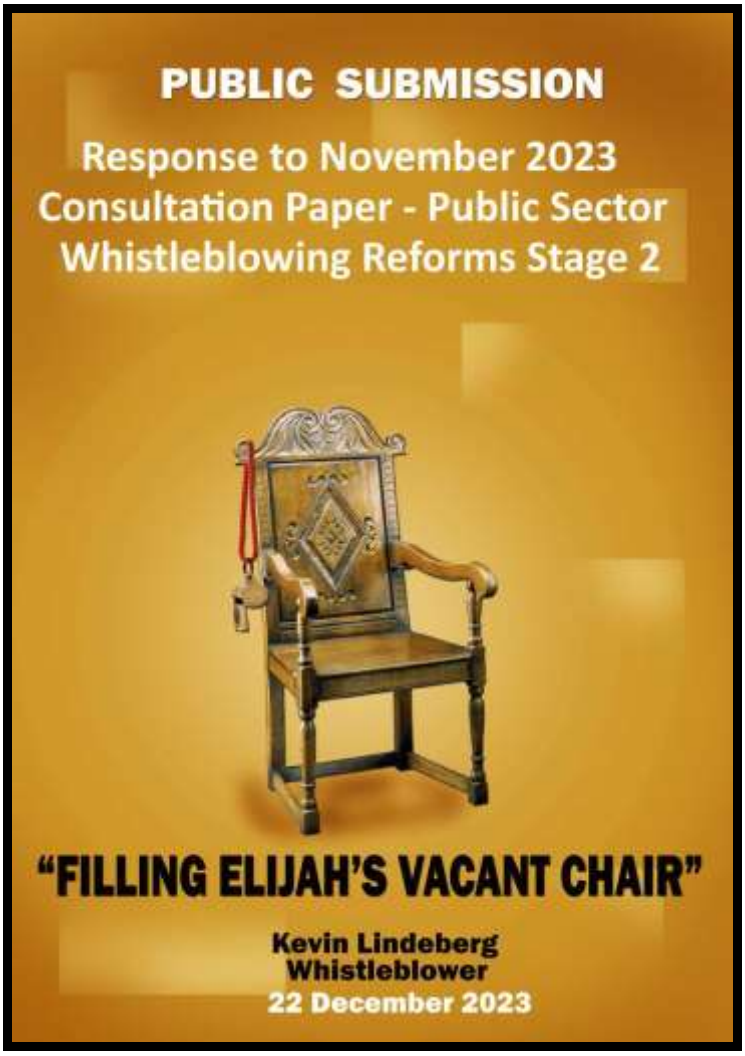
FILLING ELIJAH'S VACANT CHAIR

On 30 April 2024, the Commonwealth Attorney-General's Department brought the age-old truism of "*what goes around, eventually comes around*" to a reality when it published to the world **49 submissions** received from a wide range of concerned individuals, bodies and government entities across Australia on the very important public policy topic about the protection of whistleblowers. **Mine was one.**

15 May 2024



"The objective, demanded under the aforesaid "sacred covenant" between "the governors" and "the governed", must be to enact "fail-safe" whistleblower protection legislation, nothing less will do.

Accordingly, by introducing this analogy involving Elijah's vacant chair in these secular circumstances, I am recommending its current emptiness (around the democratic table of open and accountable government) should be filled by appropriate laws, especially when based on available documented experience which this submission (and other related material) points to in abundance.

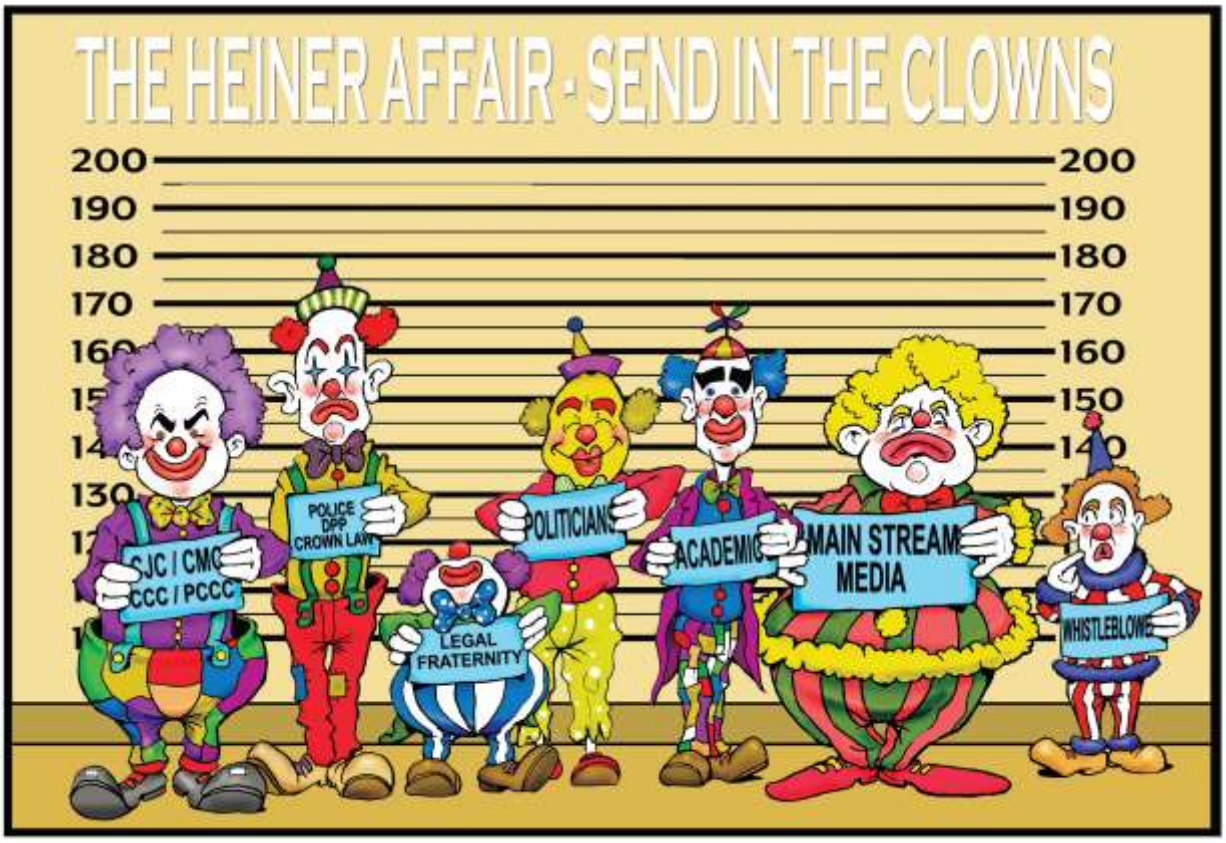
That is, by ducking the necessary introduction of a Whistleblower Protection Authority or Commissioner, "the sacred covenant of trust between parliament and its peoples" shall be unconscionably breached, and public confidence in government by the rule of law egregiously and morally betrayed." **Read More..../**

For the very many who follow this evolving 3-decade-plus ever-revelatory systemic cover-up either by reason of being one of the many current or past players who still dread the prospect of having to explain their conduct in public under oath in a future authorised court/tribunal witness box, or out of some personal, legal, constitutional, political or academic interest, all will note that there has been an absence of updates in this webpage since 30 November 2021 and elsewhere in the mainstream media.

There are reasons for this but the how's, when, where and why's cannot be gone into detail just now, but will sometime soon. That said however, pointers can be found in my recently published 22 December 2023 submission. In other words, this so-called "absence" does not denote "an absence of major activities going on behind the scenes". Far from it.

For instance, readers can click on the reference in the attached public submission to my **23 March 2023 interview on ABC Radio 612 Brisbane** with presenter Steve Austin, and on a more **recent 10 April 2024 interview on 4BC Radio** with presenter Greg Cary and listen through to its end.

To allow for a better appreciation of why I have persisted for so long in this protracted quest for justice to restore fundamental ethical, legal and constitutional principles essential to sustain a civil society and government by the rule of law, as well as to expose the evils unleashed on us all by the manner in which my 1990 public interest disclosure ("PID") of serious wrongdoing was handled from the outset and as cover-up incidents of wrongdoing compounded to the present, readers are invited to re-read the earlier 22 November 2020 posting titled "***Send in the Clowns***" to frame these matters.



Put in context, "Send in the Clowns" posting should be especially read in light of the aforesaid content of my most recent radio interviews and the recent public confession by a key legal practitioner in this affair dating back to 1992.

The truth is that since the conclusion of the 2012/13 Carmody Commission of Inquiry on 1 July 2013, what has been occurring behind the scenes may best be described as ***"...giant forward steps into the unthinkable***".

These recent steps of bringing a bright light into the very dark recesses of this matter have confirmed a state of exceptional governance gravitas, taking us to the point of showing that an unprecedented serious breakdown in the rule of law in unicameral Queensland exists. It is not speculative and thus open to be described as some madcap conspiracy theory.

Accordingly, this can be briefly recorded. Acting on eminent advice to undertake a recommended fresh course of justice under the ***Legal Profession Act 2007*** on 18 March 2022 and thereby having to dig deeper into the layers of the accumulated evidence from this new legitimate approach, it brought hitherto materially important unknown proofs into the open.

What was revealed was the extra-extraordinary reach of this systemic cover-up due to certain parties holding relevant positions of authorised statutory oversight responsibilities coming into a state of awareness that "*a suspected offence*" in this matter did arise out of the so-called **2007 and 2010 Judges' Public Statements of Concern on the Heiner Affair** which mandated those certain parties to take immediate referral action but which, based on Right to Information findings, **did not occur**.

As it happened, neither I nor the general public were aware of these monumentally serious acts of omission occurring inside "the system" when they did. Politics subsumed the law. Thus, no one outside of certain inner circles was fully aware of just how serious all these related interconnecting extraordinary political, legal and constitutional ramifications were, and what knock-on effects came into play then and later on, and remain unaddressed.

It should never to be forgotten that all of this has its genesis from when I blew the whistle on the illegal shredding of the Heiner Inquiry documents in 1990 and then relentlessly persisted in my quest for justice for over 3 decades to the present. Essentially, it was borne out of the manifest corrupt conduct I ran into at the **Criminal Justice Commission ("CJC**") which I rejected immediately on becoming aware of it and then fought back seeking a remedy within "*the machinery of government in post-Fitzgerald Queensland*" with all its so-called new checks and balances designed to ensure that systemic criminal cover ups never happened again.

In other words, what I was supposed to not find, I found. Now, aided by this fresh insight, it has also brought to light certain materially important interconnecting conduct which impacts mightily on the integrity of the three branches of government (i.e. the Legislature, Executive and Judiciary). It is unprecedented.

The starting point of all the subsequent '*whole of government'* alleged corrupt conduct now smothering, if not throttling, the integrity out of our three branches of government like a lethal ivy vine is founded on the preposterous interpretation adopted by the CJC regarding section 129 of the *Criminal Code 1899* (Qld)] in its clearance advice of 20 January 1993.

The unarguable fact is from this starting point, (let alone existing dating back to 1899 at enactment of the Code drafted by eminent jurist Sir Samuel Griffith), section 129 was never capable of being interpreted as the CJC posited and thereafter, by the fact of the CJC's all-pervading intimidating influence on "the system", fostered and promoted to defend the indefensible at great tax payer expense, as well as show utter contempt for the doctrine of the separation of power, the administration of justice, and plain old common sense and decency. Its misinterpretation only arose when my PID arose.

Thus, this affair can best be described in these terms. Namely, it is nothing short of the accumulation of compounding alleged bald-faced lies, egregious conflicts of interest, blind party-political bias, violation of duties of care, hypocrisy and double standards found staggeringly audacious incidents of abuse of power.

This audacity has witnessed decision-makers wilfully turning an '*Admiral Lord Horatio Nelson'* blind eye to highly incriminating evidence in their possession whose characteristics should have caused them to act immediately to uphold the law and honour their sworn statutory/constitutional responsibilities as impartial guardians tasked to keep our system of government trustworthy in the service of the Crown and its loyal subjects, we, the people, not to shield the abusers in high office from facing the penal consequences of their actions, let alone become co-abusers themselves.

Admiral Lord Nelson at the 2 April 1801 Battle of Trafalgar

By being oft-repeated in parliament and public for 30 years, Queensland's government has relied on this concerted interconnecting abuse of power to sustain a self-serving political narrative that not one scintilla of suspected wrongdoing could be found in my 1990 PID lodged with the CJC and that everything had been thoroughly investigated to "…*the nth degree*".

This was always a monstrous lie.

This lie was not just an affront to the proper functioning of administration of justice and my reason for blowing the whistle, but also highly contemptuous of the vitally important democratic element of the public being able to have trust in its government . By this I mean that its agencies and elected and appointed officials will always obey and uphold the law, even in the most difficult of circumstances as my PID represented from Day One. The Heiner affair shows how that trust can be, and has been, betrayed.

Significantly, in August 2007, a raft of some of Australia's highly eminent retired senior judges (fully aware and after careful consideration of the same material facts held by the CJC, police and DPP) publicly and pointedly informed "the system" in unicameral Queensland in their landmark public statement of concern of the following: (Quote)

> ***"The affair exposes an unacceptable application of the criminal law by prima facie double standards by Queensland law-enforcement authorities in initiating a successful proceeding against an Australian citizen, namely Mr. Douglas Ensbey, but not against members of the Executive Government and certain civil servants for similar destruction-of-evidence conduct. Compelling evidence suggests that the erroneous interpretation of section 129 of the Criminal Code (Qld) used by those authorities to justify the shredding of the Heiner Inquiry documents may have knowingly advantaged Executive Government and certain civil servants."***

Concerningly, one is drawn to this conclusion. Many in elected and appointed high public office, as authorised decision-makers, have knowingly betrayed their sacred oaths of office (including when being "*officers of the court*") by failing to respect and apply the law impartially and consistently to "*the Heiner affair*" facts, being open to be found in their various documented/traceable acts and acts of omission at various times in how they handled my PID's incriminating actionable evidence (i.e. facts) before them.

Reasons for their doing so will be best elicited from them under oath in a witness box in due course on pain of contempt-cum-perjury if they do not tell the truth, whole truth and nothing but the truth.

In other words, if it were to be thought that this systemic cover-up was sufficiently bad enough to warrant the establishment of a commission of inquiry at considerable public expense back in 2012 as one of the newly elected Newman Government's first decisions (which was undoubtedly right and proper), I can say in 2024, without fear of contradiction, that this matter is still of such magnitude as "*unfinished business"* to review afresh.

This is because excuses by those in positions of elected and appointed with a statutory responsibility to have acted but didn't should not be left to speculation or historians to pick over and colour by their political tendencies when major questions of legality for all the parties involved, not least the general public, are at issue.

These issues of trust in high public office are totally worthy of public scrutiny by the binding ethical, moral and legal demands of the witness box under oath and ensure their non-repeat.

I say this because these exceptionally serious breaches need to be explained. We need know how so many highly qualified public officials (especially in law) holding high public status could have got the application of equal justice in the administration of this course of justice dealing with highly compelling incriminating evidence about key aspects of fundamental law (i.e. protection of evidence, right to fair trial, avoidance of bias, probity in public office, not misleading parliament etc) so fundamentally wrong so often for so long without any visible remorse or concern about what civil society expects and/or expected of them as decision-makers in terms of honesty, ethics and impartiality in Crown employment.

In short, all should be held to account according to law despite the passage of time especially when a cover-up has been long and persistently said to exist, lest everything be reduced to a mockery. Of course, sad though it is to say, nowadays this seems to depend on whether the rule of law truly matters any longer in Queensland to the Crown, its polity or those elected and appointed to obey, uphold and enforce the law honestly and impartially as decision-makers by reason of the positions of trust they held and/or hold.

This includes - as only time will tell, let alone what should happen now – what shall happen if a change of government occurs at the up-coming State election to be held on 26 October 2024 to finally resolve this scandal given that the current Government and Opposition have been made been kept fully abreast of these new revelations due to their relevancy to their constitutional duties to act on being made aware pursuant to section 61 of the *Constitution of Queensland 2001*.

I think that this also needs to be recorded to assist in context. For example, after having gone through this harsh experience and to come out the other side of the 2012/13 Carmody Inquiry's **strictly limited** investigation into this matter (i.e. the prolonged cover-up period **was not touched**), and to later learn about certain extraordinary secret detrimental goings-on during its life (about which we, sitting at its Bar Table, had an unequivocal right to know) then, what is now additionally known dating right back to this affair's 1989/90 beginning, the flawed landmark 20 January 1993 CJC clearance, the full effect of the 2007 and 2010 Judges Public Statements of Concern, and up to the present combined with this "new" shocking evidence now to hand since 18 March 2022, this gravely serious situation looms large afresh.

Namely, we can now see just how far certain parties have been prepared to go by acts of commission and/or omissions to keep a lid on the truth of these things. Instead of taking explosive pressure out of the system, they have pumped more in.

Put bluntly, what confronts Queensland's polity embodied in "*the Heiner affair*" is nothing short of condoning and converting tyrannical government in Queensland to be the virtuous way to govern its peoples under the Crown if this status quo is knowingly left untouched, and thus able to be repeated and then ignored time and time again.

In "*the Heiner affair*", we see the weaponising of the law by "the system" and certain strategically placed legal practitioners breaching "*their fidelity to legal norms*" writ large from its very beginnings thereafter to knowingly serve improper party-political ends instead of faithfully serving the ends of justice, all of which is staggering in its audacity, depth and reach.

This is another way to summarise the handling of "*the Heiner affair*" up to 2024 by the three branches of government in unicameral Queensland: Shameful and laughable.

It demonstrates the contempt in which this generation of elected and appointed decision-makers hold all those in the past who sacrificed so much and even their own lives to secure a system of government which functions fairly by the rule of law. Their sacrifice was in total rejection of ever being governed or intimidated by a system of party-political arbitrary desires unfettered by any form of accountability constraints like of ethics, morality or the law (especially criminal and constitutional law), and able to do and say "*whatever it takes*" with impunity in attacking fundamental decency whenever thought appealing or necessary.

In winding up, readers ought never to forget that the 20 January 1993 CJC clearance of the documented alleged wrongdoing laid out in my 1990 PID (whose CJC-contracted legal practitioner author, after the passage of 3 decades, now admits his advice was "wrong") changed the political destiny of Queensland, if not elsewhere in Australia because of where certain other involved parties beyond the Ministers of the Crown of the 5 March 1990 Queensland Cabinet, went on to hold high public office and, for that matter, still do.

One is therefore drawn to express this warning in good faith. That is, borne out of a combination of political self-interest, individual and/or herd mentality driven out of misplaced loyalty, intimidation, fear and cowardice not to stand up and call out blatant lies, hypocrisy and hubris of those involved here (as decision-makers) in whom the public are otherwise expected to trust to always do the right thing in carrying out their public duties honestly in public office (taken under oath or affirmation beforehand) then, unless challenged and changed, the tyranny of this status quo will have brought us to this historic litmus-test governance moment, albeit being over 3 decades in the making, namely:

> ***When public trust in government by the rule of law vacates the political/governance field of play, everything worthwhile disappears with it leaving in its place justified feelings of mistrust to outright distrust, authoritarianism, fearsome chaos and denial of basic human rights, none more precious than free speech.***

I firmly believe that no reasonable democratic ordinary Queenslander (let alone any fellow Australian citizen) should or would ever want the above to prevail once being fully acquainted with these facts.

Nor, do I believe that this same informed ordinary Queenslander would accept, as fit and proper, such conduct by any of its relevant public officials responsible for maintaining integrity in our system of government to wilfully ignore enforcement of the law specifically prescribed by parliament to address this type of exceptional circumstance, namely **section 61(2) of the *Constitution of Queensland 2001***, particularly **after being made aware** by a whistleblower about these credible allegations of serious wrongdoing in high public office having taken place and escaped justice by means of a cover-up.

And, taking it to its zenith, I do not believe that any properly informed ordinary Queenslander would expect that "*the reserve powers of the Crown*" not to be invoked by the Head of State, the Governor, as the necessary available last resort when all else fails to return stable government by the rule of law to the State of Queensland's governance and its peoples.

This is open to be said because our system of constitutional monarchy government in either Commonwealth or States jurisdictions wisely permits, in exceptional circumstances, such vice-regal intervention to be invoked as the ultimate shield-cum-guardian of and for the people against tyranny.

Therefore, if not before then certainly in 2024 by being now armed with this additional "new" alleged prima facie compelling incriminating evidence, it is self-evidently and reasonably open to deduce that the people of Queensland (having to function under our Westminster constitutional monarchy system of responsible government in its unicameral form since 23 March 1922) have been disgracefully duped for far too long. It must cease.

All this is another compelling reason why Queensland desperately needs an independent **Whistleblower Protection Authority** (just as our federal government does) otherwise whistleblowers simply cannot survive the reprisals waiting them, especially if and when taking on the might of "*whole of government*" as occurred in the characteristics of my PID.

Therefore, when one understands the true scope of corruption caught up in "*the Heiner affair*" in current unresolved state, it is open to say that the true state of Queensland's governance is not all it is cracked up to be.

Rather, to date, the people of Queensland have been maliciously, systematically, persistently and unforgivably deceived into believing that government by the rule of law (e.g. everyone being equal before the law in materially similar circumstances, right to a fair trial, protection of evidence etc.) is secure; and also that the integrity of its three branches (i.e. Legislature, Executive and Judiciary) is secure and above and beyond any and all suspicions of ever engaging in conduct involving alleged abuse of power, obstruction of justice or judicial misbehaviour.

Our Sunshine State deserves much better than what has been served up in '*its post-Fitzgerald governance era*" since 1990. This is why the unresolved Heiner affair whose life mirrors this span of time must be resolved urgently and comprehensively in the public and national interest.

We must learn from its many governance lessons on offer.

The cleansing sun of accountability must be allowed to shine its bright light into all components of government where and when illegality of an act or act omission is suspected and allowed to nip corruption in the bud - dare anyone try to raise its ugly head ever again.

Kevin Lindeberg