

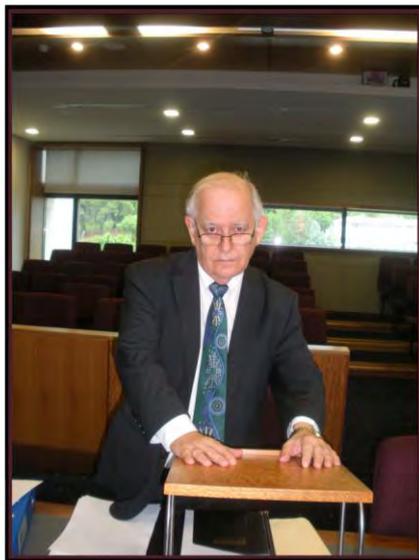
# THE ENDGAME CLOSES IN ON THE LONG-RUNNING HEINER AFFAIR

## CCC CLUTCHES AT DESPERATE MEASURES IN DESPERATE TIMES

14 December 2016

An extraordinary event setting off a chain of others has finally erupted into the public domain. It's the ticking time bomb only a few in public office knew about for the last year or so. That's all changed now, although there is more disturbing news to come. The watershed event occurred in April 2015. It's about the extraordinary decision by Crime and Corruption Commission (CCC) to secretly breach a public trust with unprecedented and far-reaching consequences for the sound governance of Queensland.

It came after the CCC was finally confronted with the compelling evidence of potential wrongdoing in "the Heiner affair papers" by whistleblower Kevin Lindeberg in February 2015 when he met then acting CCC Chair (the late) Dr Ken Levy RFD. He showed to Dr Levy the serious character and content of the unresolved systemic cover-up not touched by the recent 2012-13 Carmody Commission of Inquiry or by any other proper authority to date.



Whistleblower Kevin Lindeberg at Bar Table during the 2012-13 Carmody Inquiry

Amongst others adversely named in these papers regarding to their respective roles in this alleged systemic protracted cover-up at particular times are seven sitting judicial officers. Following several meetings between Dr Levy and Lindeberg, the CCC recognised and undertook in writing on 2 March 2015 to appoint an *interstate* Supreme Court judge to carry out a preliminary review of the allegations. The term "independent person" in the letter meant *interstate* Supreme Court judge. **(See a copy further on)**

Before embarking on this course of action, the CCC did its own initial assessment of the allegations. It did not act on Lindeberg's volition but by its own motion. On 27 February 2015, the CCC Board resolved that the necessary legal threshold regarding the presence of a reasonable suspicion of official misconduct to authorise special action was satisfied. It is highly probable that significant public money was spent to conduct the preliminary review for a period of between 12-14 weeks.

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Crime and Corruption  
Commission

QUEENSLAND

Our Reference: AD-14-0389 / 15/029662 AV  
Contact Officer: Dr K Levy

2 March 2015

Mr K Lindeberg  
11 Riley Drive  
CAPALABA QLD 4157

Dear Mr Lindeberg

The matters you referred to me in your letter of 12 February 2015 were referred to the Commission on 27 February 2015.

The Commission has unanimously decided that it does not see its jurisdiction as being limited to referring the information you provided to only support a judicial inquiry under section 61 of the Constitution of Queensland 2001. Indeed, the Commission is disinclined to support that course of action.

However, following a consideration of the issues raised in the material supplied with your letter of 12 February 2015, the Commission has determined to have a preliminary examination conducted of the Commission's holdings which are relevant to the allegations about CJC staff. A preliminary examination will also be conducted into the Rofe QC Audit. Depending on the outcome of that material, further investigations or Inquiries may be commenced by the Commission.

An independent person external to Queensland will be appointed to conduct the Commission's preliminary examination of these matters.

Yours sincerely

  
Dr Ken Levy RFD  
Acting Chairman



**(The Late) Dr Ken Levy RDF**

With so much known to be at stake for so many known to be named in this long-running unresolved scandal, this was a landmark decision of historic proportions in Queensland's political history, especially in "post-Fitzgerald Queensland" with its new paradigm of checks and balances to eradicate wrongdoing from the system. Dr Levy asked Lindeberg to keep their agreement confidential while the preliminary review was carried out. He honoured this request out of trust for Dr Levy and the CCC's written and signed undertaking.

It was understood at all times that an appointment of a Supreme Court judge '*...external to Queensland*' was a legal and ethical necessity to ensure independence and impartiality of the process and outcome under the *Crime and Corruption Act 2001*. The CCC knew that it could not investigate the allegations itself because of its previous long involvement. That is, its independence and impartiality were irredeemably compromised in this matter.

So, after over two decades of distrust, Lindeberg put his trust for the first time in this written and signed undertaking by Dr Levy, the acting CCC Chair. By any reasonable measure, Lindeberg was entitled to expect trust from these public office holders by law and ethics.



**The new Queen Elizabeth II Courts of Law Building, Brisbane**

He also trusted the CCC when told that the Supreme Court judge's name would be withheld from him to protect the judge's identity from becoming known. Unknown to Lindeberg at the time but

discovered after the review was finished, the judge was provided with accommodation in the new Queen Elizabeth II Queensland Courts of Law Building in Roma Street Brisbane to conduct the preliminary review in which a number of the judges under review sat on the Bench.

It is known that the judge never contacted Lindeberg to question him.

Throughout the process, Lindeberg was never once given to believe that the 2 March 2015 undertaking was not being fully honoured. It was always known that if the judge did not come from *interstate*, Lindeberg would immediately withdraw, let alone go to the media about any betrayal of trust, as well as the Parliamentary Crime and Corruption Committee (PCCC) and Parliament.

When Lindeberg met with certain CCC officials including Dr Levy in CCC HQ on St Pauls Terrace, The Valley, in late May 2015, those officials undoubtedly knew the true identity of the (switched-to) judge chosen to do a preliminary review but kept Lindeberg in the dark throughout the meeting.

At all times, it was known that the allegations - if proven to have substance - had the potential to change the course of Queensland's history at many different levels.

After the preliminary review was completed sometime in mid July/early August 2015 (without the report ever being shown to Lindeberg), Lindeberg learnt, for the first time officially around October 2015 after pressing the CCC in writing for an assurance that the signed undertaking had been fully honoured, that the CCC had in fact **secretly violated** its signed undertaking.

*The facts now reveal that in mid-April 2015, the CCC secretly appointed a recently retired Queensland Supreme Court judge to review the conduct of certain sitting judges, all of whom came from that same jurisdiction.*

This switch (on the signed undertaking) is alleged to be a material betrayal of public trust. This is because it involves alleged unconscionable false and deceptiveness conduct whose effect perpetrated an egregious alleged *prima facie* fraud on Lindeberg, and, for that matter, on the impartial administration of justice. Because of his trust towards them (i.e. the CCC), Lindeberg was not only duped by their deceptive conduct towards him, but so too was Parliament and the Queensland people.

It's hardly surprising to learn that Lindeberg was outraged. He complained.

In this period, as part of the obligatory chain of accountability, the Parliamentary Crime and Corruption Committee (PCCC) may also have been knowingly misled by the CCC when reporting this landmark activity to the PCCC under the *Crime and Corruption Act 2001*. On the face of public evidence, it is quite reasonably open to suggest that the PCCC was only told **convenient half-truths** by the CCC about the appointment process. It is well known that to knowingly misled Parliament and its committees (i.e. not to provide an **inconvenient whole truth** of a matter) may not just be a potential contempt of Parliament but also a potential breach of section 57 of the *Criminal Code 1899* (Qld).

The CCC is now relying on the excuse that it merely changed its mind about the judge by the exercise of a prerogative, i.e. a discretion to do so. This excuse is both desperate and dangerous. If found to be acceptable, it has very major far-reaching ramifications on sound and reliable governance in Queensland.

*It is often said that what's good for the goose is good for the gander. The CCC is, by law, the independent oversighting watchdog authority of ethical conduct in the daily operations of Queensland's public sector. Its own conduct therefore ought to be the exemplar for others to follow. This is supposed to imbue trust in the government. It reasonably follows that if the CCC is able to secretly violate its own signed undertakings with others with impunity, then why shouldn't all other Queensland entities of government misconduct themselves in a similar manner whenever they like?*

The CCC's conduct is exposed as an affront to the relevant laws and ethical conduct which the CCC previously accepted as binding in these circumstances. Unacceptable double-standards are on full public display for everyone to see.

*This new paradigm will mean that promises/contracts written and signed by State entities under their official letterheads may not be worth the paper they are written on. This will quickly lead to the disintegration of civil society and the rule of law which relies on trust in public office in order to function fairly and harmoniously. Society will be left with capricious, self-serving arbitrariness in official government decision-making as the mood, secrecy and circumstances suit the purposes of those decision-makers, not the public interest.*

In this matter, the judicial reviewer had to be an interstate Supreme Court judge because Queensland judges should not be judged by fellow Queensland judges in matters of possible judicial misconduct/misbehaviour.

The CCC must comply always with its binding statutory duties of honesty, independence and impartiality in all its actions. No prerogative to 'opt out' by the exercise a so-called "discretion" - i.e. do a secret act of arbitrariness which is contrary to a signed agreement and the public interest - is capable of relieving the CCC of those binding duties.

*The CCC's excuse is nothing less than on a bodgied-up recipe, based wholly on the self-serving ingredient of an non-existent*

*"discretion" which has inexorably produced a half-baked, inedible dish laced with the bitter taste of anarchy, needing to be served to all and sundry, including Parliament, with an air of unchallengeable hubris in the desperate hope that no-one would either notice or dare question its taste because of the standing of the chef in the law-enforcement world.*

Well, it's been noticed and tasted, and now being seriously questioned.

The PCCC, Queensland Government and Parliament are all now intimately entangled in this alleged sordid crisis. The CCC is accountable to Parliament via the PCCC; the PCCC is accountable to Parliament; and Parliament is accountable to the people. We're all captured in this mire one way or another. The judge's secret report is undoubtedly a nullity at law. This means that credible allegations of serious suspected official misconduct in the Heiner affair papers remain unresolved.

This recent alleged violation of public trust is just the tip of an unprecedented crisis of governance in Queensland now facing the three arms of government - i.e. Parliament, Legislature and Judiciary - entangled in the Heiner affair. It's brought everything to a head. The landmark 1987-89 Fitzgerald Inquiry never faced a crisis like this, nor, it seems, has any other jurisdiction in the Commonwealth of Australia.

As our supreme democratic institution, Parliament is at the epicentre of what happens next - if anything. Its only legal option to address this crisis is found in section 61 of the *Constitution of Queensland 2001*, namely, it provides for the urgent reintroduction and enactment of the November 2014 Cunningham Bill called the **Parliamentary (Heiner Affair and Related Matters) Commission of Inquiry Bill** with its definition of what "the Heiner affair" means expanded to capture these recent events of 2015-16.

If and when enacted as an Urgent Bill pursuant Standing Rules and Orders No 137, the Bill establishes a parliamentary tribunal presided over by three independent **interstate** senior judges, along with Counsel Assisting and support staff, resources etc, capable of investigating these credible allegations of possible judicial misbehaviour and other interconnected related matters under the new definition of what "the Heiner affair" means.

Neither the PCCC or its Parliamentary Commissioner has any legal authority to investigate such allegations under the *Crime and Corruption Act 2001*.

Public trust lies at the heart of the Heiner affair. It has been there from the very beginning of this scandal back in 1989/90. Public trust in public office has been undermined and sullied in its breach by one act after another over many years, all of which can be found in "the Heiner affair papers". These matters are in the knowledge and possession of the Queensland Government, Parliament, CCC and PCCC.

Public trust must be restored urgently. It lies at the heart of all public affairs. If those in public office think that they can either ignore, thwart or delay justice longer, then they should know that they are knowingly, foolishly and dangerously tampering with the foundations of our democracy.

The people should never be treated as uncaring fools or compliant sheep as if to believe that trust in public office counts for nothing to them in 21st century Queensland. It does. Hopefully, it always will in Queensland, and across Australia. Trust in public office is the lifeblood of the people to safeguard their freedom and rights in democracies, and hence is and must always remain a non-negotiable value.

Urgent action is required. This unconscionable alleged betrayal of trust has now been brought into the public light of day. It is no longer concealed behind closed doors or withheld from the public's right to know what their government is up to by redacting key passages in public submissions.



**The Hon Sir Anthony Mason**

It is worth recalling what Chief Justice of the High Court of Australia, the Hon Sir Anthony Mason AC KBE GBM said in *Australian Capital Television Pty Ltd and Ors & State of New South Wales v the Commonwealth of Australian and Ors* (1992) 177 CLR at 38 [No.2] about the supply of information in a representative democracy. He observed:

***"...Indispensable to that accountability and that responsibility is freedom of communication, at least in relation to public affairs and political discussion. Only by exercising that freedom can the citizen communicate his or her views on the wide range of matters that may call for, or are relevant to, political action or decision. Only by exercising that freedom can the citizen criticise government decisions and actions, seek to bring about change, call for action where none has been taken and in this way influence the elected representatives. By these means the elected representatives are equipped to discharge their role so that they may take account of and respond to the will of the people. Communication in the exercise of this freedom is by no means a one-way traffic, for the elected representatives have a responsibility not only to ascertain the views of the electorate but also to explain and account for their decisions and actions in government and to inform the people so that they may make informed judgements on relevant matters. Absent such a freedom of communication, representative government would fail to achieve its purpose, namely, government by the people through their elected representatives; government would cease to be responsive to the needs and wishes of the people and, in that sense, would cease to be truly representative." (Underlining added)***

As matters stand, the on-parade conduct by certain public officials is an affront to fundamental values about how democratic governments work, or should work. They must now fully explain themselves in public under oath under close cross-examination by independent authorities in the public interest. This

is now Queensland's 21st century litmus test about whether or not trust in public office matters in Queensland any longer. It's about what standards of conduct across whole-of-government by "the governors" we want for ourselves and future generations, "the governed". It's a stark choice.

The following items in *The Brisbane Times* on 6 October 2016, a recent video interview of whistleblower Lindeberg before a CCC Panel chaired by CCC Chair, Mr Alan MacSporran QC, on 7 October 2016 and Lindeberg's 30 June and 21 October 2016 submissions (even in redacted format at the hands of the CCC and PCCC) on the CCC's webpage show how this crisis now looms large over good government in Queensland.

There is more to come.

In the meantime, contact your local State MP and ask what he/she intends doing about this serious betrayal of public trust which they have all been told about.

Don't be surprised or put off by their answers though. It's the truth that matters at the end of the day because it's the truth that keeps us free.

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**ACCESS LINDEBERG'S SUBMISSIONS (No 37) REDACTED BY THE CCC UNDER AUTHORISATION FROM THE PCCC MAY BE FOUND AT:**

<http://www.ccc.qld.gov.au/research-and-publications/publishing-allegations/submissions>

**THE VIDEO OF LINDEBERG'S APPEARANCE BEFORE THE CCC ON 7 OCTOBER 2016:**

The videos of oral evidence given by invited speakers to the CCC's public forum (6/7 October 2016) on whether or not making allegations of corruption lodged with the CCC public ought to be made a crime are now available at:

<http://www.ccc.qld.gov.au/research-and-publications/publishing-allegations/transcripts-video>

Lindeberg's appearance - the last presentation on 7 October 2016 - may be found at **Time 1.58:**

<http://www.ccc.qld.gov.au/research-and-publications/publishing-allegations/videos/session-5.mp4>

The CCC has redacted two portions of his delivery despite the fact, on the day, it was live-streamed without any "non-publication" order issued during its delivery.

The CCC's Final Report was published on 12 December 2016, and may be found at:

<http://www.ccc.qld.gov.au/research-and-publications/publishing-allegations/pacc>.

## THE BRISBANE TIMES ARTICLE - 6 OCTOBER 2016

### CCC accused of breaching trust of senior whistleblower

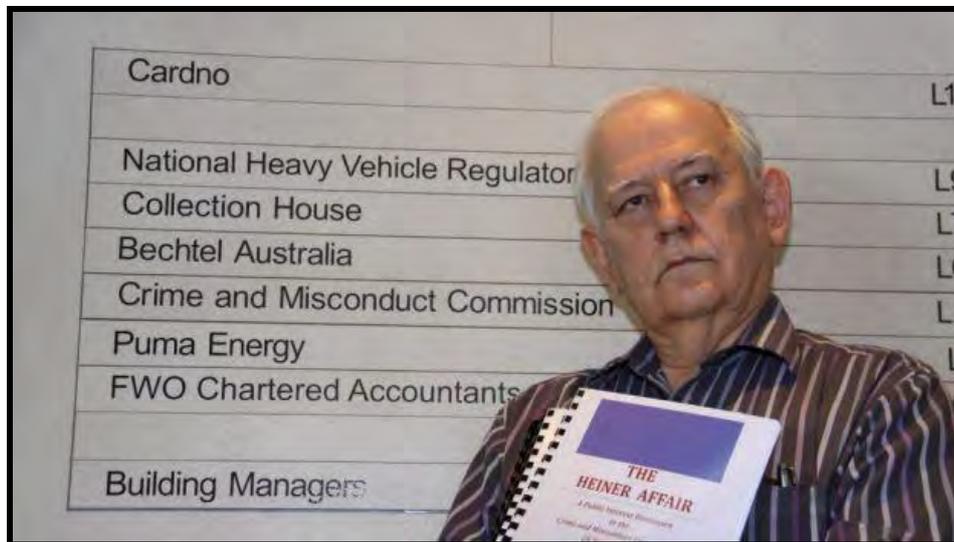
<http://www.brisbanetimes.com.au/queensland/ccc-accused-of-breaching-trust-of-senior-whistleblower-20161005-grvtrl.html>



Tony Moore

Queensland's Crime and Corruption Commission has been accused of reneging on a written promise to Queensland's highest-profile whistleblower straight after the 2015 state election.

The explosive allegation was made in a letter from Queensland's Whistleblower Action Group to Attorney General Yvette D'Ath on February 14, 2016.



Whistleblower Kevin Lindeberg - did the CCC renege on a promise to have his issues investigated by an interstate judge?

Queensland Whistleblower Action Group president Greg McMahon will raise the "issue of trust" allegation when he speaks on Thursday at a two-day forum hosted by the Crime and Corruption Commission on a discussion paper on whether media can report the watchdog is investigating allegations of corruption.

Mr McMahon said the serious issue goes to "whole tone of trust" between whistleblowers and the Crime and Corruption Commission.

The Crime and Corruption Commission told key Heiner Inquiry whistleblower Kevin Lindeberg in a letter on March 2, 2015 it would appoint "an independent person, external to Queensland" to investigate why it took 26 years to find there was a *prima facie* case against politicians who shredded Heiner Inquiry documents wanted in court.

The CCC instead appointed a retired Queensland Supreme Court judge - without telling Mr Lindeberg - to complete the investigation instead.

Fairfax Media is not saying the review is inadequate.



CCC Chair Mr Alan MacSporran QC



Ordinary CCC Commissioner Mr Marshall Irwin

The Crime and Corruption Commission on Wednesday declined to comment on the allegation and would not answer questions on the issue.

The Parliamentary Crime and Corruption Commission (sic) – the parliamentary body that oversees the Crime and Corruption Commission – has been investigating this allegation since May 2016.

A stunned and horrified Mr Lindeberg – who provided previously confidential information to the CCC – reported the "switch" to Queensland Whistleblowers Action Group, which subsequently wrote to Attorney-General Yvette D'Ath in February 2016.

Mr Lindeberg has, until this week, declined to comment, concentrating on a remembrance for aviation hero Bert Hinkler.



"I wasn't just promised an interstate judge by the CCC's mere whim or chance," Mr Lindeberg said.

"It was because the law and ethics required such an appointment in this Heiner affair context," he said.

"This is all about trust in public office. Without trust we are all left with absolutely nothing. We will be left to the fate of the roulette wheel of anything goes, particularly self-interest by and for those in power."

Mr McMahon said he believed the switch by the Crime and Corruption Commission was a real-life "test case" for media and the Crime and Corruption Commission.

"We are concerned when an undertaking is given to a whistleblower that they will conduct an investigation in a particular way – and then without telling the whistleblower – they renege on that undertaking," Mr McMahon told Fairfax Media.

Mr McMahon said Queensland Whistleblowers agreed with Mr Lindeberg that the issue of why the Heiner Inquiry "cover-up" was investigated by a Queensland judge – which Mr Lindeberg has always opposed – must be investigated.

Mr Lindeberg has always insisted interstate judges should investigate why it took 26 years to find there was a "*prima facie*" case against Goss Government MPs who voted to shred the Heiner Inquiry documents in 1991.

"He is asking for the set of circumstances - where he was given an undertaking - where the undertaking was reneged without telling him," Mr McMahon said.

"He wants to have that investigated, and we support that."

Mr McMahon said Mr Lindeberg's allegation must be investigated.

"It is a test case of how they may behave – if what Mr Lindeberg is saying is true – if they had this rule.

"The matter needs to be investigated, because Mr Lindeberg has documents tending to show that the allegations may be true."



Attorney-General the Hon Yvette D'Ath MP



PCCC Chair the Hon Lawrence Springborg MP

Attorney-General Yvette D'Ath has written back to Queensland Whistleblowers saying she does not intend to allow the bill (Cunningham Bill) – presented by former PCCC chair Liz Cunningham in November 2014 to [allow interstate judges to investigate these issues - to be represented.](#)

Mr Lindeberg said he believed the issue showed why media should not be hamstrung.

<http://www.brisbanetimes.com.au/queensland/independent-mp-calls-for-heiner-coverup-inquiry-20141127-11v63y.html>

"The crisis is real, serious and now," he said.

"At the very time when the authorities may make it a crime for a whistleblower like me to make allegations like this public to the media, this scandal demonstrates why we always need a fearless and free media more than ever to tell us the truth instead of being kept in the dark by those in power."