Parliament of Australia

HOUSE of REPRESENTATIVES

STANDING COMMITTEE
ON
LEGAL AND CONSTITUTIONAL AFFAIRS

INQUIRY INTO CRIME IN THE COMMUNITY:

- **VICTIMS**
- **OFFENDERS**
- **FEAR OF CRIME**

LATE SPECIAL SUPPLEMENTARY SUBMISSION
TO
SUBMISSIONS 142, 142.1, 142.2
ON
THE HEINER AFFAIR

SUBMISSION
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TERMS OF REFERENCE

The House of Representatives agreed to the following Terms of Reference:

The Committee shall inquire into the extent and impact and fear of crime within the Australian community and effective measures for the Commonwealth in countering and preventing crime. The Committee's inquiry shall consider but not be limited to:

(a) the types of crime committed against Australians
(b) perpetrators of crime and motives
(c) fear of crime in the community
(d) the impact of being a victim of crime and fear of crime
(e) strategies to support victims and reduce crime
(f) apprehension rates
(g) effectiveness of sentencing
(h) community safety and policing

"No power ought to be above the laws."
Cicero, de domo sua, 57 B.C.

INTRODUCTION

This old Robert Burns adage has resonance here:

" The best laid schemes o' mice an' men
Gang aft a-gley,
An' le'e us nought but grief an' pain
For promis'd joy."

On 28 January 2004 a respected source brought to my attention for the first time highly significant new evidence relating to this matter which the Committee is entitled to know about so that its deliberations are conducted in a full and proper manner. The source told me that highly relevant information existed in *The Courier-Mail* of 17 and 18 March 1989 which caused me to visit the John Oxley Library newspaper archives at Cannon Hill to retrieve it. I now hold this new evidence.

This new material has featured in the March 2004 edition of *The Independent Monthly*[1] and it forms the basis of this Late Special Supplementary Submission.

THE AMENDED HEINER AFFAIR'S EPICENTRES

In light of the new material, those epicentres might now be described as:

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. (Notwithstanding there may be two pack-rape incidents but assuming there are not two), the deliberate misleading of then Families Minister the Hon. Craig Sherrin on 17/18 March 1989 by his bureaucracy going to the level of a conspiracy or a conspiracy by the Minister and his departmental bureaucracy to deceive *The Courier-Mail* (and its readership) into believing that the pack-rape victim was a 17-year-old female (i.e. at the age of consent) and declined to press charges when in fact the departmental record showed that she was a 14-year-old female minor not legally capable of consensual sexual intercourse and intimidated out of laying rape charges;
3. 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;

[1] *The Independent Monthly* (p3) "New twist in mysterious rape saga" by Bruce Grundy and Susann Kovacs http://www.justiceproject.net/justice/content/files/documents/Rape%20Twist.pdf

(b) the records contained evidence about the abuse of children;[2]
(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;
    (iii) prevent the gathered evidence being referred to the police or Criminal Justice Commission for independent examination despite there being a legal obligation to do so;
    (iv) and, concomitantly, it is open to conclude, to 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; and to

4. 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, including the unlawful disbursement of public monies as "hush money" to cover-up known crime and official misconduct involving serious abuse of children while held in the care and custody of the State of Queensland.

In respect of Points 1 and C (3) (iii), the evidence is quite clear that the May 1988 sexual assault incident was not properly investigated at the time, nor again in late 2001 by the Criminal Justice Commission or the Queensland Crime Commission, when it was subsequently exposed by investigative journalist Bruce Grundy in *The Courier-Mail*[3] for the first time in an authoritative form.

The term "authoritative" is used deliberately because in November 2001 Mr. Grundy had located the victim and later on accessed the relevant departmental files covering the May 1988 pack-rape incident under freedom of information which did not happen in March 1989.

After the publication of the Grundy articles, I brought the pack-rape incident to the attention of the Queensland Crime Commission (QCC) in late December 2001 as a major crime, together with the shredding and related matters. I met with its then QCC Head Commissioner Mr. Tim Carmody SC[4] and handed over a major submission of complaint. The QCC's extraordinary inaction, despite my being subsequently informed by it that the assault came within its jurisdiction under the *Crime Commission Act 1997's* definition of "criminal paedophilia" and that it had a standing reference to investigate all allegations of "criminal paedophilia", has been covered in earlier submissions to the Committee.[5]

The new material shows that when the pack-rape incident first appeared in *The Courier-Mail*[6] on 17 March 1989 through the disclosure of a whistleblower at the Centre in the wake of a major riot[7], then Families Minister the Hon. Craig Sherrin informed *The Courier-Mail* on 18 March 1989 that the victim was 17 years-of-age and that she had declined to lay charges despite being

[2] 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."
[3] See *The Courier-Mail* 3 (p3) and 8 (p2) November 2001
[4] Now His Honour Justice Carmody SC of the Federal Court
[5] See Submission 142 of 5 March 2003 Points 18.11-18.19
[6] See *The Courier-Mail* 17 & 18 March 1989.
[7] *The Sun* 16 March 1989 Front page "Rampage at Teen Jail."

invited to do so. In fact, the victim was a 14-year-old minor not legally capable of consenting to sexual intercourse, and wanted the alleged rapists charged but, after being intimidated for 2 days, declined to proceed when the police first arrived some 4 days after the incident.

To reiterate, in March 1989, neither the newspaper nor the public knew or were entitled to know who the victim was, her age, or what the departmental report actually said because disclosure was prevented under relevant juvenile justice legislation and freedom of information legislation had not been enacted then. The passage of years changed everything. In 2004, it can be said with authority what happened because the relevant Lower Portals file is held via a freedom of information application and the victim found because Mr. Grundy holds her personal testimony of the incident and has met with her in many occasions. For the record, I have never met the victim.

The victim has now commenced an action in damages in the Supreme Court of Queensland against the State of Queensland over the incident. The settlement of this action in itself raises very interesting questions indeed and will be well worth watching very closely.

However, back in 1989, because neither the girl's identity nor her file was legally accessible, there was no way of showing that a serious deception was being perpetrated on the public in the Minister's response, save via a public interest disclosure by a concerned whistleblower operating from within the system. Consequently, a picture could be painted that the girl was above the age of consent thereby creating a false impression that it was highly likely – in the mind of the reader – that she was perhaps a consensual party to multiple-sexual partners on the bush/art outing and had thought the better of laying charges despite the department being happy for her to bring them forward at the time.

Mr. Grundy's bracket of evidence to the Committee on 27 October 2003 and material on *The Justice Project*[8] Webpage reveal a very different and disturbing story. It is anticipated that he will table all relevant documentation when the Committee next takes evidence on the Heiner Affair (Heiner).

Another Layer of Possible Misconduct and/or Criminal Conduct

This fresh evidence demonstrating deception of the highest order gives rise to even more hugely serious questions of possible misconduct and/or criminal conduct in Heiner.

Notwithstanding there may have been another rape on another art outing, but, on the reasonable premise it is the same 24 May 1988 Lower Portals area at Mount Barney incident, it is open to suggest that either:

- the Families Minister was seriously misled in his briefing document by his own bureaucracy potentially involving a conspiracy; or
- the Families Minister himself was a partner in the conspiracy with his own departmental bureaucracy against *The Courier-Mail's* readership and the public interest in order to cover-up the State's culpability in the pack-rape incident.

Just as I respectfully suggested to the Committee in my November 2003 Submission in Reply[9] that under the circumstances it was appropriate to call the likes of the Member for Griffith Mr. Kevin Rudd MP and the Member for Lilley Mr. Wayne Swan MP and others to find out what

[8] http://www.eastes.net/justice/content/default.asp
[9] http://www.aph.gov.au/house/committee/laca/crimeinthecommunity/subs/sub142.2pdf

they knew about the child abuse at the John Oxley Youth Detention Centre around the late 1989 transition-into-government period for the Goss Government, it now becomes even more relevant and equally fair to ask the members of the Department of Families Executive team what they knew about the pack-rape incident which saw then Families Minister the Hon. Craig Sherrin, wittingly or unwittingly, seriously mislead the public about the incident. It is simply not plausible to suggest that the Executive team did not discuss the serious 15 March 1989 Centre riot, the allegation that a 15-year-old female inmate was raped during an art outing, and what the media was saying about these major departmental embarrassments. Moreover, its members might be only too glad (or legally and/or ethically obliged) to provide evidence on oath to assure their current employers, the public, and the Committee for that matter, that they did not know the true facts surrounding the pack-rape incident.

However, a note of caution must be sounded. It is simply not open to believe that some of these public officials did not know, at all relevant times, that the victim was a 14-year-old minor and not a 17-year-old when the assault occurred (assuming it is the same Lower Portals incident) because Mr. Coyne reported to this Executive team via his immediate supervisors, Messrs. Ian Peers and George Nix, and the Minister's briefing note must have traversed down and up this Executive team route at some stage.

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

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
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

I have expressed my concern over this new evidence and its ramifications in an interview reported in the March 2004 edition of University of Queensland's School of Journalism and Communication's newspaper *The Independent Monthly*.

FRAUD UNRAVELS EVERYTHING

In *Lazarus Estate Ltd Vs Beasley*, (1956) 1 QB. 702 at 712, Denning LJ famously found:

> *"… 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."*

The salient facts in Heiner go overwhelmingly to suggest that the finding of no official misconduct and/or criminality was obtained by fraud, notwithstanding that the wrongdoers in Heiner have yet to be put before a court of law because the evil fruits of their fraud and subsequent wide-spread cover-up have resolutely prevented that from occurring.

My earlier submissions set out the salient facts but it is worthwhile repeating some of them here particularly touching on the key-minding role of the Criminal Justice Commission (CJC) – now the Crime and Misconduct Commission (CMC) – in handling my 1990 complaint. This is important because it demonstrates to the Committee that this major public sector corruption-fighting body in Queensland, the CMC, set up in the wake of the Fitzgerald Inquiry, has become a corrupt blockage in our system of justice in the same way the infamous Special Branch was under the Bjelke-Peterson regime for many years with corrupt Queensland Police Commissioner Sir Terry Lewis at its helm oversighting who received justice and who didn't on the grounds of connections and favours rather than on what impartial policing and the law required.

Like the Special Branch, I suggest that the CMC has become an untouchable organisation and a law unto itself. Its legislative all-party watchdog, the Parliamentary Crime and Misconduct Committee, is quite incapable of holding it to account through either fear, unacceptable deference to its assurances, sheer incompetence, self-interest, indifference or sloth because some things are simply too hard.

The CMC has covered up very serious crime in Heiner. Were it to attempt, at some stage, to resort to an excuse of acknowledging past incompetence and express sincere regret, it would be wholly unacceptable. It must be held to account for its past particularly because it has aided and abetted in covering up serious crime in Heiner which is not time barred from prosecution in 2004 or beyond. In my opinion, if the CMC is to continue to function within the machinery of government in Queensland enjoying public confidence, it requires a major public overhaul and, plainly, any Special Prosecutor appointed to look into Heiner would inevitably have to undertake that long-overdue task.

In my opinion, the Committee would be well within its rights, if it were to reach such a view, to express its grave concern over the CJC/CMC's handling of Heiner. For the record, this is what barristers Messrs. Tony Morris QC and Edward Howard had to say about the CJC's role in my matter in their October 1996 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 nothing as to the independence - of the Commission's investigation into this matter."*

If things were serious in 1996, they have become infinitely moreso in 2004 as more hidden secrets relating to this dark incident have become known such as pack-rape, murder, missing inquests, the Office of the DPP misrepresenting the criminal law [i.e. section 129 of the *Criminal Code (Qld)* 1899] advantaging members of the Executive Government while a citizen is charged for similar shredding conduct, and so on.

Duty to Obey the Law

Furthermore, I believe that this needs to be put on the record concerning Queensland public officials, particularly legal officers (i.e. solicitors and barristers as officers of the court), caught up in Heiner in some form or other who find themselves defending the Queensland Government's position. All are duty bound to obey the law. All must not engage in covering up crime. It is therefore open to suggest that any such public official, who may be assisting the Queensland Government and other authorities like the CMC in keeping this matter from being properly examined and, who, in effect, are knowingly defending the indefensible, should consider very carefully his/her legal, professional and ethical position. Obligations exist. They are found in his/her first duty to the court (if a lawyer), respective professional codes of conduct, the *Public Sector Ethics Act 1994*, *Crime and Misconduct Act 2002* and the *Criminal Code (Qld) 1899* because the evidence is now so overwhelming that illegal conduct has occurred in Heiner on fundamental elements of the law and good government, that any more stifling or dissembling on his/her part on behalf of the Beattie Government or others may tend to leave him or herself open to a serious charge of aiding and abetting and engaging in official misconduct.

In short, it is time public officials stopped being bystanders and stood up and blew the whistle over Heiner to rescue our public administration and democracy from being brought into further disrepute than it already is in the eyes of the law and the local and international community instead of vainly hoping or relying on a corrupt administration, through continuing abuse of office aided by a unicameral system of government with an overwhelming majority (which might be aptly termed here as "majoritarian totalitarianism"), to ensure that it never becomes the subject of independent examination by a Special Prosecutor.

Some salient facts:

1. Failure of the CJC to properly investigate and to act honestly, impartially and in the public interest despite its legal obligation to act accordingly;
2. Improper appointment of (then) barrister Mr. Noel F. Nunan[10] in mid-1992 to review my complaint when knowing that he was (a) an ALP member/activist; (b) member of Labor Lawyers; and (c) former work colleague of Mr. Wayne Goss at the Caxton Street Legal Service, all giving rise to real or apprehended bias and a significant conflict of interest impeding his obligation to come to the matter independently and impartially;
3. Failure of Mr. Nunan to declare aforesaid conflicts of interest and/or decline the commission so that this investigation was free from taint of bias given that any adverse finding had the potential to cause an unprecedented constitutional crisis on a scale never seen in Australian political history before;

[10] Now a Queensland Stipendiary Magistrate in the Brisbane region. He was elevated to the Magistracy by the Goss Government in 1994.

4. Failure of Mr. Nunan (together to CJC Chief Complaints Officer Mr. Michael Barnes[11]) to properly quote the key Heiner statute (i.e. *Public Service Management and Employment Regulation 65*), and to properly interpret same;
5. Failure of Mr. Nunan (together to CJC Chief Complaints Officer Mr. Michael Barnes and his superiors within the CJC) to request access to relevant Crown Law advice provided to the Families Department and the Queensland Cabinet (accepting that under the circumstances legal professional privilege would be waived);
6. Failure of Mr. Nunan (together to CJC Chief Complaints Officer Mr. Michael Barnes) to properly represent the role of the State Archivist pursuant to the *Libraries and Archives Act 1988*, the *Criminal Code (Qld) 1899* and the *Criminal Justice Act 1989*;
7. Failure of Mr. Nunan (together to CJC Chief Complaints Officer Mr. Michael Barnes) and others such as CJC Chairmen Messrs. Rob O'Regan QC, Frank Clair, and Brendan Butler SC and Messrs. Mark Le Grand Director of the CJC's Official Misconduct Division and Mr. David Bevan[12], Deputy Director of the CJC's Official Misconduct Division) to properly interpret and apply section 129 of the *Criminal Code (Qld) 1899*, whereas its aberrant Heiner-related interpretation, if applied in all cases, invites all relevant documents/evidence held by any party to be deliberately destroyed to prevent their use in any judicial proceeding up to the moment of a writ/or formal notice being given and/or served despite the despoiler knowing that such evidentiary documents are required;
8. Failure of Mr. Nunan (together to CJC Chief Complaints Officer Mr. Michael Barnes) and others such as CJC Chairmen Messrs. Rob O'Regan QC, Frank Clair, and Brendan Butler SC and Messrs. Mark Le Grand Director of the CJC's Official Misconduct Division and Mr. David Bevan, Deputy Director of the CJC's Official Misconduct Division) to properly interpret and apply other relevant provisions such as sections 132 and 140;
9. Failure of Mr. Nunan (together to CJC Chief Complaints Officer Mr. Michael Barnes) and others such as CJC Chairmen Messrs. Rob O'Regan QC, Frank Clair, and Brendan Butler SC and Messrs. Mark Le Grand Director of the CJC's Official Misconduct Division and Mr. David Bevan, Deputy Director of the CJC's Official Misconduct Division) to properly interpret section 119 of the *Criminal Code (Qld) 1899* concerning the definition of "judicial proceeding", whereas its aberrant Heiner-related interpretation, if applied in all cases, invites all relevant documents/evidence held by any party to be deliberately destroyed to prevent their use in any judicial proceeding up to the moment of a writ/or formal notice being given and/or served despite the despoiler knowing that such evidentiary documents are required;
10. Failure of Mr. Nunan (together to CJC Chief Complaints Officer Mr. Michael Barnes and CJC Deputy Director of the Official Misconduct Division Mr. David Bevan) to properly investigate the "special payment" and the February 1991 Deed of Settlement pursuant to the provisions of the *Financial Administration and Audit Act 1977*, the *Criminal Justice Act 1989* and the *Criminal Code (Qld) 1899*;
11. Failure of the CJC to concern itself about a potential reprisal/intimidatory act by Mr. Nunan against me (as a CJC complainant/witness) when he phoned my home on 11 September 1993 and threatened to sue me, as well as called me *"…a pathetic bastard"* for daring to question his involvement and competence in handling my complaint;
12. Failure of CJC Legal Officer Mr. Richard Pointing to act honestly, impartially and in the public interest when first examining my December 1990 complaint as is evidenced in his

[11] Appointed as Queensland's first State Coroner on 1 July 2003.
[12] Now Queensland Ombudsman/Information Commissioner.

personal notations on my 1991 correspondence thereby revealing the presence of real or apprehended bias and a failure to properly investigate and apply the criminal law;[13]

13. Failure to protect the integrity of CJC interview tapes, namely my interview tape with Mr. Nunan of 11 August 1992 being subsequently tampered with by someone in the CJC, or contracted by the CJC with access to the tape, seeing a statement made by Mr. Nunan during the course of our interview being erased whose plain meaning left it open to conclude that he did not come to the Heiner matter honestly or impartiality[14];
14. Failure to obtain copies (or secure the safety) of highly incriminating memoranda between Minister Warner and Ms. Ruth Matchett which Mr. Barnes inspected during a (secret) visit to the Department of Families in late 1994/early 1995 whose contents strongly inculpated all members of the Goss Cabinet in the offence of destruction of evidence;
15. Failure of the CJC to interview key witnesses (i.e. members of the Goss Cabinet, Cabinet Secretary, Crown Solicitor and certain legal officers, Ms. Ruth Matchett, Rtd. Stipendiary Magistrate Noel Heiner, JOYC Youth Workers and other staff, Ms. Lee McGregor the State Archivist, Ms. Anne Dutney, Ms. Norma Jones, Ms. Sue Crook, Messrs. Trevor Walsh, Donald A. C. Smith, Gary Clarke, Donald Martindale, Bill Yarrow, Brian Tierney, Terry Hamilton, Ms. Roslyn Kinder, Ms. Jenni Eastwood, Ms. Janine Walker etc.) but at the same time assuring the Senate, the Queensland Parliamentary Criminal Justice Committee and public, that my complaint had been investigated to the "nth degree" and not one scintilla of suspected official misconduct could be found;
16. Failure by the CJC to abide by its own 11 November 1996 memorandum of undertaking – set out in an internal "highly protected memorandum" - not to involve itself in the Heiner Affair again after its independence had been impugned by the Queensland Parliament after the tabling of the Morris/Howard Report.

This is not an exhaustive list but highly illustrative of serious questions which any reasonable person interested in knowing the truth would want answered. Similar lists can be made out for the Queensland Police Service, Office of the Information Commissioner, Crown Law, Queensland Audit Office, Office of the Director of Public Prosecutions etc. Put simply, if fraud can be found in any one of the above, Heiner unravels.

THE STATE OF KNOWLEDGE OF THE QUEENSLAND PROFESSIONAL OFFICERS ASSOCIATION

This is the wording of the charge relating to the "Coyne case" used by QPOA General Secretary Mr Don Martindale as one of the contrived charges to dismiss me on 30 May 1990:

> *"…Some time ago I made you aware of a complaint I received from the Hon A. Warner and the fact that she believed your attitude to negotiations with respect to the "Coyne case" was inappropriate and over-confrontationalist. She claimed that your method of operation showed a lack of understanding for how such*

[13] Mr. Pointing currently works a case manager in the Queensland Office of the Director of Public Prosecutions oversighting the case against the Baptist pastor. NB: My opening statement to LACA on 27 October 2003 in Brisbane.

[14] See Submission in Reply to Senate Select Committee on Unresolved Whistleblower Cases of 5 July 1995 at page 9. In part an independent analysis of "the gap" on the tape by Professor Miles Moody of QUT said this about its extraordinary 'coincidence' of occurring where it did: "… ***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."***

negotiations should be conducted. When I raised the issue with you the day that I received the complaint you totally denied the allegation indicating that there was no real problem. I do not believe that to be the case."

After I was sacked (and then conditionally reinstated by the QPOA Council on 5 June 1990 only to be dismissed again on 2 August 1990 on the findings of the Patti Report[15]) I was contacted by Mr. Alan Hogan (believed now to be a producer for Channel 9's *60 Minutes*) of *ABC-TV's The 7.30 Report* on 7 June 1990 wanting to do a story about the treatment meted out to Mr. Coyne by the Goss Government and the shredding of the Heiner Inquiry documents. I told him about my extraordinary predicament, namely that I had just been sacked (and reinstated by the Council) over my handling of the "Coyne case" by Mr. Martindale, and that while I believed the story needed to be run, he should go through Mr. Martindale. He said that he would do that.

Mr. Hogan then contacted Mr. Martindale indicating that he wanted to run a story on the "Coyne case." (It appears that Mr. Coyne had contacted Mr. Hogan about his treatment and the shredding.) Mr. Martindale then approached me asking me to draft a submission to the Executive setting out a strategy how it should be handled because he wanted to obtain Executive approval before appearing on *The 7.30 Report*. It is important to note that in my position as the union's media/publicity officer for some 5 years, Mr. Martindale had never previously asked for the Executive's approval before appearing on TV (or radio), moreover, it was a decision which rested within in his discretion and seldom, if ever, did he decline any opportunity to appear on TV to further the union's interests or profile.

On 12 June 1990, I provided a detailed submission[16] recommending that the matter be pursued with vigour, including through the media. I indicated that the matter was serious. I informed the QPOA Executive that a potential breach of the *Criminal Code*[17] had occurred (over the shredding because it had destroyed known evidence) and that either:

(a) Minister Warner had properly informed the Cabinet making all members collectively responsible for the act;
(b) Minister Warner may have incorrectly informed the Cabinet, leaving only Minister Warner responsible; or
(c) Acting Director-General Ms. Ruth Matchett had incorrectly informed Minister Warner, leaving only her responsible.

In short, the union was fully aware that a *prima facie* serious criminal offence had been committed by one or all of the above over the shredding but did nothing about it save to:

[15] The QPOA Council conditionally reinstated me on 5 June 1990 ordering that my dismissal – i.e. the charges - be reviewed by a mutually agreed independent arbitrator between Mr. Martindale and myself. Such an arbitrator could not be agreed upon. Finally a Mr. Joe Patti was selected against my wishes, and imposed on me by QPOA President Mr. Bill Yarrow under extreme duress. It was discovered that Mr. Patti was a known anti-unionist advocate and former work colleague of Mr. Martindale's at the Queensland Confederation of Industries – an employer advocate body – where he (Martindale) worked before taking up the position of QPOA General Secretary. Some QPOA industrial staff protested the imposition of Mr. Patti but to no avail. Despite great straining of the English language, Mr. Patti could not sustain the charges but recommended that the dismissal stand because Mr. Martindale alleged that an irretrievable breakdown in the working relationship existed. The Patti Report was adopted by the Council and divided its membership forcing an unprecedented vote of non-confidence in the Executive in the union's 80-year history. The Patti Report was considered to be exceedingly biased, flawed in logic and inappropriately deferential to Mr. Martindale's claims.

[16] See Lindeberg Exhibit 79 page 3 Senate Select Committee on Unresolved Whistleblower Cases 1995

[17] Section 129 of the *Criminal Code (Qld) 1899*

- sack me when I tried to prevent the shredding;
- sell out its members' industrial/legal rights; and
- keep all information surrounding this matter away from the membership.

Mr. Martindale declined to appear on *The 7.30 Report*, and decided to return to Minister Warner about the matter. To repeat, the QPOA Executive – such as it was properly informed at the time - sold out its members' industrial/legal interests, to say nothing of mine as both employee and QPOA union member, afterall, I had been sacked trying to preserve my member's industrial/legal rights as I was paid to do, and all the while my superiors were fully aware of my negotiations with the Department of Family Services and Aboriginal and Islander Affairs and my working in concert with the Queensland Teachers' Union to gain lawful access to the documents, if necessary by a foreshadowed court action together with Mr. Coyne and Ms. Dutney.

The conduct of certain QPOA officials in this matter cannot be divorced from the manner in which Mr. Coyne departed the Queensland public service including the circumstances surrounding the creation and signing of the infamous February 1991 Deed of Settlement. Everything is interconnected. In particular, the roles of QPOA President Mr. Bill Yarrow and QPOA General Secretary Ms. Jenni Eastwood, and that of QPOA Assistant General Secretary Mr. Terry Hamilton warrant public scrutiny.

If there is any suggestion from any quarter that I never wanted a thorough scrutiny of any of these events then, now or at any time involving the shredding and related matters, then it is simply untrue. It was only because I fought back (together with the assistance of Mr. Grundy commencing a short number of years after my dismissal and ever since) that we now know and can speak of these serious things, and any attempt to "*shoot the messenger*" in 2004 should be seen for what it is: An improper act of desperation and reprisal on the part of those doing or threatening to do the shooting because the shredding was and remains indefensible – and a serious breach of the criminal law.

QUEENSLAND AUDIT OFFICE & THE FEBRUARY 1991 DEED OF SETTLEMENT

On 9 February 2004 (immediately after the conclusion of the "caretaker period of government" in Queensland following the return of the Beattie Government in the State election of 7 February 2004) I met with Mr. Len Scanlan, Queensland's Auditor-General and laid a fresh complaint concerning the illegality of the February 1991 Deed of Settlement entered into by the Mr. Coyne and the State of Queensland. Our meeting lasted some 80 minutes.

An electronic copy of my fresh complaint to the Queensland Audit-Office (QAO) is attached to this Late Special Supplementary Submission for the Committee's consideration.

The fresh complaint effectively puts legal flesh on the bones of Mr. Robert F. Greenwood QC's advice of 9 May 2001 to the Senate that the Deed of Settlement was an unlawful instrument, particularly because of its purpose that both parties agreed to never speak about *"…the events leading up and surrounding Mr Coyne's relocation from the Centre"* ever again given that it is open to conclude that those events concerned the crime of abuse against children in the care and custody of the State of Queensland. It was constructed against a background of recorded threats being made by QPOA officials, in the presence of Mr. Coyne, against public officials of the Department of Family Services and Aboriginal and Islander Affairs, that*"…the entire saga of the Centre"* would be taken to the CJC unless monies were paid.

Mr. Scanlan has acknowledge receipt of my complaint and has indicated that he will give the matter consideration and inform me in due course. At the time of constructing this Late Special Supplementary Submission his finding remains unknown.

Of the three options set out in my complaint concerning the proper way this matter might be handled and advanced because of the existence of real and apprehended bias on the part of normal investigative authorities and the allegation of a widespread cover-up being present involving those authorities like the CMC, Queensland Police Service, Queensland Office of the Director of Public Prosecutions, Crown Law, including the QAO itself because of its past involvement, the following option appears to be his only way forward in order that public confidence is maintained in our public administration:

A. Provide a Audit Report pursuant to section 40 of the *Financial Administration and Audit Act 1977* to the Speaker and Queensland Legislative Assembly about the legal predicament in which the QAO finds itself over this complaint (in respect of the legal requirements of avoiding real or apprehended bias and conflicts of interest touching on the QAO, CMC, DPP and Queensland Police Service) by suggesting that Parliament might, upon the re-introduction of the Special Prosecutor Act, appoint a Special Prosecutor to investigate the matter, including the QAO's own handling of my 1993 and 1997 complaints, so that public confidence is maintained and/or restored in the administration of justice and the role of the QAO;

It is my respectful suggestion to the Committee that either Mr Scanlan might be invited to give evidence to the Committee being an independent statutory official and officer of the Queensland Legislative Assembly and not subject to direction by the Executive, or, **Recommendation 20.15** be adopted.

RECOMMENDATIONS

For the sake of completeness, the following list shows all the recommendations put to the Committee in my various (No.142) submissions:

20.1 That, in accordance with Terms of Reference (d), (e) and (h), should the Legal and Constitutional Affairs Committee be satisfied that this submission gives rise to sufficient *prima facie* evidence of unresolved wrongdoing and/or criminal conduct, the Committee may recommend to either (a) the Commonwealth Attorney-General the Hon. Daryl Williams QC; (b) Minister for Justice the Hon. Senator Chris Ellison; and/or (c) the Queensland Attorney-General the Hon. Rod Welford MLA take appropriate action to address the suspected wrongdoing and/or criminal conduct as a matter of urgency;

20.2 That, in accordance with Terms of Reference (d), (e) and (h), the Committee recommend to all Federal/State and Territory governments that a Special Prosecutors Act be enacted and/or remain on their respective statute books as permanent legislation in order that systemic corruption undermining the administration of justice (as the Heiner Affair reveals) may be appropriately addressed when and if it manifests itself in whatever Australian jurisdiction so that community confidence in the rule of law may be maintained;

20.3 That, in accordance with Terms of Reference (d), (e) and (h), should the Legal and Constitutional Affairs Committee be sufficiently satisfied that the 1995 findings of the Senate Select Committee into Unresolved Whistleblower Cases in respect of the Heiner Affair are unsafe and bring the integrity of the Commonwealth Parliamentary committee system into possible disrepute, even going to possible contempt by certain parties mentioned in this submission, the Committee may, with due respect, request that the President of the Senate the Hon. Senator Paul Calvert revisit the matter by a select committee (as outlined in Mr. R. F. Greenwood QC's submission to the Australian Senate of 9 May 2001 - known as the *Lindeberg Grievance* - and because of new evidence in this submission including the covering up of evidence of child abuse, going to the possible unresolved crime of criminal paedophilia, in a State-run institution by means of the shredding) so that the people may have faith in the Parliamentary process and Parliament as the "grand inquisitor";

20.4 That, in accordance with Terms of Reference (b) and (e), State/Federal Archivists be made officers of their respective Parliaments, in the same manner as Ombudsmen, Auditors-General and Clerks-of-the-Parliament are, so that their independence may be guaranteed in the face of any improper Executive abuse of power in order that public records - the people's records - may be impartially protected for all appropriate lawful purposes, including as evidence in a pending/anticipated judicial proceeding or revealing wrongdoing within government;

20.5 That, in accordance with Term of Reference (e), legal officers of the Crown/State be the subject of appropriate independent disciplinary processes if found to have engaged in improper conduct in the same manner as solicitors in private practice are in their respective constitutional jurisdictions;

20.6 That, in accordance with Term of Reference (e), Federal Whistleblower Protection Legislation, in consultation with Whistleblowers Australia, be enacted as a matter of high policy priority by the Commonwealth Government of Australia;

20.7 That, in accordance with Term of Reference (e), a Whistleblowers Protection Authority be established as a matter of high policy priority by the Commonwealth Government of Australia to ensure that any whistleblower does not suffer a detriment and/or reprisal as a consequence of making a public interest disclosure;

20.8 That, in accordance with Term of Reference (e), in the interests of community confidence in the decision-making processes of public sector watchdog law-enforcement agencies (like the ACC, ICAC and CMC) in order to avoid apprehensions of bias, a person shall not be engaged in a senior investigative/decision-making position who is a member of a political party or known to have been active in a political party within 7 years of any appointment to such an agency (as to mirror, in part, Section 23(4) of the *Electoral Act 1992 (Qld);*

20.9 That, in accordance with Term of Reference (e), in the interests of community confidence in the decision-making processes of the administration of justice, that all Federal/State and Territory Governments in the Commonwealth of Australia, give consideration to removing their respective Attorneys-General from membership of Executive Government in order that their independence and impartiality as first law officer of the State/Crown and guardian of the public interest is assured;

20.10 That, in accordance with Term of Reference (e), in the interests of community confidence in the decision-making processes of the administration of justice and eradicating official misconduct and criminality in the public sector through the operation of *Freedom of Information Act 1992* and *Parliamentary Commissioner Act 1974*, the Committee seeks clarification from the Queensland Information Commissioner/Ombudsman David Bevan as to whether or not he was and/or is obliged to report ***all*** suspected official misconduct to a proper authority pursuant to section 37(2) of the *Criminal Justice Act 1989* and its equivalent in the *Crime and Misconduct Act 2002* which comes to his attention in the performance of his statutory function under the *Freedom of Information Act 1992* and *Parliamentary Commissioner Act 1974*, and if not, why not, or if so, how does he explain (a) the failure of his Office to report the suspected misconduct evident "on the papers" in Heiner, and (b) the contradictory view of his obligation expressed by Deputy Information Commissioner Sorenson.

20.11 That, in accordance with Terms of Reference (b), (c), (d) and (e) should the Legal and Constitutional Affairs Committee be satisfied that this submission gives rise to sufficient *prima facie* evidence of unresolved wrongdoing and/or criminal conduct concerning role of former Criminal Justice Commission official Mr. Michael Barnes in the matter, especially in light of his appointment of Queensland's first State Coroner in the newly established Office of State Coroner pursuant to the *Coroners Act 2003*, the Committee may recommend to either (a) the Commonwealth Attorney-General the Hon. Daryl Williams QC; (b) Minister for Justice the Hon. Senator Chris Ellison; and/or (c) the Queensland Attorney-General the Hon. Rod Welford MLA, (notwithstanding the presence of apprehended bias[18] but pursuant to the doctrine of necessity on his part) take appropriate action to address the suspected wrongdoing and/or criminal conduct pertaining to Mr. Barnes as a matter of urgency to ensure the integrity of and public confidence in the Queensland Office of State Coroner;

20.12 That, in accordance with Terms of Reference (b), (c), (d) and (e) should the Legal and Constitutional Affairs Committee be satisfied that this submission gives rise to sufficient *prima facie* evidence of unresolved wrongdoing and/or criminal conduct concerning role of former *pro-tempore* Criminal Justice Commission official Mr. Noel Francis Nunan in the matter, especially in light of his position in the Queensland Magistracy, the Committee may recommend to either (a) the Commonwealth Attorney-General the Hon. Daryl Williams QC; (b) Minister for Justice the Hon. Senator Chris Ellison; and/or (c) the Queensland Attorney-General the Hon. Rod Welford MLA, (notwithstanding the presence of apprehended bias but pursuant to the doctrine of necessity on his part) take appropriate action to address the suspected wrongdoing and/or criminal conduct pertaining to Mr. Nunan (SM) as a matter of urgency to ensure the integrity of and public confidence in the Queensland Magistracy;

20.13 That, in accordance with Terms of Reference (b), (c), (d) and (e) should the Legal and Constitutional Affairs Committee be satisfied that this submission gives rise to sufficient *prima facie* evidence of unresolved wrongdoing and/or criminal conduct, the Committee may request that the Queensland Government release the Queensland DPP's advice to the (Borbidge) Queensland Government in respect of the findings of the October 1996 Morris/Howard Report into the Lindeberg allegations in the public interest in order to

[18] *Livesey v New South Wales Bar Association* [1983] 151 CLR 288 at 294-294; *Metropolitan Properties Co. (F.G.C.) Ltd. v. Lannon* (1969) 1 QB 577 at p599

ensure the integrity of and public confidence in the Queensland Office of Director of Public Prosecutions.

20.14 That, in accordance with Terms of Reference (b), (c), (d) and (e), and in keeping with its public undertaking of 27 October 2003, the Legal and Constitutional Affairs Committee might write to the Leader of the Queensland Opposition and Shadow Justice Minister and Attorney-General the Hon. Lawrence Springborg MLA requesting a copy of the January 1997 Queensland DPP's advice to the (Borbidge) Queensland Government in respect of the findings of the October 1996 Morris/Howard Report into the Lindeberg allegations in the public interest in order to ensure the integrity of and public confidence in Queensland's Office of Director of Public Prosecutions and its criminal justice system.

20.15 That, in accordance with Terms of Reference (b), (c), (d) and (e) the Legal and Constitutional Affairs Committee might write to Mr. Len Scanlan, Queensland Auditor-General, seeking a "public interest" explanation on how $27,190 of taxpayers' monies can be lawfully paid to any public official, under the *ex gratia*/special payment provisions of the *Financial Administration and Audit Act 1977* against the factual circumstances of it being sought and extracted by threat of disclosure of certain "events" to the Criminal Justice Commission, on the proviso set out in the February 1991 Deed of Settlement between the State of Queensland and Mr. Peter Coyne that neither party would ever speak publicly about those certain JOYC events (now known to be concerning unresolved criminal abuse of children) at the without permission from the other.

20.16 That, in accordance with Terms of Reference (b), (c), (d) and (e) the Legal and Constitutional Affairs Committee might write to the former Commissioner Leneen Forde requesting that she explain how such extraordinary omissions of not asking relevant questions about the 1 March 1990 Dutney memorandum concerning the lives of JOYC children were being put at risk by staff, the improper relationship between a former Youth Worker witness and a JOYC female inmate, or not seeking to extend her Terms of Reference to investigate Heiner. Furthermore, the Committee might inquire whether or not her Inquiry examined the Families Department file on the May 1988 pack-rape incident, and if not, why not.

CONCLUSION

Once again I am prepared to appear before the Committee and provide evidence under Oath.

KEVIN LINDEBERG
5 March 2004

COPY OF FRESH COMPLAINT TO QUEENSLAND AUDITOR-GENERAL

Kevin Lindeberg
11 Riley Drive
CAPALABA QLD 4157
9 February 2004

Mr. Len J Scanlan
Auditor-General
Queensland Audit Office
Level 11
Central Plaza Office
345 Queen Street
BRISBANE QLD 4000

Dear Mr. Scanlan

RE: **The Shredding of the Heiner Inquiry Documents and Related Matters**
YOUR REF: **00-1071**

I refer to the above file which should contain my earlier correspondence with the Queensland Audit Office (QAO) showing that I was the 1993 complainant concerning what I suggested was and remains an unlawful disbursement of public monies for an improper purpose.

I refer afresh to the final position taken by the QAO on 19 February 1997 in respect of an *ex gratia*/special payment made pursuant to the section 77 of the *Financial Administration and Audit Act 1977* in the sum of $27,190 on 12 February 1991 to (then) public servant Mr. Peter William Coyne subject to terms set out in a Deed of Settlement between the State of Queensland and Mr. Coyne.

The QAO's most recent position was expressed in its response to my letter of 7 January 1997 in which I laid out certain relevant findings before (then) Auditor-General Mr. Barrie Rollason from the Morris/Howard Report into the so-called "Lindeberg allegations". In respect of the aforesaid payment, Messrs Morris QC and Howard found that it was open to conclude that the payment was:

(a) illegal and a breach of section 204 of the *Criminal Code (Qld)* by then Minister the Hon. Anne Warner and an officer or officers of the Department of Family Services*;* and
(b) "official misconduct", within the meaning of sections 31 and 32 of (then) *Criminal Justice Act 1989*, committed by the Minister the Hon. Anne Warner and an officer or officers of the Department of Family Services in connection with the making of the payment of $27,190.00 to Mr. Coyne.

At section 58 (page 137) of the Morris/Howard Report, the following comment was made:

> *"…In our view, the real issue of concern is not the fact that the payment "was technically unauthorized under the Act", but the fact that the payment appears to have been made principally to buy Mr. Coyne's silence…"*

And at section 59 (page 142), the Report concludes:

> *"…The real impropriety involved in the payment to Mr. Coyne relates to the fact that – as in our view, it is open to conclude – the payment was made for an ulterior purpose…"* and *"…But in our view it is open to conclude that the same individuals were fully conscious of the fact that they had acted dishonourably, and perhaps illegally, over the destruction of the Heiner documents, the returning of statements to the QSSU, and the destruction of photocopies of those statements. Had the true facts been brought to light – as they have now, for the first time, been brought fully to light – a number of individuals, including the Minister and Ms. Matchett, were at risk of serious personal and (in the Minister's case) political embarrassment. In our view it is open to conclude that those individuals allowed their personal interests to guide them in deciding on the disbursement of $27,190.00 of public funds, and accordingly acted in a way which can be characterised as involving substantial impropriety."*

My January 1997 letter set out other relevant facts, and concluded with this question:

> *"Does the QAO **still** endorse the Coyne "additional" payment of $27,190.00 from the public purse **known** to be extracted by certain public sector trade union officials using threats of exposing **known** illegal behaviour by officers in a unit of public administration in the "post-Fitzgerald era" to buy silence rather than report such behaviour to the Criminal Justice Commission required by law?*
>
> *I, and the truth, await your public answer/s with interest."*

The QAO summarised its last position in these terms on 19 February 1997:

> *"…In my view the actions of the accountable officer to give effect to the purpose of the Deed of Settlement dated 12 February 1991 between the Crown and Mr. Coyne which resulted in the initial charge against the 1990-191 Departmental Budget Appropriations were supported by the prescriptions of the Financial Administration and Audit Act 1977."* (my underlining)

Fresh Evidence Giving Rise to Fresh Consideration of Possible Illegal Conduct

In my opinion, the February 1991 Deed of Settlement – the instrument - between the State of Queensland and Mr. Coyne and related disbursement of public funds warrants fresh consideration.

Indeed, the instrument was examined by Mr. Robert F. Greenwood QC and in a substantial submission of 9 May 2001 to the Australian Senate and another of 25 April 2000 to the Australian Chapter of the International Commission of Jurists found it to be illegal.

For the record, I do not resile from my earlier complaint held on your files and do not accept the QAO's previous view as being correct.

My original complaint centred on the actual shredding of the Heiner Inquiry documents by order of the Goss Cabinet to prevent their known use as evidence in known foreshadowed judicial proceedings. In that matter, I held that section 129 of the *Criminal Code (Qld)* – destroying

evidence - had been breached, or, in the alternative, section 132 of the *Criminal Code (Qld)* – conspiracy to pervert the course of justice – applied. I still hold this view, as do others.

Now, on the weight of fresh evidence, I restate my original complaint and add another layer of criminality to it. That is, it is a corrupt/fraudulent instrument[19] in which both parties knew that its purpose was to unlawfully cover up crime and pervert the course of justice regarding: -

(a) unaddressed disciplinary and/or criminal conduct concerning the maltreatment of children at the John Oxley Youth Detention Centre by certain JOYC staff, including Mr. Coyne, and high-ranking Department of Families officials, including then Minister the Hon. Anne Warner (and potentially extending to legal officials in the Office of Crown Law) being complicit in such unaddressed conduct.

You are reminded that a reason given by the Goss Cabinet of 5 March 1990[20] for destroying the Heiner Inquiry documents was to prevent the gathered evidence being used against the careers of JOYC staff, including Mr Coyne, in addition to preventing their use as evidence in anticipated judicial proceedings.

We now know the shredded documents contained evidence of a criminal/disciplinary nature. This was previously concealed from the public, and may have been concealed from the QAO at all relevant times.

It is therefore open to suggest that the conduct by certain public officials and others (who themselves ***always knew*** about that criminal/disciplinary nature of the evidence at relevant times) in reaching such a settlement involving the exchange of public monies on the proviso of silence concerning those child abuse events, may be in breach of the following provisions of the *Criminal Code (Qld) etc:*

Section 87 - Official corruption

(1) Any person who—

(a) being employed in the public service, or being the holder of any public office, and being charged with the performance of any duty by virtue of such employment or office, not being a duty touching the administration of justice, corruptly asks for, receives, or obtains, or agrees or attempts to receive or obtain, any property or benefit of any kind for himself, herself or any other person on account of anything already done or omitted to be done, or to be afterwards done or omitted to be done, by the person in the discharge of the duties of the person's office; or

(b) corruptly gives, confers, or procures, or promises or offers to give or confer, or to procure or attempt to procure, to, upon, or for, any person employed in the public service, or being the holder of any public office, or to, upon, or for, any

[19] See *Lazarus Estates v Beasley* [1956] 1 QB 702 at 712 Lord Denning found that *"…Fraud unravels everything."*
[20] See State *Hansard* 18 May 1993 in (then) Families Minister the Hon. Anne Warner's answer to a Question on Notice by the Hon. Kevin Lingard MLA.

other person, any property or benefit of any kind on account of any such act or omission on the part of the person so employed or holding such office;

is guilty of a crime, and is liable to imprisonment for 7 years, and to be fined at the discretion of the court.

(1A) If the offence is committed by or in relation to a Minister of the Crown, as the holder of public office mentioned in subsection (1), the offender is liable to imprisonment for 14 years, and to be fined at the discretion of the court.

Section 88 - Extortion by public officers

Any person who, being employed in the public service, takes or accepts from any person, for the performance of the person's duty as such officer, any reward beyond the person's proper pay and emoluments, or any promise of such reward, is guilty of a misdemeanour, and is liable to imprisonment for 3 years.

Section 245 - Definition of "assault"

(1) A person who strikes, touches, or moves, or otherwise applies force of any kind to, the person of another, either directly or indirectly, without the other person's consent, or with the other person's consent if the consent is obtained by fraud, or who by any bodily act or gesture attempts or threatens to apply force of any kind to the person of another without the other person's consent, under such circumstances that the person making the attempt or threat has actually or apparently a present ability to effect the person's purpose, is said to assault that other person, and the act is called an **"assault."**

Section 132 – Conspiracy to pervert the course of justice

"Any person who conspires with another to obstruct, prevent, pervert, or defeat the course of justice is guilty of a crime, and liable to imprisonment for 7 years."

The instrument's crafty purpose was "an agreement of silence" about the "*…events leading up and surrounding his (Mr. Coyne's) relocation"* forever from and on the parties involved. The instrument was sealed by the payment of public monies knowingly and deceptively coloured in its construction by the parties as so-called public service award entitlements (i.e. $14,110 [unpaid overtime] and $10,000 [travelling time]) which those parties knew did not apply at Mr. Coyne's classification level or to his new gazetted position.

The role of certain former QPOA officials in bargaining and agreeing to this payment under the condition of silence, as well as its fraudulent construction, cannot be ignored.

The payment was made under the *Financial Administration and Audit Act 1977* – Part 7 – General Provisions – (now) Section 106* - **Losses and special payments**:

(1) The Treasurer may write-off losses relating to the consolidated fund accounts.
(2) The accountable officer of the department may —
(a) write-off losses relating to the departmental accounts of the department; and

(b) authorise special payments to be made from the departmental accounts.

(3) A special payment may be made to an accountable officer only with the prior approval of the Governor in Council.

(* This provision may have been amended since 1991 as it was previously paid under section 77 of the said Act)

The relevant provisions of the 12 February 1991 Deed of Settlement[21] say this at Clauses 2, 3 and 5:

> *"2. The Claimant will not canvass the issues surrounding his relocation from John Oxley Youth Centre, Wacol to Brisbane or events leading up to and surrounding his relocation with any officer of the Department of Family Services and Aboriginal and Islander Affairs or in the press or otherwise in public and will forbear to take any action in any forum whatsoever which may have jurisdiction in respect of any of such issues or events.*
>
> *3. The terms of this Agreement will not be disclosed by either party without the written consent of the other first being obtained.*
>
> *5. Without limiting the generality of the foregoing provisions the Claimant shall not permit or allow the events leading up to and surrounding his relocation to Brisbane to be the subject of any autobiography, biography or any published article."*

It is therefore open to suggest that using an awareness of this unaddressed abuse as a lever, in the first instance, to extract public monies may breach the *Criminal Code (Qld)* in respect of extortion and collusion because the "events" concerned abuse of children in State care; and, in the second instance, ***any*** agreement by the parties involved not to report such known unlawful/criminal offences (to the CJC or other proper authority) as they were obliged to do in exchange for public money may be a breach of section 132 of the *Criminal Code (Qld)* – conspiracy to pervert the course of justice – at the very least.

The fact that the conduct may also be in *prima facie* breach of the "official misconduct" provisions of the *Crime and Misconduct Act 2002* – and earlier sections 31 and 32 of the *Criminal Justice Act 1989* – cannot act as an intervening barrier, under these circumstances, to prevent you addressing this fresh complaint yourself within your legislative authority free from reference to any other authority, where the alleged offences, as here, may breach the *Financial Administration and Audit Act 1977* and the *Criminal Code (Qld).*

That is, whatever obligation exists under the *Crime and Misconduct Act 2002* to refer all suspected official misconduct to the Crime and Misconduct Commission (CMC) as the authority to judge whether or not official misconduct may be present, such an obligation, under these circumstances, cannot override or act as a barrier to the relevant provisions of the *Criminal Code (Qld)* which appear to be triggered here because the threshold question of bias on the part of the CMC, as decision-maker, is impossible to ignore.

[21] See Volume 2 Criminal Justice Commission Submission to the Senate Select Committee on Unresolved Whistleblower Cases 1995.

This matter of real and apprehended bias and conflicts of interest is addressed further on.

SUPPORTING EVIDENCE IN IDENTIFYING THE CHARACTER OF THE "EVENTS"

The Forde Inquiry Report tabled in the Queensland Parliament found this about the "events" – namely the abuse of children at the Centre - at page 172-173:

> *"That on the order of Mr Peter Coyne, three residents of the John Oxley Youth Detention Centre were handcuffed on the evening of 26 September 1989. Those residents were X, Y and Z. Daniel Alderton was not one of these three residents.*
>
> *That both the act of handcuffing and then the length of time that X and Y were handcuffed constituted a possible breach by Mr. Coyne of section 69(1) of the Children's Services Act 1965 in that such conduct may have amounted to ill-treatment, neglect or exposure of a child in a manner likely to cause unnecessary suffering or injury to the physical or mental health of the child involved.*
>
> ***That as more than 12 months have elapsed since the date of the commission of the offence, no prosecution for any such breach can now be made**.*
>
> *In light of the evidence heard by the Inquiry, such handcuffing and more particularly the duration of it, could not be regarded as reasonable punishment, nor was it reasonably necessary in order to dissuade the residents from behaving in a recalcitrant or mutinous manner. As such, in the Inquiry's view, Mr. Coyne was not afforded the protection of section 69(5) of the Children's Services Act 1965, nor of Regulation 23(10) of the Children's Services Regulations 1966."* (my emphasis added)

I am advised by counsel that the elements of the handcuffing offence, in fact, may not be time barred because it may be in breach of section 245 of the *Criminal Code (Qld)* – assault – to which the Forde Inquiry curiously did not pay due attention.

Another admission revealing the character of the so-called JOYC "events" is that the Queensland Government ***knew*** that certain wrongdoing was occurring at the Centre because it described the Heiner Inquiry witnesses as whistleblowers. As recently as 23 October 2003, a media release published by the Department of Premier and Cabinet addressing the Heiner Affair, stated:

> "…*This was about protecting the whistleblowers."*

The simple question to be asked is what were the so-called whistleblowers blowing the whistle about? Plainly, the only reasonable conclusion one can reach is that they were blowing the whistle about child abuse, going to child sexual abuse.[22] (See the University of Queensland's School of Journalism and Communication *The Justice Project*[23] **Addendum A, D, and E).**

Another admission came from Families Minister the Hon. Ann Warner herself (when Shadow Families Spokesperson) in *The Sunday-Sun* of 1 October 1989. In the article, she revealed that

[22] See *The Courier-Mail* 17 and 18 March 1989 (discussed further on in this complaint).
[23] http://www.eastes.net/justiceproject/htm/DPPRepudiatesPredecessor.asp#top
http://www.eastes.net/justiceproject/htm/Torture.asp :Also see other related postings

she was aware of the improper use of handcuffing children, and called for an inquiry into the Centre's management practices. Another relevant admission going to Minster Warner's concern about Mr. Coyne's management of the Centre is found in *The Queensland Times* 9 April 1990 (p5) in which this is said:

> *"…We've known of the problems at the centre for a long time and when we took over the ministry our first step was to appoint a new manager which we hoped would solve the problems. But problems to still exist,"* the spokesperson (for Minister Warner) said.

Another admission came from former Goss Government Environment and Heritage Minister the Hon. Pat Comben in February 1999 on Channel 9's *Sunday* cover story entitled "Queensland's Secret Shame". Mr. Comben revealed on screen that all members of the Goss Cabinet had been made aware that the Heiner Inquiry was investigating child abuse at the Centre and that it must have been serious in order to reach Cabinet level.

Ironically, these Heiner public interest disclosures were never properly investigated, and the shredding was the apogee of the cover-up.

THE LEGAL RAMIFICATIONS OF THE HEINER INQUIRY DOCUMENTS AS KNOWN AND/OR FORESEEABLE EVIDENCE REVEALING CRIME OR DISCIPLINARY-RELATED MISCONDUCT

Taking the aforesaid Forde Inquiry findings as they stand, they give rise to other *prima facie* criminal offences against those who willfully shredded the gathered evidence some 9 years earlier, namely the Goss Cabinet, the responsible Families Minister the Hon. Anne Warner and certain of her senior departmental officials all of whom knew about the handcuffing at the time. The statute of limitations associated with the *Children's Services Act 1965* ***was not exhausted*** when the aforesaid parties decided to destroy the related evidence; furthermore, when destroying the evidence, the Goss Cabinet gave as a reason so that the contents could not be used against the careers of staff at the Centre, including Mr. Coyne.

It is therefore open to suggest that the shredding, under these circumstances, was a breach of section 129 of the *Criminal Code (Qld)* – destruction of evidence, section 132 of the *Criminal Code (Qld)* - conspiracy to pervert the course of justice[24], or section 140 of the *Criminal Code (Qld)* - attempting to obstruct justice - insofar as using handcuffing in such an excessive and unlawful manner was a breach of Section 69(5) of the *Children's Services Act 1965* and of Regulation 23(10) of the *Children's Services Regulations 1966* opening Mr. Coyne liable to disciplinary charges. The shredding thwarted this at the time and aided in covering it up for 9 years.

Had Mr. Coyne been disciplined over the unlawful use of handcuffs, which could have ranged from dismissal, demotion or transfer (or even charges for criminal assault), he would have been entitled, at the very least, to seek a review in the Industrial Relations Commission of Queensland, a quasi-judicial statutory body falling under the ambit of a tribunal, under section 119 of the *Criminal Code (Qld)*, being capable of taking evidence on oath.

This means that the Heiner Inquiry documents would have been, and were known to have been, highly material and probative evidence in other related tribunal proceedings. Under those

[24] *R v Rogerson* (1992) 174 CLR 268

circumstances, it is open to suggest that the destruction may have breached sections 129, 132 or 140 of the *Criminal Code (Qld)*, insofar as those public records related to Mr. Coyne's industrial rights and interests (or the Crown's interest to prove any potential disciplinary or criminal case) as evidence which *"… is or may be required in evidence"* in a tribunal. However, that disciplinary employment aspect of Heiner, touching on Mr. Coyne and the so-called "events" at the Centre *"…leading up to and surrounding his (Mr. Coyne's) relocation*", had to wait another 9 years before the law, which should have been applied in late 1989/early 1990, was discovered by the Forde Inquiry in 1999, by which time the statute of limitations time barred action under the *Children's Services Act 1965*.

In addition to the "event/incident/s" of abusing children through the excessive unlawful use of handcuffs, we now know that the Heiner Inquiry took evidence about the May 1988 pack-rape of a 14-year-old female indigenous inmate which was not properly handled at the time with no-one being held to account. Mr. Coyne was manager at the time. This incident was known about in the Department up to Director-General level because the file has now been publicly accessed.

Serious Deception

More fresh evidence has emerged recently. It has been discovered that in *The Courier-Mail* of 17 and 18 March 1989 this pack-rape incident was brought to light by an anonymous Centre worker in the wake of a serious riot at the Centre on 15 March 1989.[25] Disturbingly, it is noted that then Families Minister the Hon. Craig Sherrin claims in the 18 March 1989 article[26] that the victim was 17 when in fact she was a 14-year-old minor, not capable of giving consent and intimidated into not pressing ahead with the assault charges which she wanted brought against the alleged rapists for 2 days ***before*** the police arrived on the fourth day.

In short, it is open to suggest that Mr. Sherrin was either seriously misled by his own Department in his briefing document, or seemingly party to a deliberate deception/fraud on the public assuming that it is the same incident in the accessed Department of Families file.

Consequently, it would unsafe to assume that the known level of child abuse for those involved in the construction and execution of the Deed of Settlement did not extend beyond handcuffing children for excessively long periods to grates and fences because the pack-rape was one of the known "events" which occurred at the Centre ***before*** Mr. Coyne was relocated to work elsewhere in the Department in February 1990. (See The University of Queensland's School of Journalism and Communication *The Justice Project* http://www.eastes.net/justice/content/default.asp).

Accordingly, it is open to conclude that the course of justice has been unquestionably obstructed by both the unlawful shredding and the unlawful payment of public monies in exchange for silence; and, it is pointed out, that no statute of limitation applies in either of these circumstances.

THE KEY ISSUE FOR THE QAO

The key issue is what were the so-called "events" mentioned in the Deed of Settlement which the State of Queensland and Mr Coyne would remain silent about forever, upon an agreement - i.e. to give effect to the purpose of the instrument - in exchange for the payment of public monies

[25] See *The Courier-Mail* Friday 17 March 1989 *"Wacol centre 'paradise' for young crims"* by Mr Paul Whittaker.
[26] See *The Courier-Mail* 18 March 1989 p5 *"Repression 'not way' to youth reform"*.

known to be unlawfully above and beyond his (Mr. Coyne's) public service pay and emoluments.[27]

In my opinion, the evidence is simply overwhelming that the "events" were the unlawful/criminal abuse of children in State care, which both parties to the instrument knew about and approved of wherein no-one was either disciplined, dismissed or charged. In short, the law was perverted and the shredding of the gathered evidence was part and parcel of the cover-up, and that is why I do not resile from my earlier complaint held on your records since January/February 1993.

It is a matter of public record that one of the victims of this abuse (the May 1988 pack-rape victim) is currently suing the State of Queensland in a Supreme Court of Queensland action for breach of fiduciary duty, and negligence. It is not beyond reason to suggest that in early 1990 certain public officials (including members of the Goss Cabinet) would have known, or should have reasonably known and/or foreseen, that the Heiner Inquiry documents would have been highly relevant and probative evidence in any court action those abused children would likely bring in the future for breach of duty of care by the State of Queensland. It cannot therefore be suggested that the Queensland Government was a disinterested party in the long-term welfare of these public records knowing of their probative value showing what was really going on behind the high walls of the Wacol youth detention centre.

When I placed this matter before the QAO in 1993, I understood that appropriate departmental records did not exist to justify the payment of time off in lieu of unpaid overtime, notwithstanding there was no entitlement to claim or pay in the first place. However, the QAO only focussed on whether or not the payment was made within the Minister's spending limits, which, as it happened, she exceeded. While that was a relevant consideration, it was incomplete.

On the face of available evidence, it appears that the QAO gave no consideration as to ***why*** the *ex gratia*/special payment was made.

Our newly discovered evidence shows that Mr. Coyne was acting with the knowledge and approval of his superiors[28] in relation to the excessive and unlawful use of handcuffs. Of course this does not exculpate Mr. Coyne from legal responsibility in the matter but merely broadens its inculpatory net. Consequently, it is open to conclude that this abuse, at the very least, triggered his removal from the Centre and when the eventual termination of his career took effect in January/February 1991, this joint-inculpatory state of knowledge clearly became a bargaining chip. This was manifest in the Families Department memorandum of 18 January 1991 from DFSAIA Director of Organisational and Financial Services, Mr. Gary Clarke to DFSAIA Director-General Ms. Ruth Matchett which records that a threat was made by QPOA officials at a meeting on 10 January 1991 to take *"…the entire saga"* of the Centre to the CJC unless monies were paid. The QAO holds this exhibit.

It is also open to suggest that the improper handling of the May 1988 pack-rape incident (which was advanced in evidence at the Heiner Inquiry) was in the minds of the relevant parties when this extraordinary bargaining took place, especially in light of the relevant articles in *The Courier-Mail* of 17 and 18 March 1989.

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[27] See Section 88 of the *Criminal Code (Qld)*- Extortion by public officers

[28] See Document 13 (Report in handcuffing incident) sent to Senate Select Committee on Unresolved Whistleblower Cases in July 1995 by the Queensland Government, *The Sunday-Sun* article 1 October 1989, and Forde Inquiry bracket of evidence on handcuffing in particular evidence by Revd. Ian Peers, Mr. Coyne's former superior departmental officer.

It is unclear, however, as to whether or not any of new evidence[29] was ever made available to the QAO previously, but it does appear that in its earlier examination of this matter, the QAO paid no attention whatsoever as to the nature of the so-called Deed of Settlement's "events" which were never to be publicly disclosed. **If this is true, it is a critical flaw in those earlier investigations**.

Around this bargaining period of early 1991, according to Mr. Coyne himself, a QPOA official allegedly told him to make any claim and the department would pay it. Mr. Coyne stated before the Senate Select Committee on Unresolved Whistleblower Cases in May 1995:

> *"It was put to me by union officials that I just keep claiming time in lieu: "Put down anything you want. Claim anything you want. Just put it down, they will pay it."*[30]

For my part, as an experienced public sector industrial relations officer/organiser, such an unfettered invitation to raid the public purse is extraordinary, unprecedented, and, more importantly, unacceptable.

It is open to suggest that both parties (i.e. the State of Queensland and Mr. Coyne) were compromised by holding embarrassing inculpatory evidence (on each other in public records about abuse of children in State care at the John Oxley Youth Detention Centre, some of which had been wilfully shredded instead of being referred to the police or CJC for examination), and the public purse was unlawfully raided as both cure and victim to end the stand-off.

In my response on 26 February 1997, I rejected the Auditor-General's view concerning the so-called legality of the payment and its acceptability within your legislative regime. I repeated my earlier claim of 23 August 1993 that if the *ex gratia*/special payment provisions of the *Financial Administration and Audit Act 1977* could be used in such a manner, then it was nothing short of a political "slush fund" to cover up crime.

The evidence is now clear. "Hush money" was paid. Its unlawful purpose was to cover up known child abuse in a State-run institution which not only went to known disciplinary and criminal assault (and probable criminal deprivation of liberty) by the excessive use of handcuffs against minor/s in the care and control of the State, but, while on a supervised bush outing, the pack-rape of a 14-year-old indigenous female inmate by other male inmates which has been legally defined under the *Crime Commission Act 1997* as criminal paedophilia. It may now also include having knowingly misled a Minister of the Crown (i.e. the Hon. Craig Sherrin) in a briefing note to cover-up their culpability when he requested an explanation on the (alleged) pack-rape incident to supply to the media on 18 March 1989.

REAL OR APPREHENDED BIAS AND CONFLICTS OF INTEREST

Crime and Misconduct Commission

As stated before, I am aware that should this complaint give rise to suspected official misconduct then, as the Principal Officer of a unit of public administration, you are obliged to refer it to the CMC pursuant to sections 38 and 39 of the *Crime and Misconduct Act 2002* and failure to do so may constitute official misconduct.

[29] Document 13, Dutney Memorandum of 1 March 1990 and the May 1988 Departmental pack-rape file.
[30] Senate *Hansard* Senate Select Committee on Unresolved Whistleblower Cases 5 May 1995 p.536

Even though this complaint concerns conduct dating back to 1988 - 1991 in respect of those involved in the shredding and the so-called "events", they are still open to action on the part of an appropriate authority because:

(a) it may constitute offences under the *Criminal Code (Qld) ;*and
(b) *section 19* of the *Crime and Misconduct Act 2002* says: "*Conduct does not stop being official misconduct only because a proceeding or an action for an offence to which the conduct is relevant can no longer be brought or continued or that action for termination of services because of the conduct can no longer be taken*."

However, as a first priority, you are obliged to take into account that serious allegations stand against the CMC, and, as a decision-maker, it simply cannot come to this matter with a requisite independent and impartial mind,[31] moreover, I am strongly suggesting that the CJC/CMC has actively aided in perpetuating this criminal cover-up.

The CMC is a protagonist[32] and it must be treated accordingly.

The principle of real or apprehended bias was articulated in *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."*

In respect of the conduct of certain officials at the CJC/CMC who handled this (Heiner) matter at relevant times, I am suggesting that Section 208(2) of the *Crime and Misconduct Act 2002* may have been breached. It provides for:

> *"A Commission officer who uses or takes advantage of his or her office to improperly gain benefit or advantage for himself or herself or someone else or to facilitate the commission of an offence a crime"* Maximum penalty 595 penalty units or 7 years imprisonment.

Other offences may lie under the *Criminal Code (Qld)* if it were to be established that certain CJC/CMC officials have knowingly obstructed justice when handling my 1990 (Heiner) complaint.

Furthermore, by way of showing that the CJC/CMC itself recognises that it cannot come to anything associated with the so-called Heiner Affair, the following extract comes from a "highly confidential memorandum"[33] dated 11 November 1996 from then CJC Chief Complaints Officer

[31] See *Metropolitan Properties Co. (F.G.C.) Ltd. v. Lannon* (1969) 1 QB 577 at p599; *Nicholas v The Queen* [1998] HCA 9 (2 February 1998) at 74.
[32] *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."*
[33] Lawfully accessed by the author in July 1997 at the Connolly/Ryan Judicial Review into the Effectiveness of the CJC.

Mr Michael Barnes[34] to his superiors[35] in which he comments on the findings of the Morris/Howard Report.

To the best of my knowledge, no recantation of this following position has occurred. Of relevance Mr. Barnes said:

> *"…I propose advising the Director-General[36] that as it appears likely that the Government will initiate some further inquiry into the matter and as the Commission's handling of the matter has been impinged by the Premier in a speech made to Parliament, the commission does not intend to take any further action in relation to the matter."*

In summary, it is simply not open to the QAO to refer this matter to the CMC for adjudication, and therefore other legal options must be considered when and if the QAO reaches a view that *prima facie* criminal and official misconduct offences may be present in this complaint.

Queensland Audit Office

It must be said that the QAO itself may be legally compromised despite believing that it can come to this matter again with an open and impartial mind because of its previous involvement, and therefore, other options may have to be considered so that any assessment is seen to be impartial and not compromised by real or apprehended bias in order that the administration of justice may be properly served.

As earlier stated, I do not resile from anything I have said about the *ex gratia*/special payment previously. **This is a fresh complaint adding another layer of criminality, not replacing anything previously stated**.

It is the view of senior counsel that so compromised has Queensland's public administration and criminal justice system become over the handling of Heiner that the only viable option open to serve the administration of justice honestly and impartially is to appoint a Special Prosecutor to investigate this whole matter, and may well include the QAO's own conduct.

It is, however, unclear as to whether or not the QAO has ever considered the significance of the "events" and the related "silence" provisions in the February 1991 Deed of Settlement. However, it might be reasonably argued, if it did not inquire[37] at relevant times in 1993 and 1997, it was negligent in not doing so which may warrant independent investigation itself in order to restore public confidence in your watchdog role concerning the lawful disbursement of public monies.

In summary, such a serious omission (if indeed it exists) may be sufficient in the mind of a reasonable person acquainted with the facts to give rise to disqualifying apprehended bias being present in any examination the QAO may wish to undertake now in 2004. That is, any finding of wrongdoing in the payment against the facts of this fresh complaint, may inevitably call into serious question the QAO's earlier conduct because it always had the legal capacity, and duty, under the *Financial Administration and Audit Act 1977* to call for relevant documents and take

[34] Newly appointed first Queensland State Coroner on 1 July 2003.
[35] Messrs. Mark Le Grand (then Director of the CJC Official Misconduct Division) and Frank Clair (then CJC Chairman).
[36] Department of Families and Community Care.
[37] *Prasad v Minister for Immigration and Ethnic Affairs* (1985) 65 ALR 549 at 563

evidence on oath which would have revealed the hidden truths of criminal/disciplinary abusive conduct against children sooner and the inculpatory conduct of certain public officials in covering it up.

POTENTIAL OPTIONS FOR AN INDEPENDENT AND IMPARTIAL INVESTIGATION.

It is quite clear that this matter cannot be referred to the CMC for any adjudication pursuant to law. It is fatally compromised. It is also open to conclude that the Queensland Police Service and Queensland Office of the Director of Public Prosecutions may be as equally compromised as the CMC because of their earlier handling of the matter.[38]

It may be open to conclude that the QAO is equally compromised, however, as an officer of the Parliament and a new Auditor-General, and invoking the doctrine of necessity, other options may be reasonably open to you to have this complaint properly dealt with.

Upon being satisfied that a *prima facie* case exists, it may be open to you, under the *Financial Administration and Audit Act 1977* to:

B. Provide a Audit Report pursuant to section 40 of the *Financial Administration and Audit Act 1977* to the Speaker and Queensland Legislative Assembly about the legal predicament in which the QAO finds itself over this complaint (in respect of the legal requirements of avoiding real or apprehended bias and conflicts of interest touching on the QAO, CMC, DPP and Queensland Police Service) by suggesting that Parliament might, upon the re-introduction of the Special Prosecutor Act, appoint a Special Prosecutor to investigate the matter, including the QAO's own handling of my 1993 and 1997 complaints, so that public confidence is maintained and/or restored in the administration of justice and the role of the QAO;
C. Appoint a 'contract auditor" to investigate this fresh complaint, as well as the QAO's previous handling of my 1993 and 1997 complaints and provide an audit Report pursuant to section 40 of the *Financial Administration and Audit Act 1977* to the Speaker and Queensland Legislative Assembly, notwithstanding this may not be open because any 'contract auditor' may be required to find impropriety on the part of QAO and therefore, as a contractor of and for the QAO, he/she may not be free from apprehended bias;
D. Engage the services of senior counsel from the Private Bar to prosecute the *prima facie* offences on behalf of the QAO in a court of law bypassing the CMC, Queensland Police Service and Queensland Office of the Director of Public Prosecutions, notwithstanding this may not be open because the alleged cover-up means that any prosecution cannot be limited just to those personally involved in the Deed of Settlement.

Yours sincerely

KEVIN LINDEBERG
9 February 2004

[38] See *The Lindeberg Petition* tabled in the Queensland Parliament on 23 October 1999; Robert F. Greenwood QC Submission to the Australian Senate of 9 May 2001.