THE HEINER AFFAIR - PUT BLUNTLY

16 April 2020

"...Put bluntly, the resignation or jailing of a minister, and perhaps even the jailing of an entire cabinet and the senior public officials involved in a serious cover-up, although painful to see, will better secure our democratic future and stability in the long run than turning a blind eye to high-level corruption in the short run. It sends the message to all that no-one is above the law."

Kevin Lindeberg – Whistleblower – House of Representatives Standing Committee on Legal and Constitutional Affair, *Hansard* 16 March 2004

Recommendation 2 in the majority August 2004 Report of the House of Representatives Standing Committee on Legal and Constitutional Affairs states:

> **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.**

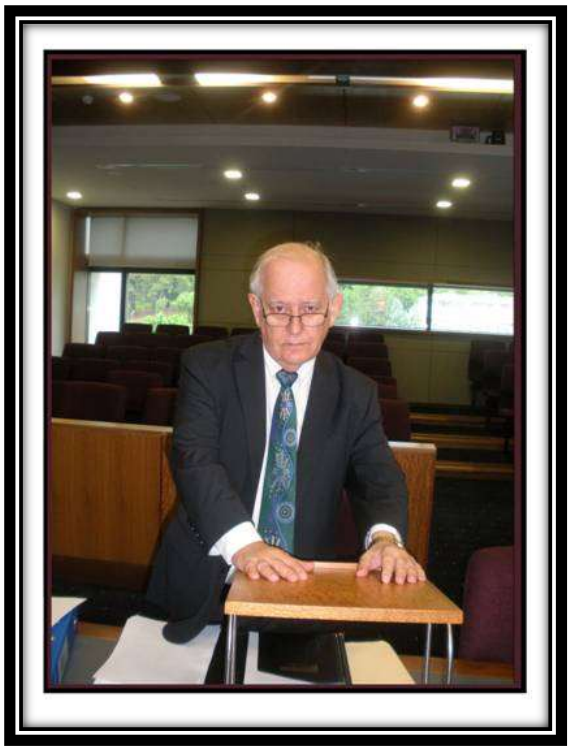
HANSARD RE: STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS 16/03/2004 - Crime in the community

The Hon Bronwyn Bishop MP - CHAIR —Welcome, Mr Lindeberg. I will just mention that I have been approached by Mr Grundy, who has something else he would like to say to us, and we may hear a bit more from Mr Roch. But we will hear from you first, Mr Lindeberg. The committee has received your latest supplementary submission and authorised it for publication. Would you like to make an opening statement.

The Hon Bronwyn Bishop MP

Mr Lindeberg —Thank you. We claim to live in a civilised, democratic society. Our constitutional monarchy provides us with freedom and the right to pursue happiness and to expect that all governments, irrespective of their political complexion, will be held accountable to the Queensland Crown for their actions, just as ordinary citizens are. Our society relies on public confidence in its public institutions, otherwise good government can disintegrate into chaos. Maintaining that public confidence, in my view, is the highest duty of public officials. Perception and reality should not divide on this duty; moreover, it cannot afford to. While we may all have different political and philosophical views about the role of government and life in general, the heritage given to us by those who have gone before has decreed that we can all play the political game without hindrance, so long as we stay within the framework of the rule of law under our constitutional monarchy.

The privilege of being a minister of the Crown and sitting in the cabinet room to decide the fate and welfare of fellow Australians is a high one, but it also comes with a high price tag. You must not abuse the privilege. When the cabinet door closes with its deliberations never to become public until some 30 years later, every citizen's constitutional right is still in the room. It is there through the swearing of the oath of office before either the Governor-General or state governors that ministers of the Crown will obey the law and not conspire to break it. The people who give power to ministers of the Crown act confident in that oath that equality before the law will be respected in all matters at all times, because the Crown acts in perpetuity and sets standards. This oath of office demands that all arms of government respect the doctrine of the separation of powers. It expects honesty of the executive and respect for the truth in its dealings with the public and other arms of government. It is a contract of trust.



Queensland Whistleblower Kevin Lindeberg at the 2012/13 Carmody Inquiry Bar Table

This is not an ultraconservative or naive view of the world but one that is fundamental to a decent, civilised society. Unless public confidence is maintained in our democratic processes, law enforcement authorities, judicial processes, public services, learning institutions and organs which control and dispense information, then intimidation, fear, cynicism, denigration of public service and a world where nothing matters except self-interest will reign supreme instead of the rule of law. Therefore, when a fundamental attack occurs on those values—that is, government by the rule of law—it must be faced with courage and determination and be overcome, no matter the duration or

cost. Blind loyalty to any political party in such a circumstance serves no-one but protects the wrongdoer or encourages criminal conduct without consequences.

Blind loyalty does not serve democracy. Blind tribal loyalty does not serve democracy. Put bluntly, the resignation or jailing of a minister, and perhaps even the jailing of an entire cabinet and the senior public officials involved in a serious cover-up, although painful to see, will better secure our democratic future and stability in the long run than turning a blind eye to high-level corruption in the short run. It sends the message to all that no-one is above the law.

Our unicameral system of government in Queensland has failed us. It has generated a mentality which accepts and even expects abuse of power. In so doing it has now produced the greatest scandal this nation has seen in the last 100 years. By dint of circumstances and a myriad of extraordinary events too numerous to mention here, Heiner has emerged from the pack as the scandal that had to happen in a system of government where sycophancy and intimidation live hand in glove both in and outside government and, sadly, into our mainstream media.

When I spoke to this committee on 27 October 2003 I set down Heiner's foundations, its importance to the administration of justice in Queensland specifically and to the nation generally. I said this in my opening statement:

> *"To deliberately destroy evidence known to be required in a pending or anticipated judicial proceeding, or known to contain proof of a crime which has been perpetrated in the past, to prevent its use by police or by court is clearly a criminal act."*

The *Ensbey* verdict now confirms my assertion. It confirms that my foundation in Heiner, laid down some 14 years ago, was always built on solid rock while that of the Queensland government and the Criminal Justice Commission, now known as the Crime and Misconduct Commission, was built on sand. We now see Heiner reaching its endgame. It was never open on the part of government to claim that known evidence could be wilfully destroyed up to the moment of a plaint being filed and/or served. It was always a corrupted foundation.

The only reason this white-ant riddled edifice built by successive Labor Queensland governments, the CJC and others has stood for so long is because it has been corruptly propped up by a coterie of corrupt mates in high places, some of whom, like magistrates Noel Nunan and Michael Barnes, are now on the Queensland bench. It has relied on a terrorised and sycophantic public service too frightened of or too deferential to executive government to issue a condemn notice on its construction and soundness. Sadly, it touches on state governors also. Two governors have been fully apprised of the facts and were and are either unable or undesirous of seeing obvious serious abuse of office and corrupt conduct. They remained and remain supine while having a constitutional duty to encourage, warn and advise the executive to redress this wrong in order to maintain or restore peace, order and good government for all Queensland citizens.

Our system of government has collapsed. *Ensbey* confirms that two serving Queensland members of parliament, the Hon. Terry Mackenroth and the Hon. Dean Wells, should be immediately charged. And that is just the tip of the iceberg. Our government is now acting at its most tyrannical by applying the criminal law to a citizen and finding him guilty of the serious criminal conduct of destroying evidence, but not applying the law unto itself for the same conduct. It cocks its nose at the suggestion.

Surely Australians care about equal justice and governments being accountable for their actions? Surely good men and women care enough not to remain indifferent to criminal law being applied by double standards, as has been laid bare before us in Heiner and *Ensbey*?

In Heiner we are facing a high-water litmus test of morality, ethics and governance about whether ministers of the Crown and government bureaucracies are above the law and whether the separation of powers is a joke or something to be respected by all. Our public record keeping has reached a

crossroads in Queensland. We are on the brink of a world without evidence when it comes to government or evidence being properly protected for pending and anticipated judicial proceedings. Faith in impartial record keeping in Queensland is in doubt. The disbursement of taxpayers' money is also in doubt. Can it be used as hush money to cover up crime or can't it? When a minister of the Crown makes a public statement concerning an allegation of pack rape of a person in care of the state touching on her age or the facts of the case, can he be trusted or can't he? Can he rely on information provided by his bureaucracy? That is in grave doubt.

And what of the future of parliamentary committees when they hear evidence of suspected and/or serious prima facie crime involving politicians? Where does truth stand in all this? Members of this committee have already placed on the public record that the shredding should not have occurred. With respect, while that was good it was not good enough. In light of the facts provided and the Ensbey verdict you must take the next unavoidable step in your report and unanimously declare it to be a prima facie criminal offence requiring impartial investigation, rather than suggest that it was an exercise in poor judgment with no legal consequences. The Senate must also correct its view on Heiner in due course.

The Lord Tom Denning OM PC DL KC (1899–1999) UK Master of the Rolls

I conclude with a plea. As Lord Denning famously declared in *Lazarus Estate Ltd v. Beasley*: `*Fraud unravels everything*.' Heiner is unravelling before your very eyes. I say to those Queensland public officials who are watching this case like some spectator sport and who may be actively aiding the Queensland government in defending the indefensible: the game is well and truly up. Do the right thing. Obey the law. I recognise that this committee's task is a heavy one, but if you have the courage to stand for what is right I remind you of another wise comment: `*The truth shall set you free*.' After 14 years of struggle, I want to be free of Heiner, but I will not go away until the truth is revealed to all.

CHAIR —Thank you, Mr Lindeberg. I must say that it has been put to me on a number of occasions that people should not listen to you, simply because you have pursued this matter without slacking—because you believed it had to be pursued. I have certainly not paid attention to those people. I think you are probably doing us all a great service…..

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FOOTNOTE

When the **House of Representatives Standing Committee on Legal and Constitutional Affairs Committee**, under its Chair, the **Hon Bronwyn Bishop MP**, decided to investigate the unresolved Heiner affair as part of its May 2002 national inquiry into "*Crime in the Community: victims, offenders and fear of crime*" and it became public news, then Queensland Premier Peter Beattie MP, reacted by describing it as '…*a political stunt'*.

The Hon Peter Beattie MP

Timed for maximum impact to discredit the Bishop Committee when it arrived in Brisbane to commence its hearings, Premier Beattie issued his Media Release on 27 October 2003.

He set out certain claims attempting to assure the public that this matter had been thoroughly investigated with nothing further for anyone to find. He also described the Bishop Committee's decision to revisit this affair as a waste of taxpayers' money.

However, just a cursory examination of the innocence/following-due-process procedures asserted by Premier Beattie (qualified in law) in his Media Release tells a very different story for anyone who takes the time to look up the facts.

In fact, so much so, the direct compelling character of his public admissions more than satisfied the triggering elements of section 129 of the *Criminal Code 1899* (Qld) – ***destroying evidence*** while other claims were nothing more than a repeat of self-serving, echo-chamber myths relied on for years by the Goss and Beattie Queensland Governments and CJC/CMC.

Executive Building, Brisbane in 2004

Parliament House, Canberra ACT

Premier Beattie made these key statements as proof of no wrongdoing: (Quote)

1. **"On 5 March 1990 the Goss Cabinet was informed that representations had been received from a solicitor representing certain staff at the centre….At that time, no formal legal proceedings had been instituted, nor was any legal action subsequently instituted."**

LEGAL IMPLICATIONS:

a. In making this statement, Mr Beattie **knew** (or reasonably had to know) that solicitors had placed the Queensland Government/Department on proper (due process) notice on 14 and 15 February 1990 of having "…***every intention to pursue the matter through the courts***" if access to the documents was not granted pursuant an **accepted** right of access found in *Public Service Management and Employment Regulation 65.* **The solicitors also instructed the Queensland Government/Department not to destroy the documents;**

b. To be clear and unequivocal, the 5 March 1990 Cabinet Submission **(Cabinet Submission No. 00160 Decision 00162)** informed the Crown Ministers that lawyers were seeking access to the Heiner Inquiry documents but had not yet commenced the **foreshadowed** legal/court proceedings;

c. Mr Beattie failed to mention the self-evident fact that the foreshadowed judicial proceedings **did not** eventuate for a very good reason. The Heiner Inquiry documents (being the known central item of evidence) having been deliberately destroyed on the order of the Queensland Cabinet on 5 March 1990 to prevent their usage in court (and then being shredded on 23 February 1990), there was no sense or reason for instituting judicial proceedings to gain access to evidence that **no longer existed.** The shredding therefore obstructed justice by irretrievably disposing of relevant evidence through the government shredder on 23 March 1990;

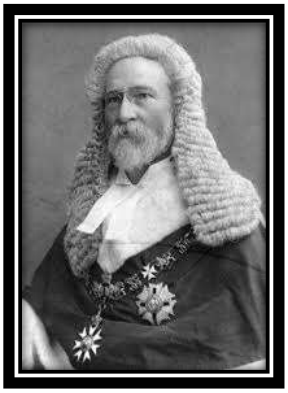
d. Mr Beattie failed to mention at this very same time when the evidence was being secretly appraised and then shredded, the Queensland Government was **still** materially and deceptively pretending that the evidence was in existence and safe from destruction. This forestalled the commencement of court proceedings. The course of justice was at a mutually-agreed "***interim***" stage pending receipt of the promised Crown Law advice addressing the question of access **out** of court;

e. Mr Beattie failed to mention that Crown Law on 16 February 1990 had advised that once the (anticipated) writ was served, the Heiner Inquiry documents would have to be disclosed under the Discovery/Disclosure Rules of the Supreme Court of Queensland. This was because they did not attract "*Cabinet confidentiality*" having not been brought into existence for a Cabinet purpose. In these circumstances, the shredding therefore also scandalised those binding Rules (to ensure a fair trial) by an act of *prima facie* contempt and serious breach of the doctrine of the separation of powers;

f. Mr Beattie's proposition that until known foreshadowed judicial proceedings commence, all known and foreseeably relevant (required) evidence can be wilfully destroyed without offending the law (i.e. section 129 of the *Criminal Code 1899*), was always untenable nonsense. It was equally so when the CJC relied on this (mis)interpretation in its 26 January 1993 report to dismiss Lindeberg's 1990 disclosure of alleged wrongdoing, as well as relying on the State Archivist's approval (to shred) on 23 February 1990 by postulating (falsely) that archives law could override the *Criminal Code 1899.* **It does not**;

g. **In 1990, the wording and purpose of section 129 had not changed since its enactment into law by the Queensland Parliament in 1899. They were always unambiguously clear. Quite plainly, section 129 was not enacted to either licence or encourage the wholesale destruction of evidence known to be required for future court proceedings, but to outlaw such conduct. The provision sits in Chapter 16 of the *Criminal Code* concerning Offences Against the Administration of Justice. It was drafted by**

arguably one the greatest jurists in Australian jurisprudential history, Sir Samuel Griffith, the first Chief Justice of the High Court of Australia and former Queensland Chief Justice of the Supreme Court. It is directly replicated in other *Criminal Codes* throughout the Commonwealth of Australia and other nations, such as Israel.



The Hon Sir Samuel Walker Griffth

h. If section 129's aforesaid purpose/meaning promoted by Mr Beattie (qualified in law) were indeed correct, it preposterously ushered in "*a world without evidence*" with no legal consequences despite inflicting a cataclysmic undemocratic effect of completely crippling the administering of justice in the process. Self-evidently, this ludicrous claim catapulted Queensland's justice system into an unacceptable state of injustice and utter chaos;

i. In ***R v Ensbey; ex parte A-G (Qld)*** [2004] QCA 335, the Queensland Court of Appeal unanimously upheld a District Court guilty verdict against Pastor Doug Ensbey concerning section 129. The highest court in Queensland affirmed that an act of damaging evidence (i.e. guillotining a girl's diary into strips) some 6 years **BEFORE** a relevant 'realistically possible' future judicial proceedings commenced was a serious crime. In the factual circumstances associated with the Heiner affair, all the same triggering elements (re. section 129) are far clearer and more compelling than ever faced Pastor Ensbey;

j. In *Ensbey*, His Honour Justice Geoff Davies said at 16: (Quote)

> ***"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."***

k. His Honour Justice Glen Williams said at 24: (Quote)

> ***"…The destruction of evidence is, in my view, a serious offence which calls for a deterrent sentence and that would usually necessitate the offender serving an actual period in custody."***

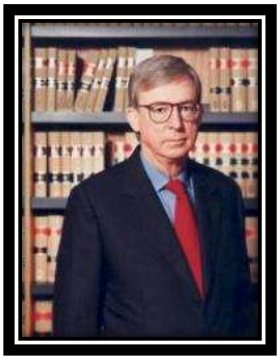
l. His Honour Justice John Jerrard said at 48: (Quote)

> ***"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."

m. Justice Jerrard added at 54: (Quote)

"The judgment in The Queen v Vreones is a leading case, cited in the joint judgment of the High Court in The Queen v Murphy for the proposition that at common law an attempt to obstruct the course of justice was a punishable misdemeanour. It is accordingly appropriate to follow it. Applying the logic of the decision to a charge of destroying evidence, as opposed to a charge of fabricating it, there is no need for the prosecution to establish more than the possibility, known to or believed in by the accused on reasonable grounds, that a judicial proceeding would occur, those reasonable grounds being matters shown to exist to the knowledge of the accused. On that construction the appellant was properly convicted."



Justice Geoff Davies AO

Justice Glenn Williams AO

Justice John Jerrard

2. "The Crown Solicitor advised the Goss Labor Government in 1990 that the investigation should not continue and that the documentation should be referred to the State Archivist for destruction, because the inquiry was incorrectly established and because there was no legal protection for witnesses who gave evidence before the inquiry."

a. Mr Beattie failed to disclose that the decision to close the Heiner Inquiry was made by the acting Director-General of the Department of Family Services and Aboriginal and Islander Affairs (DFSAIA). This was set out in the acting D-G's letter to Mr Heiner on 7 February 1990. In the same letter, **his appointment and inquiry were confirmed to be lawful** under section 12 of the *Public Service Management and Employment Act 1988*;

b. Mr Beattie failed to disclose that the Crown Solicitor on 23 January 1990 had advised the DFSAIA D-G that (Quote): "***I believe there is no legal impediment to the continuation of the Inquiry***" notwithstanding, in his opinion, its continuation would serve no good purpose. The Crown Solicitor, however, **was not** legally responsible for the efficient running of the DFSAIA which fell to the D-G and responsible Minister;

c. Mr Beattie failed to disclose that far from having no legal protection (as he and others liked to claim) the 12 February 1990 Queensland Cabinet Submission (**No 20 – Decision No. 00101 – See**

QCPCI Exhibit 151) informed and had then saw **adopted** by the Queensland Cabinet a Public Policy that the Heiner Inquiry Crown public servant/witnesses:

i. **would have Crown legal representation (if needed) and be indemnified from costs associated with any legal claims arising out of the due performance of their duties, providing they had acted '*conscientiously and diligently*'**. This long-standing Statement of Public Policy is titled "***Crown Acceptance of Legal Liability for action of Crown Employees***". It is still in force in 2020;

ii. but, if those Crown public officials/witnesses who **had not acted** '*conscientiously and diligently*' but maliciously (i.e. who had knowingly lied in their evidence to Mr Heiner to the detriment of another),they **would not** be provided with legal protection because public officials **are not** authorised to either knowingly lie or mislead anyone (including Mr Heiner) in the performance of their Crown duties;

iii. In the same vein, if the Heiner Inquiry had been established under the provisions of the *Commissions of Inquiry Act 1950* (Qld), a complete protection in respect of what those same witnesses said **did not exist** either. That is, if they told material lies, it may have left them *prima facie* open to serious charges of perjury committed before a 'judicial proceedings' (as defined in section 119 of the *Criminal Code 1899*);

v. **Therefore, by shredding the lawfully gathered evidence, the Queensland Cabinet effectively protected liars regarding their defamation or on whatever else was materially important. By that same shredding act, it obstructed the other notified course of justice to have the Queensland Government by court order grant the right of access owed under *Public Service Management Employment Regulation 65 – access to officer's file* – namely, stipulated parts in the Heiner Inquiry documents held on and/or about particular DFSAIA public officials;**

d. Mr Beattie also failed to disclose that the 12 February 1990 Queensland Cabinet had extended its same indemnity to cover any legal costs Mr Heiner might accrue should legal action ensue and an adverse court decision eventuate consequent on conducting his lawful inquiry.

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COMMENTARY ON THE LONG-STANDING QUEENSLAND GOVERNMENT PUBLIC POLICY AFFORDING PUBLIC OFFICIALS LEGAL PROTECTION AS AROSE IN THE HEINER AFFAIR

By way of background, the functioning of our justice system throughout the Commonwealth of Australia relies on openness, honest dealings, fairness and no trickery. This mode of operation is designed to engender public confidence in the justice system. Overwhelmingly, it relies on trust and integrity at all levels of its operation.

This mode of operation is secured within a strict framework of rules/laws specifically designed to protect the integrity of the administration of justice in the interests of all who come before Her Majesty's courts for multitudinous reasons, that they civil or criminal in kind. This expectation of people putting trust in the justice system is heavily reliant on the trustworthiness of legal/judicial

practitioners. This is achieved by obliging practitioners (i.e. judges, solicitors, barristers as officers of the court) to adhere to a strict professional code of conduct and relevant laws which essentially means that they must always conduct themselves in a '*fit and proper*' manner, most especially sitting judges whether on or off the Bench.

Combining with their oaths of office, expertise and obedience to the law to ensure a fair trial, the outcome of a course of justice, played out and reported on in open courts under a proper respect of associated 'court/tribunal privilege' to prevent detrimental reprisals **while aided by relevant evidence being kept safe and made available for use**, is expected to be accepted and respected by litigants as final.

Australia's Judicature has been secured under **Chapter III of the *Constitution*** since federation, over 100 years ago. It is a binding contract of fidelity between "*the governors*" and "*the governed*". The justice system has been carefully designed so that peace, order and good government prevails across our nation under the law. In turn, this permits society, with all its ever-present ferment of competing interests and forces, to move forward smoothly and predictably in unity as far as structurally possible instead of out of control in a state of anarchy, chaos and suppurating injustice.

The democratic aim of a sound justice system is to deliver justice as honestly, swiftly, fairly, openly and competently as possible. Delay for improper purposes is impermissible because justice delayed is justice denied. In short, the State/Crown must facilitate justice not delay or obstruct it.

It follows on that Australia, which respects the rule of law, has rightly agreed in relevant laws across all Commonwealth State and Territory jurisdictions that any conduct which knowingly obstructs justice is not just unacceptable but shall be treated as a serious crime worthy of prosecution and penalty. For example, knowingly destroying known and foreseeable evidence required for pending or impending judicial proceedings attracts a maximum of seven years imprisonment if proven in Queensland in 2020. Other offences against the administration of justice such as perjury attract a more severe maximum penalty of fourteen years.

No one ought to be surprised to know that Queensland Government's standing Public Policy on the provision of legal protection for Crown officials who may find themselves facing legal action by another consequent upon them carrying out their lawful duties is **conditional** on those duties having been performed in a conscientious and diligent manner - evidence of which is, or may be, contained in identified relevant '*public records*' and along with the Crown's obligation to always conduct itself as "*the model litigant*". This Policy takes a very **strict lawful** form. In the first instance, the State/Crown cannot either authorise or condone illegality. **It must obey the law**. Therefore, the State/Crown strictly limits itself to providing legal counsel at no cost and, if the applicant wins the court action against the Crown official, pay whatever costs are awarded by the court.

The Public Policy, as it must, recognise the democratic right of a citizen (i.e. another, who may also happen to be a public official, suing the State/Crown) to exercise their democratic right to institute legal action without obstruction from anyone, especially from the State/Crown. For example, a legal action might be commenced to correct a grievance which is genuinely believed to exist so as to protect one's reputation, or to uphold property or legal rights.

The Public Policy **NEVER** recommended that a Queensland Government could deploy a so-called lawful act (as the CJC, Premier Beattie, DPP and others in the Heiner affair (falsely) claimed was legally open) to deliberately destroy relevant evidence in its possession (i.e. public records) before a threatened judicial proceedings commenced, as a means of protecting the relevant public official, or taxpayers' monies, from a potential financial impost/burden as might eventuate by court order.

The absence of this (shredding) course of action in the Public Policy concerning anticipated judicial proceedings involving Queensland Crown employees unarguably acknowledges that any thought of shredding evidence **before** anticipated judicial proceedings commenced **would be unlawful**. Doubtless, the competent Crown Law drafters **knew** the law made it unambiguously clear that shredding evidence **before** related judicial proceedings commenced would tend to, at minimum or absolutely, interfere or obstruct a related course of justice. For the record, the criminal law outlaws just "*a tendency"* and/or *"an attempt*" to interfere with the administration of justice (**See section 140**).

Quite obviously the Crown Law drafters of this Public Policy (well **before** the Heiner Inquiry happened) **knew** that the *Criminal Code 1899* (Qld) in its Chapter 16 dealt with Offences Against the Administration of Justice. It could not be ignored. It outlaws a range of obstructionist conduct, most particularly (as applies in the Heiner affair's factual circumstances) in respect of section 129 – **destroying evidence** which "*is or **may be***" required in judicial proceeding.

It follows therefore that the same 12 February 1990 Queensland Cabinet, after having approved the application of this Public Policy for Heiner Inquiry/John Oxley Youth Detention Centre (JOYDC) public officials/witnesses (and applying it equally to Mr Heiner), then materially breached its requirements and respect for rule-of-law due process. That is, those binding obligations, owed to (a) the prospective plaintiff/applicant and (b) the administration of justice, were wilfully violated when the 5 March 1990 Queensland Cabinet ordered the known evidence (in its possession and control) to be destroyed to prevent its usage in the very same proceedings for which the 'legal protection' had been approved some 3 weeks earlier.

Mrs Bishop, as Chair, first invited Mr Heiner by letter to attend to be questioned by the Committee under oath. He declined. In response, she then exercised the constitutional powers of the Federal Parliament and summonsed him to attend on pain of contempt. He attended forthwith. It is understood Mrs Bishop's exercise of these powers was, and remains, unprecedented in Australian political history as between Federal/State jurisdictions which are normally not traversed.

Under oath, Mr Heiner told the Committee on 18 May 2004 that it was the first time he had ever been interviewed. He confirmed that he took evidence about abuse of children held in State care and protection at the JOYDC.

His admission was no surprise against available facts. At least one of the staff complaints against JOYDC management, which Mr Heiner was commissioned to verify, concerned children being allegedly abused by means of excessive handcuffing throughout the night to an outside fence and storm water drainage grate.

Evidence of this child abuse being contained in the Heiner Inquiry documents was recently reaffirmed by none other than now-current Queensland Chief Justice, the **Hon Catherine Holmes AC**, in her public declaration to the Queensland Legal Services Commissioner dated 30 July 2013. Her Honour was obliged to be wholly truthful in her declaration on pain of punishment if she wasn't. Obviously, she gained this firsthand knowledge through her earlier role when Counsel assisting **the 1998/99 Forde Commission of Inquiry into the Abuse of Children in Queensland Institutions** when it examined the running of the JOYDC around the time of the Heiner Inquiry. The Forde Inquiry Report found the aforementioned treatment of children to be unlawful.

THE BISHOP COMMITTEE MAJORITY REPORT:

On 11 August 2004, Mrs Bishop tabled in the Federal Parliament her Committee's majority **Report** into the Heiner affair, albeit as the scandal then stood. The ALP Committee members resigned en masse beforehand without tendering a dissenting report.

The Committee majority Report's arguably made the most sensational landmark recommendations to have ever been tabled by a Standing Committee of the Federal Parliament since Federation.

They were: (Quote)

Recommendation 1 (Paragraph 2.174)

> **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 (Paragraph 2.213)

> **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 (Paragraph 3.163)

> **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.**

Premier Beattie summarily ignored these landmark recommendations.

It should be noted, some three years later in August 2007, a raft of retired Supreme Court judges, drawn from jurisdictions across the Commonwealth of Australia including (the late) the Hon David Malcolm AC CitWA, Chief Justice of the Western Australia Supreme Court, took the extraordinary step to lobby Premier Beattie in an Open Letter of Concern. In particular, they called for the appointment of an independent Special Prosecutor in support of what Mrs Bishop's Committee had recommended in its August 2004 majority Report. But, once again, Premier Beattie ignored them too.

ADDENDUM

In this context, hypocrisy reeks in many places. It is insightful to know that just over four years **earlier**, Premier Beattie publicly nailed his colours to the mast regarding his highly-principled non-negotiable stance on corruption in government no matter which side of politics was involved. He declared before Parliament and the Queensland people (**See State *Hansard* 8 September 2000 p3208**) that: (Quote)

> ***"....Anyone else who breaks the law should also go to jail. I do not care who they are—whether they are in my party, in the Liberal Party or in anyone's party. This Government has the highest standards, and anyone who breaks the law goes to jail. Anyone who disappoints the high standards we and I expect from the Labor Party should go to jail. I do not compromise on those things".***

However, when push comes to shove, Queensland Governments and law-enforcement/accountability authorities in dealing with this well-documented systemic cover-up of alleged high-level wrongdoing, have consistently adopted a very different standard for those in high places for the last three decades in '*post-Fitzgerald Queensland*'. So, who's really fooling who about integrity and the truth?

Well, this is abundantly clear.

In the long history of this suppurating scandal, Mr Beattie's personal assurances in his October 2003 Media Release about ***"…nothing further for anyone to find***" may have fooled and bluffed some, but certainly **not** the Hon Bronwyn Bishop MP when Chair of the highly reputable House of Representatives Standing Committee on Legal and Constitutional Affairs in 2003/04.

Far from nothing for anyone to find, Mrs Bishop found an over-abundance of unresolved corruption. And things have only got far worse ever since by the continuing self-serving obstinacy of Queensland Governments and the CCC, as attested to in other earlier postings on this webpage.