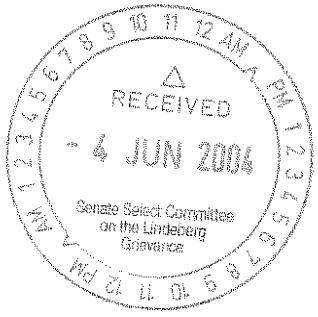

PO Box 285
Kenmore Q 4069
May 2004

The Senate
Parliament House
CANBERRA ACT 2600
For Attention: Senator Watson

Dear Senator Watson

SUBMISSION BY MR G M MCMAHON
SENATE SELECT COMMITTEE ON THE LINDEBERG GRIEVANCE

Overview

I initiated legal action, under a Federal Statute, against the Queensland Government.

Evidence relevant to my action and in the possession of the Queensland Government was disposed of, and I was 'sacked', I allege.

The Watchdogs of the Queensland Government have placed the investigation of this wrongdoing into a 'CATCH 22' situation from which it cannot escape:

- The Criminal Justice Commission (CJC) have claimed that the matter may be within the jurisdiction of the Ombudsman (hence Omb)
- The Ombudsman opines that it fits within the jurisdiction of the CJC (now the Crime & Misconduct Commission or CMC)
- Each Watchdog claims that the matter may be the jurisdiction of the other, and neither will investigate

I allege that the Queensland Government and / or its officers are in breach of the Commonwealth Crimes Act for both the disposal of that evidence and the cover-up of that same disposal.

Relevance to the Terms of Reference (TOR) of your Committee

This submission sets out the evidence for the allegations of disposal of evidence and cover-up of the same [see **Annex A**]. Because of its similarities with critical aspects of the Linderberg disclosures, I judge that this submission is relevant to the '**any other relevant evidence**' part of TOR (a) and to '**the implications**' part of TOR (b) of the terms of reference.

The documents and the evidence that the documents contain are drawn from the record of my experiences as a whistleblower while employed by the Queensland Government. I am one of the 'Senate whistleblowers' who were the subject of recommendations by the Senate Select Committees on Public Interest Whistleblowing (1994) and on The Unresolved Whistleblower Cases (1995).

Essentially, I initiated legal action against the Queensland Government for alleged disadvantages incurred in my employment because of my obligation to render Defence Service in the Reserve Forces.

The documents indicate that the Queensland Public Service found reports on my performance as a public servant, reports that I had not seen. The reports had been initiated by my two previous immediate supervisors. The performance reports criticised me for my absences with the Reserve Forces, I was told by the investigating officer who uncovered the documents. The performance reports were thus directly relevant to the legal action that I had already initiated.

I sought access to these performance reports under the same Public Service Regulation 65 (by that time re-numbered Reg 103) made famous by Mr Lindeberg and the Morris & Howard Report.

The Queensland Public Service thereupon disposed of these performance reports.

The evidence then disposed of, the different authorities within the Queensland Public Service terminated the investigation that had uncovered the evidence relevant to my Supreme Court action. This action acted to deny me knowledge of the contents of the documents, knowledge of their disposal, and / or all possibility of any investigation into my public interest disclosures about these matters and my deteriorating employment situation.

These authorities included the Departments for which I worked, the Public Sector Management Commission which later became the Office of the Public Service (PSMC or OPS), the Criminal Justice Commission which later became the Crimes & Misconduct Commission (CJC or CMC), the joint Office of the Ombudsman and Information Commission (Omb and ICO), and the State Archivist.

In certain of these actions these authorities obtained the active assistance of the Office of Crown Law.

Messrs Barnes (while still at the CJC), Ffrench & Anderson (while at the OPS) and Bevan (while at the OMB & ICO), who were at the CJC at the time of the Senate Inquiries into Mr Lindeberg's allegations, made decisions (or failed to make decisions) on my disclosures in ways that prevented investigation of the disappearing documents relevant to my litigation.

The evidence then disposed of, the Queensland Public Service also forcibly transferred me to a position three classification levels lower than my substantive classification level. I was told by my immediate supervisor that this action was taken because I had made complaints against him and the Department – my immediate supervisor recorded this advice in writing. Later I was transferred to 'a gulag', and after 4 months in 'the gulag' I was forcibly retrenched.

The CJC were forced before the Connolly-Ryan Inquiry to accept that a transfer to a position with a lower classification level had been forced upon Matthews Inquiry whistleblower, Jim Leggate. The CJC served on the Committee that reported that the same treatment (*anomalous in the extreme*) had been forced upon Fitzgerald Inquiry whistleblower and hero, Police Inspector Dr Colin Dillon, APM, after that world famous Inquiry was completed. No action to discipline the decision-makers or remedy these more well known whistleblowers was directed by the CJC watchdog.

A 'gulag' is where the self-proclaimed 'reformed' Queensland Police Force finally sent Dr Dillon, the first honest policeman to give evidence at the Fitzgerald Inquiry.

Should your Committee find that the CJC misled the Senate in past inquiries into the Lindeberg disclosures, my experiences and those of others demonstrate important implications for the integrity of the Queensland Public Service.

Firstly, the CJC appears to have acted with this level of behaviour again and again. It is open to conclude that the CJC, now CMC, have been 'captured' by their political and bureaucratic masters. The CJC/CMC appears to be participating in the types of conduct that the Fitzgerald Inquiry designed this watchdog to prevent.

In my instance, any captured behaviour has been directed against the protection of a whistleblower disclosing alleged breaches of an Act of the Commonwealth Parliament. The Defence Re-establishment Act is legislation relevant to the Defence of Australia passed by the House of Representatives and by the Senate.

Secondly, the officers of the CJC at the times of earlier Senate Select Committee inquiries into the Lindeberg Grievance appear to have repeated, in roles in other watchdog authorities within the Queensland Public Service, the types of behaviour that Mr Lindeberg alleges. The apparent spread of regulatory capture across and into the watchdogs of the Queensland Public Service may now be so entrenched that the Queensland Criminal Justice system may be incapable of reforming itself. Queensland's justice system may need an external agent to cure it of what appears to be its partisan operation, its double standards.

The imprisonment of Mrs Pauline Hanson heightened concerns in this assessment – it took a Minister of the Crown from South Australia and a popular radio personality from Sydney to reverse this outrageous outcome. Mr Beattie has claimed that, in the end, Mrs Hanson was freed, and that therefore the system is working. Mrs Hanson's case, however, shows that the system works if you can get $1 million from a Sydney property developer, are prepared to suffer months in gaol, and can get your argument to the Court of Appeal.

Thirdly, it follows from the last, that the only reasonable hope that Commonwealth whistleblowers in Queensland have of defending themselves against the system in Queensland is to get their case before the higher courts. This is what a Queensland magistrate was able to do to protect himself and a colleague from bullying and reprisals by Queensland's then Chief Magistrate.

This residual avenue of redress to whistleblowers in Queensland, however, is put at great risk if the Government is allowed to dispose of the evidence upon which the system of higher courts depends.

The failure of the CMC and, now, other watchdog authorities, to respond when evidence is disposed of by its Government, acts to undermine the last resort available to the few whistleblowers with the funds to pursue the wrongdoing before higher courts.

Finally, any evidence disposed of in my case was evidence relevant to a court action based on Federal legislation, namely, the Defence Re-establishment Act 1965. Thus, any action that constituted contempt of court or action to pervert the course of justice would be contempt of a court exercising its Commonwealth jurisdiction.

It would thus be an offence under the Commonwealth Crimes Act 1914.

A rogue State administration, acting in violation of its own legislation, its own Criminal Code, is not quarantined from breaking Commonwealth Law as well.

In any predisposition to break the law to achieve its aims, such a rogue State administration may forget to distinguish whether it is breaking the State Law that it may control or the Commonwealth Law which it may not control.

It is this aspect of my case, the alleged breaches of the Commonwealth Crimes Act by the State Government, and the cover up of these alleged crimes, that causes me to seek the protection and the assistance of the Government of the Commonwealth.

I am thus seeking this protection and this assistance through and from the Senate and your Senate Committee.

I should not, as a citizen and soldier of the Commonwealth, who has made and is here making disclosures of wrongdoing by the Queensland Government against Commonwealth Law, be left to defend my situation alone.

A State Government who may be prepared to resort to criminal activity in disposing of Commonwealth whistleblowers, or of State whistleblowers disclosing offences under Commonwealth law, is too powerful an adversary for the Commonwealth Parliament not to act in defence of the whistleblower. It is the interests of the nation, the national public interest, that should draw a reaction from the National Parliament.

Features Matching and / or Repeating the Lindeberg Experience

The features of my case that demonstrate a repeat of the wrongdoing disclosed by Mr Lindeberg include:

- Use of spurious legal opinions
- Methods of disposal of documents
- Denial of investigation

Spurious Legal Opinions

Date of Disposal. Some of the evidence disposed of, relevant to my case, was disposed of **after** I had initiated legal action under the Commonwealth Law (Defence Re-establishment Act) and under State Law (the common law on contracts). The same evidence, however, was disposed of before I initiated legal action under other State law, specifically, under the Judicial Review Act and the Whistleblower Protection Act. Much evidence associated with my 'sacking' was disposed of before my legal action under Commonwealth law was extended to include this event.

Thus, the rogue-at-law opinion attributable to the CJC's Mr Barnes, that there is no illegality if the disposal is effected before legal action is afoot, appears to have been applied to my matters. Mr Barnes supervised the first CJC investigation of allegations made by others about my case. He was the principal CJC investigator regarding the destruction of the Heiner documents.

Personnel File v Confidential Files. A second rogue-at-law opinion, again attributed to Mr Barnes, was that Reg 65 requirements for access to documents held about an officer only applied to documents attached to an officers personnel file. Attorney General Welford acted upon advice advocating this approach, without any questioning, it appears from the record, on two occasions regarding separate requests to him that I made under this Regulation (numbered Reg 103 and later Reg 16 at the relevant times) [see attachments A and B]. Mr Welford is now the Queensland Attorney General.

The Solicitor-General for Queensland had previously given written legal advice to the Families Department that was facing allegations from Mr Lindeberg. That advice was that access under Reg 65 should be given to all records held about an officer [see attachment C]. The Solicitor-General criticised the artificiality of holding some documents about the officer on confidential files to which Reg 65 access would be denied. In my case, my Personnel File could not be located by my Department for six months during 1995. The Department also could not find any record of who had last held the File. When the File was located, it had been, to my judgement, sterilised of reference to all matters relevant to criticisms I had made in my submissions to the Department, the PSMC and to the Senate.

After my 'sacking', a document obtained under Freedom of Information was noted that made reference to a person code-named 'Rainbow'. Internal and External Review applications pursuing all the Rainbow documents (and another suspected set of files code-named 'Warrior') have yielded approximately one thousand additional documents originally not provided to me under FOI, let alone under Reg 103 (formerly Reg 65).

A Mr Varghese was the Executive Director who managed the Corporate Services Group who were responsible for control of personnel files when my file went missing. I have attached a Statutory Declaration from a subordinate of Mr Varghese claiming that the same Mr Varghese originated the Rainbow files [see attachment D]. Mr Varghese counter-signed the direction of Director-General Fenwick transferring me, illegally I claim, to a position of lower classification level.

(It is instructive of the apparent dishonesty of the system that I have faced that the Statutory Declaration claims that the 'Rainbow' files were started in 'late 1999'. This was a date after I was retrenched from the QPS. Attachment E is correspondence, dated April 1997, that refers to 'Rainbow' and is addressed to the officer, Frank Fanning, who made the 'late 1999' claim in his Statutory Declaration. April 1997 is two years before I was retrenched. The April 97 document attacks directly the accuracy of the information given in a Statutory Declaration by Mr Fanning.)

Should any authority decide to pursue whether the Heiner documents or a copy of the same still exist, I recommend that investigations, including interrogations

of participants, be directed at least in part to the existence of any confidential files carrying a code-word and held by a legal office either public or private.

Private Documents. A third rogue-at-law opinion used to deny me access to the performance reports was that these documents were the private property of the two immediate supervisors who wrote them. That is, it was proposed that documents written by a public officer, summarising the performance of a subordinate public officer in the conduct of tax-payer funded duties of a public service position, established under Public Sector Management and Employment Act, are the private property of the first mentioned public officers.

Being private documents rather than public documents, the argument went, the documents are not available to the operation of Reg 103 (formerly Reg 65).

The source of this construction is not known, but it was upheld by former CJC Commissioner Ffrench when the argument was put to him. Mr Ffrench ruled so in his capacity as the Public Service Commissioner's Delegate required to hear my Fair Treatment Appeal. I had lodged a Fair Treatment Appeal about the decision of the Department not to give me a fair, thorough and impartial investigation of a grievance I had lodged about my employment.

An important aspect of the failures in the investigation process undertaken included, I asserted, the failure to give me relevant evidence that I had requested under Reg 103. The failure to give me this evidence, I claimed, denied me a 'fair' process. It also meant that the process could not be regarded as 'thorough', and that the process gave a perception that the investigation was not 'impartial'. On all three of these characteristics required of grievance investigations by both the relevant Public Sector Management Commission Standard on Grievance Procedures, and also by the Public Service Award, the investigation process was grossly deficient, I argued to Mr Ffrench. [A copy of the Standard is at attachment F].

Further, I appealed to the PSMC, the administrators of the Standard. I appealed to the PSMC (later the OPS) decisions by the Department not to comply with the Standard. For example, I appealed the decision by the Department not to give me a determination of the grievance, and the decision not to give me the performance reports as part of that investigation. The OPS were informed at those hearings that the Department was claiming that the performance reports were private documents, and that Mr Eastgate held the Eastgate document as his private property.

The OPS had asked for all performance reports prior to that hearing, as preparation for that hearing. OPS received other performance reports on me as a response to the OPS request. At the hearing, however, the OPS were accepting that these particular performance reports were 'private property'. Tape recordings are held by me of the relevant sections of the hearing.

This is information tending to show that OPS, and particular officers of OPS, were a party to the alleged criminal acts of refusing my request for documents made under Reg 103.

The Delegate who conducted the hearings and made relevant rulings was Mr B Ffrench, a Commissioner at the CJC during the time that the CJC dealt with the Lindeberg disclosures.

Should any authority decide to pursue whether the Heiner documents or a copy of the same still exist, I recommend that investigations, including interrogations of participants, be directed at least in part to the existence of any files held to be the private property of, say, one of the Ministers involved or one of the Director Generals or Mr Heiner or other participant in matters that are the subject of disclosures by Mr Lindeberg.

Disposal of Evidence

The two immediate supervisors who, in my case, wrote the reports on my performance were given possession of these documents by the Government. In the case of one document, the immediate supervisor had become a private citizen, and the document at issue was posted to that private citizen by an officer of the Human Resource Management branch of the Department.

This method of disposal was allegedly used in the Lindeberg case, where one copy of the Heiner documents is alleged to have been posted to a Union.

On this disposal-by-posting-to-a-private-entity method, information has been given to me by a person who has read the legal advice about the disposal of the Heiner documents given by the Queensland Office of the Director of Public Prosecutions to the Queensland Government. That legal advice opined that disposal by this method, after the documents had been sought under Reg 65, was an indictable offence, I am informed. Certainly this legal judgement agrees with that offered the Government in the Report by Morris QC & Howard.

Denial of Investigation

Failure by the Department to Investigate. The actions by the Department in denying me an investigation of my grievances in accordance with the Standard and the Public Service Award was, I assessed, an open abuse of authority that I would have little difficulty in exposing:

- The Standard and the Award required the Department **to maintain the status quo** while any grievance was being investigated. Thus, for example, I was alleging that I was being forcibly transferred to a position because I had initiated legal and administrative actions against the Department - it would be easy to show that the status quo had not been maintained, and that the Department had forced me to move location.
- The Standard and the Award required the Department to ensure that the employee or the employee's association representative had **the opportunity to present all aspects** of the grievance. If I was not given access to the performance reports, then clearly I could show that I was not being given the opportunity to address aspects contained in those documents. If my association's representative and I

were not interviewed, it would be easy to demonstrate that we were not being given the opportunity to respond to any arguments or evidence put forward by the Department

- The Standard and the Award required the Department to conduct the investigation 'in a **thorough, fair and impartial manner**'. The above criticisms, and the failure to interview my witnesses, were strong evidence that the investigation did not meet these three criteria
- The Standard and the Award required the Department's investigating officer to **consult with the employee's association during** the investigation where the employee desires that the matter be notified to the association. The testimony of my Association would readily demonstrate that this requirement to consult was not carried out by the Department.
- The Standard and the Award required the Department to **provide me with a written determination** of my grievance. The Department would not be able to produce something that it had not written.

Without a determination from the Department, however, I had no basis to appeal to the Public Service's Equity Commissioner about that determination. This type of tactic had been used against Matthews Inquiry whistleblower Jim Leggate when his Department failed to give him a determination of his grievance.

I could not, for example, appeal any determination of my grievance about the decision to transfer me forcibly to a position of lower classification level because I had initiated legal and administrative action against the Department. I could not appeal the determination of my grievance on this matter, because I had no determination.

What I could appeal instead, to the Equity Commissioner within the Office of the Public Service (OPS), was the decision by the Department not to give me a determination, and their decisions not to otherwise comply with the Standard on Grievance Procedures.

This I did initially on seven grievances (about matters which acted to deny me a substantive position at my current classification level within the Department). For none of these had I received a determination. These appeals were termed Fair Treatment Appeals or FTAs by the OPS. Because the Department had decided not to maintain the status quo, and the Department had acted to fill certain positions while deciding not to act on my grievances, I also submitted promotion appeals(or PAs) to the Equity Commissioner to protect my position.

As a result, the Public Service Commissioner referred the disclosures made in the FTAs, of multiple decisions not to carry out and determine grievances, to the CJC as suspected official misconduct.

Further, Public Service Commissioner Delegate Hill referred to the CJC as suspected official misconduct disclosures that I had made in one Promotion Appeal [see attachment G]. I was told orally by Public Service Commissioner Delegate Anderson that he was suspending hearing of the other PAs until they had been investigated by the CJC along with the other appeal material.

A Particular Situation. A particular situation existed regarding the referral of the FTA material to the CJC. I had had trouble in the Queensland Public Service over my Defence Service Obligation on two previous occasions, once five years earlier and once two years earlier than the current event. In the former, a recommendation for my promotion from my Branch Head had been overturned by his superior.

Three reasons were given during the appeal hearing on this earlier occasion. The first two reasons given were performance related. The third reason given for denying the recommendation for my selection was a reduction made in the calculation of my experience so as to exclude time I had spent in military service. In cross-examination as part of a public service appeal, the first two reasons were quickly shown to be not credible, which left alone the third reason to explain the overturning of the recommendation for my promotion. I won the appeal, and I was promoted.

As it occurred, my barrister in the earlier Public Service Appeal was Mr Clair QC. One of the two Public Service Commissioner Delegates who heard the earlier Appeal was Mr Wolff.

The current Fair Treatment Appeals thus had been referred by the now Public Service Commissioner, Wolff, to the now CJC Chair, Clair, QC [see attachment H]. While this coincidence did not entitle me to any special consideration, both principals, at the OPS end and at the CJC end of the referral, had had first hand inspection of past actions by the Public Service to disadvantage me in my employment because of my Defence Service Obligation. I expected that there would be an investigation.

Failure by the CJC to Investigate. After six months, the CJC advised the OPS that there was no suspected official misconduct in the matters referred to them by Mr Wolff, but that there may be administrative matters within the concern of the Ombudsman [see attachment I].

The CJC and Mr Barnes came to this view without interviewing my Association whose disclosures had led to the Wolff referrals [see attachment J]. I was not interviewed, nor were any of my witnesses. This property of CJC investigations, of not interviewing the parties involved, was demonstrated in the Heiner saga where the CJC has never interviewed Mr Heiner.

The CJC, in the Heiner matter, had the constitution still to describe their investigation as having been conducted to 'the nth degree'. I suffered a similar misrepresentation with respect to the Hill referral.

With the Hill referral, there is no documentation in the CJC, to which access was given to me under FOI, showing any investigation or consideration of the Hill referral. The CJC's letter of decision on the Wolff referrals specifies the Wolff referrals by date, but makes no reference to the separate date of the Hill referral. The notes of Barnes and his officer make no reference to the particular circumstances or to the particular officers involved in the matters referred to the CJC by Delegate Hill. Whereas the CJC letter to Wolff raises the prospect of maladministration having occurred, Mr Hill's documentation reports that he was advised by the CJC that no maladministration was associated with the matters that Hill referred to the CJC [see attachment K].

The CJC has the constitution to claim, and the Information Commission has accepted this claim, that the Hill referral was included in the 'other matters' phrase used in the letter of decision sent to Mr Wolff.

How could Hill get a 'no maladministration' message from a report that stated that maladministration may be involved in unspecified matters? The claim conflicts with the documented record. Again, your Committee is likely to find such conflicts and contradictions in claims made by the CJC over the Heiner documentation, I believe.

I submit that it is premature to accept that the Heiner documents, or all copies of these documents, have been destroyed. I believe that many of the documents sought for my case have left a visible trail and may still exist.

Failures by the OPS to Investigate. Having received advice that there may be matters of administration in the Departments treatment of me that may be the concern of the Ombudsman, the OPS

- Failed to refer the matters to the Ombudsman [see attachment L].
- Failed to notify my Association of this view held by the CJC (my Association was initially told only that the CJC found that there was no suspected official misconduct) [see attachment M]. The failure to inform occurred for a period such that, when my Association was told, orally as an aside at a preliminary hearing of an appeal, the matters were outside the 12 months deadline for notification of wrongdoing to the Ombudsman.
- Refused to hear the Fair Treatment Appeals (FTAs) that I had lodged (about the decisions not to give me a written determination of my grievance, etc).
- Heard FTAs that I had **not** lodged and for which I had no determinations from the Department. For example, the OPS heard an appeal into the decision to transfer me to the lower level position because I had initiated legal and administrative proceedings against the Department. I had refused to appeal this decision to the OPS because I did not have a determination of my Departmental grievance about this transfer. [**NOTE**: Section 99 of the Public Sector Management & Employment Act states that the Public Service Commissioner must determine the appeal ***by reviewing the decision appealed against***].
- Refused me the opportunity to argue, in these improper hearings about Fair Treatment, that the treatment was unfair. I was required to argue that the treatment was malevolent, born of bad faith and/or malicious intent - that is, that it was conduct of a nature that may constitute suspected official misconduct. I was being required to argue to the OPS something that the CJC had already concluded to the same OPS was not in evidence; at the same time I was being refused the opportunity to argue wrongs of an administrative nature that the CJC stated to the OPS might be in evidence. These refusals made during the Ffrench hearings are all on audio tapes held by me.
- Failed to hear six PAs for a period of 15 months, forcibly retrenched me from the Public Service, and then dismissed the appeals on the basis that I was no longer a public officer [see attachment N]. One of the appeals so denied me was the Promotion Appeal being heard by Delegate Hill, who had found that I had established a prima facie case [see attachment K].
- Heard six appeals by an OPS officer who, in attachment M, was stated to have disqualified himself. The disqualification was an OPS response to complaints by

my Association that the same OPS officer had been involved in decisions at the Departmental level that were the subject of the undetermined grievances.

Failures by the Ombudsman and Information Commissioner to Investigate. The documents indicating disposal of evidence and cover-up of this disposal was disclosed by me to these Offices. I also disclosed the operation of the 'Rainbow' files in the department, the forced transfer and the reasons given me for it, amongst other matters.

In Queensland, these Offices are held by the same person, presently former CJC officer Bevan.

I made these disclosures to the Information Commissioner in support of arguments for achieving sufficient search, and for denying the Department exemptions from disclosing documents to me.

I made these disclosures to the Ombudsman, amongst other things, to demonstrate that I was a genuine whistleblower The Department was arguing that I was never a whistleblower. As a whistleblower, I merited the protections of the Whistleblower's Protection Act. Principal amongst these protections were reasonable procedures to ensure that I was not subject to reprisals. I was arguing that failures by the Department to investigate my grievances, and failures by the OPS to hear the appeals that I had lodged, did not constitute the 'reasonable procedures' required by the Act.

Wait for this.

The Ombudsman and Information Commissioner, under the latter hat, found no suspicion of official misconduct in any of my disclosures in FOI applications decided to date, and thus did not refer any of my disclosures to the CMC.

The Ombudsman and Information Commissioner, under the former hat, found that my disclosures did fit the definition of official misconduct, thus was not maladministration and was thus not matters that the Ombudsman had jurisdiction to investigate [see attachment O]. It took the Ombudsmans Office four years to reach this decision

This public record shows that Mr Bevan, who holds these double-hatted positions, was Mr Barnes colleague and supervisor at the CJC during times when the CJC was handling the Lindeberg Grievance. The CJC letter claiming that the State Archivist had authority to destroy documents requested for intended court proceedings went out under Mr Bevan's signature. My concerns that an officer who was a party to such rogue-at-law opinions would be overseeing the response to my allegations of similar fact wrongdoing was communicated directly by me to Mr Bevan by the letter included at **Annex B**

Failures by the State Archivist to Investigate. Disclosures made to the State Archivist, after an 18 month delay, resulted in another refusal to investigate, or refusal to refer matters for investigation. On this application, the basis for doing nothing was that I was no longer a public officer and was thus not able under law to make public interest disclosures [see attachment P].

An Aside

OPS earlier had dismissed my Promotion Appeal for which I had established a prima facie case on the basis that I was no longer a public officer.

The law in Queensland gives many advantages to the Government, in disposing of whistleblowers, their disclosures and their evidence, if the Government removes the whistleblowers from the Public Service.

Other Major Concerns

I describe two further matters for the significance that they have for describing the poor state of administration of justice in Queensland. These matters are:

- Disposals of Other Evidentiary Documents
- Tape Recordings of the Ffrench Hearings

Disposal of Other Documents. My forced retrenchment was justified by the OPS on the basis that I had not been able to secure a position in the public service. The procedures for finding a position required only that I be able to perform in the position – that is, that I met the selection criteria to an adequate or suitable degree.

I have enclosed three examples of documents that were disposed of after I had made application for access to these documents under FOI.

Firstly, the Premiers Department had the selection scores for one position for every applicant except myself. On a photocopy of the original, the scores against my name are blank. The original, which would tell what my scores were, had been destroyed [see attachment Q].

Secondly, the Justice & Attorney General's Department (JAG) claimed to have destroyed documents for another position for which I applied. JAG claimed that the documents were destroyed automatically when the twelve months for which they were required to hold the documents expired. Documents obtained under FOI, however, showed that the documents had been destroyed after I had made an FOI application for them; also, the documents were destroyed six months before the twelve months period had expired [see attachment R].

Thirdly, the Department of Natural Resources provided documents indicating that on average I had scored above the acceptable level for the selection criteria for another position. The Department claimed that I had not obtained the acceptable level for two of the selection criteria that they did not nominate. When I applied for access to the documents from that selection exercise (Dec 99), including the scores for the individual selection criteria, the documents were destroyed (May 00), claiming that the time the Department was required to retain them had expired [see attachment S].

Tape Recordings of the Ffrench Hearings. Partial tape recordings of this hearing of appeals that I did not lodge are held by me. I would like the Senate Committee to hear for itself

- The many instances where the Delegate refused to allow me to submit evidence of maladministration
- The acceptance by the Delegate of the proposition that the reports made about my performance in the public service were the private property of the immediate supervisors who wrote the reports. This exchange made reference to the Lindeberg disclosures
- The admission by my immediate supervisor that one of the reasons for transferring me out of one Group of the Department was that I had made complaints about him, and the Delegate's refusal of any questioning of the supervisor by me about this

Conclusion

The implications, I submit, to any misrepresentations, made by the Queensland Government including the CJC, to past Senate Committees inquiring into the Lindeberg disclosures, may be as follows:

- The alleged wrongdoing in the handling of the Lindeberg disclosures has led, in my judgement, to the 'capture' of the watchdog authorities in the administration of justice in Queensland
- The system may not have the ability to cure itself of this phenomenon called 'regulatory capture'.
- Whistleblowers can only expect to gain protection for their employment, their careers , their health and their financial and family security, if they can get their matters above the level of 'capture' and before a higher court
- Disposal of evidence appears to have become a modus operandi for Departments. To this development the watchdog authorities can hardly respond, given the scurilous legal rules that they have established, especially for the implications that the Lindeberg disclosures had for the Goss Cabinet
- The destruction or disposal of documents relevant to higher court proceedings is destructive of the last opportunity for whistleblowers to get above the 'captured' administration
- That 'capture' has, again in my view, incorporated a willingness to allow mistreatment of whistleblowers who disclose alleged breaches of Commonwealth legislation as well as State legislation
- That willingness extends, in my judgement from my experience, to the disposal of documents relevant to existing and intended legal proceedings under Commonwealth statutes

My situation involves alleged disposal, by the Queensland Government, of documents that I sought to support legal action I had already initiated under Commonwealth law. I should not be expected to defend myself against an administration that has shown itself to be capable of the actions that Mr Lindeberg is able to prove to you.

I seek your Committee's support, and that of the Senate, to have any suspected criminal acts carried out in my case referred to the Australian Federal Police.

I further request legal assistance to fund my legal proceedings against the Queensland Government arising out off their mistreatment of my employment and my career.

Regarding the Lindeberg disclosures specifically, my experience has shown to me mechanisms by which the Queensland Government or its officers or agents or legal representatives may still retain the Heiner documents. They may be held as private property and / or on secret code-named files and / or at the offices of lawyers representing those private citizens or public officers / public sector entities.

I would appreciate any opportunity to give further documentation in support of this submission.

I would be willing to participate in any public or private hearings by the Senate Select Committee on the Lindeberg Grievance.

Yours sincerely

Greg McMahon

NOTIFICATION OF SUSPECTED CRIMINAL ACTS AGAINST THE COMMONWEALTH CRIMES ACT 1914: DISPOSAL OF EVIDENCE OF BREACHES OF THE DEFENCE RE-ESTABLISHMENT ACT

I refer in turn to documents tending to show the alleged crime:

- The action lodged by me on 20 Feb 1995 before the Supreme Court of Queensland exercising its Commonwealth jurisdiction. That action claimed damages for disadvantages that I had suffered in my employment with the Queensland Public Service because of my obligations for Defence Service with the Australian Government (see enclosure 1)

- A report to Mr Fenwick (at that time Director-General, Department of Primary Industries) and Mr McGaw (Equity Commissioner, Office of the Public Service) by Investigating Officer Mr Ross Pitt, dated 15 Mar 1996. Mr Pitt's interim report described the existence of reports on my performance as a public officer that I had not seen, and that criticised me for my service in the Defence Forces. One such report was attributed by Mr Pitt to Mr Dawson (the other was attributed to Mr Eastgate). Mr Dawson was a public officer and my immediate supervisor when he wrote the performance report, but his tenure as a public officer was terminated in early 1996 (see enclosure 2), such that he no longer was a public officer of the Queensland Public Service.

- A faxed memo by Mr Kel Holmes to Mr Pitt, dated 10 Sep 1996, advising Mr Pitt that Mr Holmes has sent the performance report on me that was written by Mr Dawson (hence termed the 'Dawson document') to private citizen Mr Dawson, and had not kept a copy (see enclosure 3).

I disclose an allege that this disposal is an act tending to obstruct / prevent / pervert / defeat the course of justice with respect to the Supreme Court litigation that I had initiated many months earlier under a Commonwealth Statute, namely the Defence Re-establishment Act 1965.

I refer also to the documents tending to show the alleged cover-up of the alleged crime:

- Requests properly made to the Department of Natural Resources by me and by my professional association, both before and after the secret disposal of the Dawson document, for access to the Dawson document (see enclosures 4, 5 and 6). Access was requested by me under Regulation 103 (earlier numbered Reg 65, later numbered Reg 16) of the Queensland Public Service Regulations issued under powers derived from the Public Service Management and Employment Act.

- Letters by Mr Holmes, then Mr Goode, attempting to deceive me into accepting that a second document [one that I had seen (and signed), and one that did not contain any

criticism of my performance based on my Defence Service], was the Dawson document that Mr Pitt referred to in his 15 Mar 1996 report (see enclosures 7 and 8)

- Action by the Department of Natural Resources (Mrs Hume) and Crown Law (Mr Dunphy) in Feb 1997, that had the effect of denying me access to the Holmes document, and to knowledge of its reference to the secret disposal of the Dawson document. This joint action occurred during discovery procedures for a judicial review application that I lodged. DNR and Crown Law did this by affidavit claiming that the Holmes document was subject to legal professional privilege (see serial 27 within enclosure 9)

- A report by Mr Pitt to the Office of the Public Service, dated 10 Sep 1999, offering the opinion that the Dawson document was probably no longer held by DNR. Mr Pitt, however, had been informed by Mr Holmes, and thus knew, that Mr Holmes had disposed of the Dawson document and had not kept a copy for DNR. Mr Pitt knew that the Dawson document was not with DNR, and knew specifically how this came to be, but Mr Pitt represented to the OPS that the absence of the Dawson document was a probable outcome from 'various departmental reorganisations' (see enclosure 10).

- The failure to advise the Minister that the Dawson document had been disposed of by Holmes, when briefing the Minister about my claims of the breach of Regulation 103 (see enclosure 11)

- The apparent suppression of the letter from Holmes to Dawson, referred to in Holmes' letter of 10 Sep 96, with which the Dawson document was enclosed when Mr Holmes posted the Dawson document to private citizen Mr Dawson

With respect to the failure by the Queensland Government to give access to documents held on one of its officers when access is requested by the officer under Regulation 103, the Office of the Premier has received two legal opinions. The first was from a special QC investigator into the Heiner Affair and the second was by the Queensland Director of Public Prosecutions when responding to the QC's report. That QC opinion was that denial of such access is a criminal offence (see enclosure 12, an extract from the full report). I am informed by a person who has read the Director of Public Prosecutions advice (re the disposal of the Heiner documents) that this advice acccepted that the action to dispose of the documents requested under Regulation 65 was a criminal offence.

On 6 Dec 2002, the Court of Appeal of the Supreme Court of Victoria made rulings concerning the destruction of evidence required or likely to be required for legal proceedings {BATASvCowell [2002] VSCA 197(6 Dec 02)}. The decision also recited precedents concerning fraudulent replacement of documents relevant to legal proceedings with forged documents, and the situation where a party to a legal proceeding has a history of misconduct including destroying documents required for litigation. The Court

- Confirmed that both destruction and also suppression of documents, required for legal proceedings, were attempts to pervert the course of justice and / or contempt of court

- Confirmed that fraudulent conduct designed to mislead the court by production in the course of discovery of documents that the party knew to be fraudulent was a plain case of the party attempting to pervert the course of justice

- Confirmed that destruction of documents likely to be required for future litigation before that litigation is afoot could constitute an attempt to pervert the course of justice

- Confirmed that attempting to pervert the course of justice and contempt of court are criminal offences

I disclose to you my belief, reasonably held, that the above documentation is information tending to show that particular public officers and their superiors may willfully have committed criminal acts. They may have been doing this by acting in ways that attempted to obstruct, prevent, pervert and or defeat the course of justice, and in ways that denied me knowledge that these attempts had been made. They may have acted in furtherance of this overall plan and strategy by denying me thorough, fair and impartial investigation of my complaints related to the management of the documentation pertaining to my employment and related to the treatment of me in my employment that the same documentation described.

I further allege that particular public officers and their superiors may in turn have failed to record and report my Public Interest Disclosure to the Queensland Parliament, and denied me a fair trial in the judicial review that I had initiated. They may all have been playing their part in an overall plan or strategy to achieve this obstruction, prevention, perversion and or defeat of the course of justice, though not all may have known all aspects to the total plan or strategy. The information thus may be tending to show alleged complicity and / or conspiracy to achieve these ends.

I further disclose to you my belief, reasonably held, that these public officers may have been denying me the Dawson document (and the Eastgate document) and / or knowledge of its disposal and / or knowledge of the cover-up of the disposal because of my legal actions already afoot and anticipated from me. I hold that these officers may have held an expectation that, if I had this knowledge or these documents, I would make public interest disclosures about these matters in my court actions (and in any administrative appeals or grievance procedures that I was allowed).

I am thus making to you a Public Interest Disclosure of a reprisal / reprisals that may have been made by these officers against me.

I am notifying the Senate Select Committee of these alleged criminal acts because the actions are tending to obstruct / prevent / pervert / defeat the course of justice with respect of legal action afoot under **Commonwealth legislation**, namely the Defence Re-establishment Act.

TEXT OF LETTER TO THE JOINTLY HELD POSITIONS OF QUEENSLAND PARLIAMENTARY OMBUDSMAN AND INFORMATION COMMISSIONER
Regarding
THE LAW TO BE APPLIED TO MY COMPLAINTS OF DESTRUCTION OF DOCUMENTS RELEVANT TO EXISTING AND LIKELY COURT ACTION

Ombudsman and Information Commissioner
Level 25 Jetset Centre
288 Edward St
BRISBANE Q 4000

Dear Sir

ADVICES REGARDING PUBLIC INTEREST DISCLOSURES
MADE TO YOUR OFFICES, JOINTLY OR SEPARATELY,
1996 TO 2002, BY MR G MCMAHON AND/OR BY PUBLIC OFFICERS AND/OR
PRIVATE CITIZENS, REGARDING MR MCMAHON'S EMPLOYMENT
WITH THE QUEENSLAND GOVERNMENT
FURTHER DISCLOSURES

I refer to my letter to you dated 21 January 2002 and your response dated 19 Feb 03. The date of my letter was a new year error, and should have read 21 Jan 03.

Thank you for your courtesy of a response through your Ombudsman's hat.

I refer to the article (attached) titled 'Pastor shredded sex victim's diary', carried by the Courier Mail on 24 Jan 03. It describes a Minister of Religion being charged with criminal offences for destroying evidence and attempting to pervert the course of justice. I understand that the Minister of Religion was charged under Sections 129 and / or 140 of Queensland's Criminal Code.

The facts of the case indicate that the diary was shredded as many as six (6) years before any action was afoot before the courts of Queensland. I put it to you that this demonstrates that there is, within the Queensland Police and the Director of Public Prosecutions, a perfect understanding of the law of Australia, as set out by the High Court of Australia in the *Rogerson* case and as confirmed by the Victorian Court of Appeal in the *McCabe* case.

I have the expectation that this is the law that will be applied in your response to the Public Interest Disclosures that I have made about the disposal of the 'Dawson document'; I also expect that the case law from *Rogerson* and *McCabe* will be the law that you apply concerning the reported destruction by Mr Cremer of documentation pertaining to decisions not to deploy me to the District Manager Caboolture position within DNR.

Unfortunately in Queensland, this interpretation of the law by the High Court has been ignored by criminal justice authorities in one instance known to me. I am referring to the alleged decisions by Ministers of the Crown to destroy evidence of abuse of children in the John Oxley Centre. In this case, termed 'Shreddergate' and 'Heiner', the CJC claimed that the question of criminality did not arise because the direction to destroy was given before the legal action was formally afoot. I understand that the CJC's legal opinion to this effect was authorised by Mr Michael Barnes of the CJC after receiving advice from lawyer (now a magistrate) Mr Noel Nunan.

I seek to ensure that the law applied in Queensland to Ministers of Religion is also applied in my case. I seek to avoid having the legal opinion, used specially for refusing the public interest disclosures made by Mr Kevin Lindeberg against Ministers of the Crown, applied to my Public Interest Disclosures.

The system of criminal justice in Queensland has shown itself capable of both following Australian law and also of ignoring that same law. I seek to have the law followed in the case of my allegations, that is, to have the persons and entities against which current evidence appears to stand treated the same as Ministers of Religion are treated before the law, rather than as though they were Ministers of the Crown.

In this regard, I understand that you professionally may be associated with the opinion of Barnes, in as much as you may have played a role in efforts by the CJC to withstand the criticism of QCs, academics, archivists and Parliaments about the Barnes opinion. Your staff, trained in the law, would also be aware of the status of the Barnes opinion vs *Rogerson* and *McCabe* decisions, but that the CJC, while you were a part of that organisation, refused to yield on the point.

I am thus greatly concerned about any influence, accidental or otherwise, that you may have on which opinion is applied by your joint offices in assessing my Public Interest Disclosures regarding destruction or disposal of evidence relevant to legal actions that I might initiate or had already initiated. I do not believe that you can come to the matter, as there may be a perception, reasonably held, that you may have a degree of pre-judgement against the opinion of the High Court in *Rogerson* and in favour of the opinion of your former subordinate, Mr Barnes

To ensure, at least in part, that my allegations are assessed according to law and not according to the purposes served by the Barnes opinion, I ask that you obtain truly independent assessment of the substance of my PIDs. I further request that you brief that independent professional in writing on the substance of the *Rogerson* and *McCabe* decisions and of the substance of the Barnes opinion, and then instruct the independent professional to be guided by the authority and legal seniority of the respective legal sources in choosing between any differences in interpretations of the law emanating from these opinions. I do not believe that the opinion of a relatively junior legal mind should be allowed to hold off the authority of the High Court precedent, simply because of the bureaucratic authority of the position held by the junior legal mind. I request a copy of that written brief.

I am also aware that, in making to you this comparison of disparate interpretations of the law, made by both the DPP and by the police, in matters concerning actions by a Minister of Religion versus actions concerning Ministers of the Crown, I am making to you allegations of information tending to show suspected official misconduct, similar in nature to those currently being alleged about the DPP in the Volkers case.

I am also aware that, in the absence of the CJC being able to prove its own incompetence (both in knowledge of the relevant criminal code provisions and relevant case law, and also in not recanting the Barnes opinion when confronted by opposing opinions from eminent QCs, one now a High Court judge), I am also providing information tending to show wrongdoing by the CJC; about this wrongdoing, you may have had suspicions or have played a part. I have thus made a public interest disclosure to you on this matter as well.

If the PIDs that I have made have been referred to the CJC or the CMC, I ask that I be informed of this as a matter of urgency. This may allow me to take steps to ensure the absence of any perceived bias or lack of proper investigation in the way that that body deals with my PIDs. Waiting to inform me only after the CMC has made a decision may serve the purpose only of allowing the CJC to repeat the alleged injustice that may have been perpetrated, in good faith or otherwise, by the CJC regarding the Lindeberg PIDs.

Yours faithfully

G MCMAHON

Discloser