point also that the Heiner affair is far more than just Executive Government and senior bureaucrats shredding public records known to be required as evidence in a judicial proceeding.

As Your Excellency well knows because of material placed before you, it also concerns allegations about covering up known abuse of children in State care involving the pack-rape of a 14-year-old indigenous minor, improper disbursement of public moneys to buy silence, and wide scale abuse of office.

I now turn to the Heiner affair report itself.

I respectfully submit that it ought to be made a public record for both historical and good governance reasons. It is indisputable that the report goes to the core issue of public confidence in the institutions of government, especially the criminal justice system, and not least, in the impartial role of the State Governor as the guardian of our *Constitution*, and therefore, normal confidentiality conventions concerning communications between Governor and Government ought to be waived by both yourself and your Government.

In short, this is a special circumstance where the people have a right to know so they may judge for themselves whether the rule of law is being upheld without fear or favour.

THE AMENDMENT OF SECTION 34 OF THE *CONSTITUTION OF QUEENSLAND 2001*

In the wake of independent expert commentary by others as reported in the September 2005 edition of *The Independent Monthly*, I now turn to the proposed amendment of section 34 of the *Constitution of Queensland 2001* as seen in the context of on-going communication between Your Excellency, your Government and me on this matter where the section is highly relevant.

Section 34 of the *Constitution of Queensland 2001* currently says:

[1] http://www.unimelb.edu.au/speeches/sirguygreen99oct29.html

> *"Ministers hold office at the pleasure of the Governor who, in the exercise of the Governor's power to appoint and dismiss the Ministers, is not subject to direction by any person and is not limited as to the Governor's source of advice."*

Section 34 of the *Constitution of Queensland 2001* as to be amended by *Constitutional and Other Legislation Amendment Bill 2005* proposes this:

> *"Ministers hold office at the pleasure of the Governor who, in the exercise of the Governor's power to appoint and dismiss the Ministers,* ***must, in accordance with constitutional convention, act on the advice of the Premier.***"

No fair reading of the amendment can suggest that your Government does other than seek to change what are known as "the reserve powers of the Crown" which are solely exercisable by the Queensland Crown's representative, namely Your Excellency.

As the Clerk of the Australian Senate suggests, the change is open to be read as limiting or even eliminating the reserve powers as they currently stand in section 34, unfettered as they should be.

The amendment is reasonably open to be interpreted, on its plain reading, as giving the Premier all power over your reserve powers, in particular, the current unfettered right, in extraordinary circumstances, to seek alternative advice which may lead Your Excellency to dismiss a Minister, including the Premier him or herself.

Once enacted, the amendment would oblige Your Excellency to act on self-serving, potentially unlawful, advice from the Premier alone when the issue may directly impinge on his or her own conduct, and therefore, there is no guarantee or safeguard that all advice from this Government, or any future Government, to the Head of State will always be lawful as the rule of law requires.

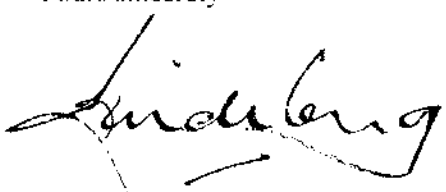
By so impinging on the Crown's reserve powers, thereby preventing the Governor from being independent and able to intervene in order to restore integrity to government in an extraordinary circumstance – such as the Heiner affair - respect for the rule of law must lose out, leaving the Executive being able to place itself about the law forever and a day.

The real purpose of section 34 of the *Constitution of Queensland 2001*, in its current unfettered form, is to protect the people from oppressive government and to maintain their freedom and liberty under the Queensland Crown.

I therefore respectfully submit that should the amendment be passed by the Queensland Parliament, it may not be open to Your Excellency to sign away your unfettered reserve powers because they reside in the Queensland Crown itself on behalf of the people, and there has been no indication whatsoever that the people of Queensland are desirous of such a drastic change limiting their freedom and liberty.

I await your urgent response to these matters.

Yours sincerely



KEVIN LINDEBERG

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Queensland Government

Please quote P12463/MR04/CALS/SA

05 AUG 2005

Mr Kevin Lindeberg
11 Riley Drive
CAPALABA Q 4157

Dear Kevin

I refer to your letter to the Premier of 6 July 2005 seeking clarification with respect to the Premier's answer to Question on Notice No. 643 tabled on 14 June 2005. I have been requested to reply to you on the Premier's behalf.

I will address each of your queries in turn.

Firstly, advice was forwarded to Her Excellency, the Governor regarding this matter on 26 April 2005.

Secondly, the advice to the Governor was provided on a confidential basis and the Premier does not intend to request that Her Excellency approve the tabling of the advice in Parliament.

Thirdly, the Crown Solicitor confirms that the advice rendered to the Borbidge Government in 1997 by the then Director of Public Prosecutions, Mr R N Miller QC was examined in the process of preparing advice to the Attorney-General on this issue. The advice to Her Excellency included reference to the views of Mr Miller QC about the effect of section 129 of the Criminal Code.

Fourthly, in a letter of 19 May 2005, the Leader of the Opposition advised that the interpretation of section 129 of the Criminal Code given by the Court of Appeal in R V Ensbey was contrary to the interpretation given by Mr Miller QC. Her Excellency had been previously briefed on this issue.

Fifthly, the Premier's response to the Question on Notice No. 643 suggested that your assertions regarding the interpretation of section 129 were "misconceived". The term "misconceived" was intended to refer to the conclusions that you sought to draw regarding the differing interpretations of section 129 and their relevance to the Heiner matter.

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Email
Website

Finally, as with all Questions on Notice, the Premier sought to respond to Question on Notice No. 643 fairly and accurately. It is apparent from Mr Miller QC's advice in 1997 that the conclusion he reached with respect to "wrongdoing" in the Heiner case would have been the same even if he had accepted the "wider" view of section 129. Accordingly, the "clearance", as you describe it, was therefore not based on an allegedly erroneous interpretation.

As you have been previously advised, the best legal advice available at the time the decision was taken to destroy the Heiner materials, was that there was no breach of section 129 of the *Criminal Code*. As the Senate Select Committee on the Lindeberg Grievance found: "...the interpretation [of section 129] made at the time of the relevant inquiries was not unreasonable, given the lack of precedent and the eminence of the lawyers [including the DPP] who held that view. The Committee therefore cannot conclude that the interpretation was clearly incorrect and untenable" [para 3.36].

I trust this satisfies your queries.

Yours sincerely

Rob Whiddon
Chief of Staff