Crime & Misconduct & OLAB 2014
Submission 014

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SUBMISSION

to

LEGAL AFFAIRS AND COMMUNITY SAFETY COMMITTEE

QUEENSLAND LEGISLATIVE ASSEMBLY

Crime and Misconduct and Other Legislation Amendment Bill 2014

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Email: [redacted]
4 April 2014

THE OBJECTIVES OF THE BILL

The policy objectives of the Bill are to:

1. reform the upper governance structure of the CMC (which will be renamed the Crime and Corruption Commission and generally referred to from this point in the Explanatory Notes as the commission);
2. change the definition of 'official misconduct' in the CM Act to raise the threshold for what matters are captured within that definition and rename the defined conduct as 'corrupt conduct';
3. rename the 'misconduct function' in the CM Act to 'corruption function'; which will result in the following new titles: '*Crime and Corruption Act 2001*'; 'Crime and Corruption Commission'; 'Parliamentary Crime and Corruption Committee' and 'Parliamentary Crime and Corruption Commissioner';
4. improve the complaints management system of the commission to refocus it on more serious cases of corruption and reduce the number of complaints the commission is to deal with and investigate;
5. remove the commission's responsibilities for the 'prevention' of corruption in units of public administration'
6. ensure the commission's research function is more focussed and relevant to its functions;
7. strengthen the transparency and accountability of the commission by expanding the role of the Parliamentary Crime and Corruption Commissioner (parliamentary commissioner) in his oversight of the commission, and requiring meetings between the commission and the Parliamentary Crime and Corruption Committee (the parliamentary committee) to be held in public as much as possible'
8. clarify the grounds for discipline and what disciplinary action may be taken by the commission in relation to conduct of commission officers'
9. make transitional arrangements to continue the current acting chairperson's appointment and certain other appointments; and provide transitional arrangements for the ending of other appointments;
10. implement recent recommendations of public reports about the commissioner's investigation of alleged official misconduct at the University of Queensland and to make other unrelated minor amendments to the CM Act;
11. improve the management of personal conduct and work performance of Queensland public service employees; and
12. make consequential amendments to the CM Act, the *Public Service Act 2008* (PS Act) and other Queensland legislation and regulations to support the above policy objectives.

COMMITTEE MEMBERSHIP

Mr Ian Berry MP, Chair, Member for Ipswich

Mr Peter Wellington MP, Deputy Chair, Member for Nicklin

Miss Verity Barton MP, Member for Broadwater

Mr Bill Byrne MP, Member for Rockhampton

Mr Sean Choat MP, Member for Ipswich West

Mr Aaron Dillaway MP, Member for Bulimba

Mr Trevor Watts MP, Member for Toowoomba North

Foreword

1. My contribution to the **Legal Affairs and Community Safety Committee's** ("**LACSC**") consideration of the **Crime and Misconduct and Other Legislation Amendment Bill 2014** ("**the Bill**") has been shaped through the prism of my whistleblowing experiences in the notorious Heiner affair[1] for the last 24 years. To all intents and purposes, this lifespan runs exactly parallel to that of this Bill and its progenitors, the ***Criminal Justice Act 1989*** ("**CJ Act**)" and the ***Crime and Misconduct Act 2001*** ("**CM Act**").

2. This legislation is arguably one of the most important on Queensland's statute books. Therefore, to introduce changes which may either diminish or seemingly enhance its purpose and ability to provide open and transparent government free from corruption, and because of its all-pervading power to override confidentiality obligations in other laws in accordance with section 38(1)(b) of the *CM Act* – not to be changed in the Bill – it is submitted that any contribution warrants detailed thought so that bitter lessons of the past are neither forgotten nor repeated.

3. During this 24-year period, I have personally experienced how an entire system of checks and balances implemented in the post-Fitzgerald era catastrophically failed to properly handle a serious alleged *prima facie* crime committed by an entire Queensland Cabinet on 5 March 1990, and then, in a series of subsequent acts and acts of omission, these various authorities aided and abetted in a whole of government cover-up. In such circumstances, an immediate concern therefore arises about history repeating itself even with these current changes introduced by a different side of politics for a new generation because they may not realise what has gone before.

4. The alleged initiating crime in the Heiner affair (i.e. a *prima facie* breach of section 129 of the *Criminal Code 1899* (Qld) – **destroying evidence**[2]) fundamentally undermined all the precepts of government by the rule of law because of who the alleged perpetrators were: an entire Cabinet. Despite the massive turbulence of abuse of power I experienced over the years, this law remained my immoveable anchor and the recurring nightmare for the abusers of power.

5. In respect of this particular law, unlike some others which may be arguable, retired eminent judges and others of impeccable reputation and standing such as former Queensland Supreme and Appeal Court Hon James Thomas AM QC, former WA Supreme Court Chief Justice, the Hon David Malcolm AC QC, NSW retired Supreme Court Justices the Hon Jack Lee QC, Roddy Meagher QC and Barry O'Keefe QC have placed on the public record - within its Heiner affair context - that

[1] http://www.heineraffair.info/

[2] "*Any person who, knowing that any book, document, or other thing of any kind, is or may be required in evidence in a judicial proceeding, wilfully destroys it or renders it illegible or undecipherable or incapable of identification, with intent thereby to prevent it from being used in evidence, is guilty of a misdemeanour, and is liable to imprisonment for 3 years.*"

section 129 was always unambiguously clear in its purpose and meaning. In their August 2007 public statement of concern to Premier Beattie, *inter alia*, the retired senior judges said this about section 129:

> *"....Compelling evidence suggests that the erroneous interpretation of section 129 of the Criminal Code (Qld) used by those authorities to justify the shredding of the Heiner Inquiry documents may have knowingly advantaged Executive Government and certain civil servants."* [3]

6. **Our lauded post-Fitzgerald system of government ignored these authoritative warnings for two decades**. In that sense, it can be reasonably said that Queensland's premier law-enforcement authority, the CJC and CMC, redefined a fundamentally important law of the administration of justice and of open and accountable government for an alleged *prima facie* political/corrupt purpose, and, in doing so, I submit became laws unto themselves and set in place a path for others in the system not to follow at their peril as in trying to withstand the pull of a 'cosmic black hole'.

7. From the moment my 1990 public interest disclosure ("**PID**") was brought to the system's attention, and then later in the face of clear, unequivocal and credible warnings over the passage of time by eminent jurists that a high-level cover up was happening due, in its initial phase, to the **Criminal Justice Commission's** ("**CJC**") utterly untenable interpretation of section 129, the respective authorities via the decisions of certain of their officials accepted the flawed clearance, and persisted with the cover-up either out of political/personal self-interest or fear, intimidation and implausible 'honest' incompetence.

A Palpable Nonsense Begins the Cover-up

8. In its 20 January 1993 clearance of my PID's shredding allegation, the CJC claimed that section 129 was not breached because in the view of its contracted barrister[4] (appointed to review my complaint in 1992) it permitted anyone, including the Crown, to **deliberately destroy** any

[3] See **Attachment A**

[4] Queensland Barrister Noel Nunan was an ALP member/activist at the time he reviewed my PID in 1992/93. He was subsequently elevated to the Magistracy (25 July 1994) by the Goss Queensland Government where he currently sits in Brisbane. His 20 January 1993 clearance, adopted by the CJC under the signature of its Chief Complaints Officer, Mr Michael Barnes (who was a member of Queensland Association of Labor Lawyers), in its key findings has been proven to be incorrect in law and fact. Mr Barnes was later appointed as Queensland's first State Coroner, and is currently State Coroner for New South Wales. Also See Tasmanian Parliament – **Select Joint Committee on Ethical Conduct** – 28 November 2009 *Hansard* p57, my Opening Statement when appearing before this committee in Parliament House Brisbane, I said *inter alia*: "*...It was conducted by a contracted barrister, Mr Noel Nunan. Unbeknown to me at the time he was an ALP member, activist, a former work colleague of Premier Wayne Goss before Mr Goss entered politics. Mr Nunan was a member of the Queensland Association of Labor Lawyers as was the CJC official, Mr Michael Barnes, who recommended him for the review purposes. They were mates investigating a mate."* (Also see **Footnote Point 21**)

known and foreseeable evidence to prevent its use as evidence in a foreshadowed and realistically possible future judicial proceeding up to the moment of such a proceeding commencing. I challenged this palpable nonsense immediately, and persisted. I was ridiculed by the CJC and Queensland Governments for years. However, like a snowball, eminent retired judges, barristers, lawyers, academics, archivists and other whistleblowers gradually joined my outcry and turning this injustice of massive abuse of power into an avalanche of national legal/political/recordkeeping outrage.

9. It is strongly open to suggest that the law enforcement authorities could not face the harsh and unprecedented actuality that an entire Cabinet may have to stand trial over a *prima facie* serious criminal act of destroying evidence to prevent its use in known and/or realistically possible future judicial proceedings.

10. Some years later, when JOYC Manager, Mr Peter Coyne, was providing evidence to the Senate **Select Committee on Unresolved Whistleblower Cases** ("**SSCUWC**") in Brisbane on 5 May 1995 – reviewing the Heiner affair was part of its commission - about his experience when he went to the CJC in August 1992 to assist in its review of my PID, he said that its contracted barrister purportedly said these words when they first met:

> *"There will be absolutely no solace in this matter for you or Mr Lindeberg. This is a complaint against the Cabinet."* [5]

11. Yet, it was for alleged misconduct such as this that the Fitzgerald reforms were purportedly introduced. These reforms gave hope and promise to every Queenslander that when misconduct arose inside government, no matter by whom, where or when it would be nipped in the bud fearlessly and impartially addressed. In the process of attempting to eradicate corrupt conduct in government, whistleblowers could be assured of full protection by the CJC from reprisal.

A Cruel Hoax

12. The Heiner affair, which more than any other political scandal in our history reaches the highest echelons of public administration, shows that it was a cruel hoax in taking the CJC and Queensland Government at their word in 1990. Against that experience, any reasonable person might be entitled to be concerned about whether or not these 2014 reforms will really change anything for the better after two decades during which the CJC/CMC could not find any wrongdoing in the Heiner affair and allowed respective ALP Queensland Governments to proclaim their purity. The hoax extended to the CJC assuring the 1995 SSCUWC that my PID had been investigated to "the nth degree". Nothing could have been further from the truth.

[5] See *Hansard* Senate Select Committee on Unresolved Whistleblower Cases 5 May 1995 p545

13. The LACSC should note that although a number of submissions on the CJC/**Crime and Misconduct Commission's** ("**CMC**") handling of this scandal were provided to the recent Callinan/Aroney Review, no specific examination took place by the Hon Ian Callinan or Professor Nicholas Aroney. Instead, this important and long overdue task was left by them to the **Carmody Commission of Inquiry into Child Protection** ("**the Carmody Inquiry**")[6] which, as the record shows, **strictly limited itself** to just the initial alleged shredding offence and left untouched the alleged systemic cover-up in which alleged central players were the CJC/CMC.

14. The Heiner affair is therefore highly relevant because the central investigative/law enforcement authority which initially failed to correct the alleged serious wrongdoing and became a blockage to justice was the CJC and its replacement, the **Crime and Misconduct Commission** ("**CMC**"), including the **Queensland Crime Commission** (**"QCC"**). *Inter alia*, the **Parliamentary Criminal Justice Committee** ("**PCJC**") and **Parliamentary Crime and Misconduct Committee** ("**PCMC**") became involved with my PID [redacted]

Beneficial background Information

[redacted]

[6] See Term of Reference 3(e) http://www.childprotectioninquiry.qld.gov.au/term-of-reference-3e

[7] See section 295(3) of the *Crime and Misconduct Act 2001* and **Attachment B**

[8] See QCPCI Recusal Hearing **Attachment Two to Exhibit 5** of 24 July 2012. [redacted]

[redacted]

[redacted]

[redacted]

[redacted]

A. THE ISSUE OF BIPARTISANSHIP IN THE BILL

1. I have long held to the view that the major flaw in the Fitzgerald model for fighting corruption in government, namely via an independent integrity tribunal (CJC/CMC) oversighted by an all-party parliamentary committee (PCJC/PCMC) on behalf of the Queensland people is that it makes our politicians decision-makers in the area of criminal justice. Those decisions may, from time to time, involve politicians themselves (indeed even an entire Cabinet). I strongly suggest that such a role fundamentally breaches the doctrine of the separation of powers at its worst.

2. Politicians are elected to parliament because of their myriad of social, philosophical, political views and promises, and, in respect of being a member of a political party as well as an

[redacted]

independent member, either inside or outside a government can enact directly or influence certain policies into law on behalf of those who elected them to public office. In short, their role is to vet Bills, speak to and enact laws, ask questions of government and make speeches on matters of interest and/or public importance under the protection of parliamentary privilege, serve on committees and, generally, hold government to account as best as possible. It's an essential job to be done. The point is that we should not take politics out of politicians because they are what they are. Hopefully, politicians will always be ethical in their conduct and obey the law, but for those associated with political parties, loyalty can have no conditions attached to it in certain circumstances when it comes to staying in power and then be more in accord with Graham Richardson's famous words of "Whatever it takes". In that sense, the experiences of the Heiner affair ought to be a salutary lesson for everyone.

3. In a democracy, the administration of the law should be carried out by the Executive arm in a fashion which is devoid of party-politics, i.e. not to knowingly disadvantage or advantage oneself or another. Under the *CM Act,* conduct of public officials is required to be performed honestly, impartially and in the public interest, and unless it is, an offence of official misconduct going to, in some cases, criminal conduct may be found. The interpretation and ultimate enforcement of the law is the province of the Judicial arm of government, and it too should perform its duties in a similar impartial and independent manner according to law.

4. In these circumstances now before the LACSC, it all gives rise to the **eternal** question of who shall guard the guards who guard us? In its wisdom, the only way Parliament has been able to placate or limit public concern that "the numbers" inside Parliament will not be abused for party-political interests (by either side when in power) is to enshrine in law "obligatory bipartisanship in decision outcome". In my opinion, the most significant provision in the *CM Act* is section 295(3) regarding referral of complaints by the PCMC to the CMC and/or Parliamentary Commissioner for review. Fortunately, section 295(3) remains unchanged in the Bill regarding obligatory bipartisanship. [redacted]

[redacted]

6. **I submit that it is a fundamental error to remove the bipartisanship requirement regarding the appointment of the CMC Chair**. It is a non sequitur for the Queensland Government to suggest that because it has an accepted right to appoint judges, the same right should apply for the CMC Chair. While it is earnestly hoped that any Government would appoint judges on the basis of merit, the safeguard of judicial decisions being taken in open court and being subjected to scrutiny by the media and ultimately, superior courts exists. On the other hand, the internal conduct and directions of the CMC Chair are not always known, save what may now occur during open questioning in front of the PCMC when the CMC Chair is expected to attend and give full and truthful answers. However, this so-called 'safeguard' quite obviously has its limits. It will always depend on the topic under discussion (which may of necessity need to be held in camera), expertise, experience and maturity of PCMC members and their ability to put insightful questions and respond immediately to answers (which may be purposefully or unwittingly incomplete from the CMC), and a reliable media to accurately report what occurs, let alone report it at all, even though what is said may be recorded in *Hansard.*

7. If nothing else, any CMC Chair, by enjoying bipartisan PCMC support at appointment, would better secure and assure his/her legitimacy in the mind of the public, including would-be whistleblowers, of his/her impartiality. Maintaining public confidence in the operations of the CMC and PCMC is a critically important consideration to take into account in the formulation of sound law. It is submitted that this suggested change in the Bill must tend to enliven legitimate public concern, albeit an apprehension, that by being appointed on the arbitrary desires of any Executive in a unicameral environment where its influence is felt everywhere, that the office holder may not be truly independent of such influence. Furthermore, in my opinion, it is not a good look for or admission by any CMC Chair to have been "head-hunted"[21] by the same government which he/she is then expected to hold to account in respect of possible future corrupt conduct, notwithstanding still having to obtain bipartisan PCMC support.

8. The Attorney-General's assertion that all holders of the office of CMC Chair being, of prescribed necessity, so highly legally qualified that they must surely be beyond reproach and can be trusted to carry out their duties in an impartial manner places faith over reality to potential dangerous ends. **No one wielding such power ought to be above public scrutiny**. This scrutiny ought to include **before** taking office. There is much to commend an open interview process conducted in a special committee of the Parliament being adopted because, more than most other

[21] See Tasmanian Parliament – **Select Joint Committee on Ethical Conduct**, *Hansard* 22 November 2008 p52. Before the Tasmanian Government established its integrity tribunal, the aforesaid committee visited all States in 2008 to hear from interested parties regarding their relevant experiences and knowledge. I was invited to speak, as was then CMC Chair, Mr Robert Needham. On this point, Mr Needham said the following at p52: *"…In Queensland, they are required to advertise nationally for my position. **I cannot then say how it is done because I was head-hunted I did not apply for the position**. I presume there is a selection panel put together for it."* (Underlining and bold added)

accountability public office holders in Queensland, the CMC Chair acts in a highly charged political/legal environment which, on occasions, may deliver to his/her table for decision a complaint like the allegations pertaining to Heiner affair whose outcome had the potential to bring down a government if proven to be correct.

9. **I support the change which permits a direct approach by complainants to the Parliamentary Commissioner**. Unlike what former CMC Chair, Mr Needham, posited in his submission, I believe that this is a positive step, particularly in light of how section 295 is currently being interpreted. This obviously replicates the practice in Western Australia which enjoys public support. It is noted that the bipartisan support requirement in the appointment and dismissal of the Parliamentary Commissioner[22] is not disturbed in the Bill. That is a good thing. Clearly the criminal justice expertise of the Parliamentary Commissioner is a vital safeguard factor in this current structure, and it might be suggested, provides a greater source of expert legal advice than may be available from within the PCMC itself, of course providing he/she is demonstrably impartial and highly competent.

10. It is unclear as to what tension currently arises within the PCMC's Research Directorate and the Parliamentary Commissioner and in what circumstances does and/or should the PCMC decide to look in one direction or other for guidance. This goes to the appropriateness of expecting ordinary politicians who may serve on the PCMC, coming from all walks of life - acting in the service of the community and Parliament - being expected to be the safe decision-makers in criminal justice matters where legal expertise may only be gained by practitioners after many years of specialist legal study, training and practice to ensure safe and just outcomes, and after being sworn in as officers of the court where rigid rules exist regarding impartial decision-making.

11. In short, try as they will, the PCMC always has the potential of being hoodwinked by the very body it is required to hold to account. In large measure, without proper oversight, the CMC can become a law unto itself, and, potentially worse, through inappropriate appointments to key positions of power and influence, become just an extension to the desires of any Queensland Executive like the tarnished Police Special Branch of the 70's and 80's.

12. The infamous Inquiry into the **CJC's Failure to Account for Two Copies of the November Monthly Report to the PCJC** also remains a case in point of who is guarding whom?[23] It is suggested that LACSC members (and the public) ought to take the time to read this material where not only did the CJC mislead its own counsel, Mr Ian Callinan QC, at the time, but arguably treated the PCJC with unacceptable contempt when it (i.e. CJC) knew that the two missing reports

[22] See Sections 307 and 308 of the *Crime and Misconduct Act 2001*

[23] See http://www.parliament.qld.gov.au/work-of-committees/committees/PCMC 20 April 1994

went missing from inside the CJC itself and not, as was alleged, by a member/s of the PCJC. With this state of knowledge, the CJC still insisted on an investigation which gave the public perception that 'the guards' (i.e. the PCJC members) guarding the CJC needed guarding themselves. While this may seem to be ancient history, it remains highly relevant. It demonstrates the innate difficulties of politicians functioning in the complex and difficult field of active criminal justice matters, and it gives compelling evidence that when the doctrine of the separation of powers is breached structurally and lines are blurred, unwanted chaos can too easily ensue.

13. Without gainsay, it is when the unresolved Heiner affair is finally and properly reviewed that these important structural/governance matters and resultant chaos and corruption will be better understood, and hopefully, better remedied.

14. To conclude, it is submitted that any removal of bipartisanship must be seen as a retrograde step. History ought to be our instructor. Whatever one's political views may be, hubris in political leaders in unicameral government is an especially dangerous and risky attitude for anyone to have because it can too easily lead to abuse of power. Unicameral Queensland does not have the safeguard of limited government. Therefore, the universal desire for open and accountable government, no matter which side of politics is in power against the ever present reality that power tends to corrupt and absolute power corrupts absolutely, ought to always be our reliable Northern Star and not be deviated from. In a democracy, governments eventually change. For good or ill, unicameral Queensland seems to have a propensity to long-term rule by both sides of politics, and unbridled Executive power, wherever it exists, is never a good thing. Obligatory bipartisanship offers a check on abuse of power, and we will be throwing it away at our peril, no matter which side of politics is involved.

No 1: It is recommended that to ensure bipartisanship in this critical area of accountability is achieved in section 295(3), its wording should be amended to read "A decision to either ask or not ask, or to refer or not to refer".

B. THE ISSUE OF TITLES AND DEFINITIONS IN THE BILL

1. It is proposed that the CMC should be renamed the **Crime and Corruption Commission** ("**CCC**"). While it may be said that what's in a name so long as the entity does what it is required to do at law, it is unfortunate the new title self-evidently clashes with Western Australia's **Corruption and Crime Commission**, which is now commonly known across Australia as the CCC.

2. Within our Federation, each State Government is sovereign and, *inter alia,* responsible for its own criminal justice matters as well as its own governance structures as is settled by the respective Parliaments within the framework of their *Constitutions* while not being in conflict with the

Australian Constitution. It is submitted nevertheless that the inevitable clash over the usage of the acronym/abbreviation "CCC" will be unfortunate, if not confusing, in certain areas of operation especially given the regular interstate co-operation and interactions between the various jurisdictions in the Commonwealth in the fight against organised crime, all of which now have these types of tribunals. It would therefore seem appropriate and sensible that somewhere in the commission's title 'Queensland' should sit, and thus become, for example, the "QCCC".

3. The Fitzgerald Inquiry Report recommended that the new offence of "official misconduct" under the *CJ Act* for improper conduct by public officials be created. It was an effort to fill the gap between the relevant provisions in the *Criminal Code 1899* (Qld) concerning improper conduct in public office (e.g. section 87 – official corruption, section 92 – abuse of power)[24] and normal, but potentially less serious conduct, enlivening disciplinary procedures available under public services law.

4. This definitional change to "official corruption" may tend to place in jeopardy the bringing to account those public officials whose conduct falls into the "intermediate misconduct" area, and that would be unfortunate. As a general principle, uncertainty in law should always be assiduously avoided. This change to the usage of "corruption" could encourage turf wars between the police and the commission about where the cut-off line exists in the fight against misconduct/corruption in government.

5. Changing to "official corruption" also appears to be about what the appropriate threshold is which needs to be reached **before** action should be taken to either report (i.e. as is currently mandated under section 38 and 39 of the *CM Act* in respect of a 'suspicion' of misconduct) or investigate it, and then, by whom. I am not convinced that lifting the threshold (as Clause 17 of the Bill does) to a "reasonable suspicion" instead of a "suspicion" before section 38 is triggered is sound public policy.

6. Such a framework of public sector management invites keeping these matters as an "internal" affair for units of public administration. If and when it later explodes (probably via a whistleblower's PID at considerable personal risk), the public official concerned, who currently must act on a mere suspicion otherwise he/she may be engaging in official misconduct, could run the line of defence that what he/she thought at the time was "reasonable." Sound public policy requires that public administration should operate without suspicions of wrongdoing being ignored, and while it is understood that by having the threshold at a "mere" suspicion being the reporting trigger that a considerable workload will ensue on the commission as a sorting point – which in fact may discover a network at play - it is submitted that all corruption which starts from a bud, where it is possible, should be nipped as a bud, and not be allowed to take root which

[24] See Chapter 13 of the *Criminal Code 1899* (Qld) – **Corruption and Abuse of office**

the threshold of being "reasonable" is likely to allow. This is because what is reasonable for one person is not always for another whereas, generally speaking, a suspicion is always a suspicion. Once again it comes to the vexed question of who shall guard the guards?

No 2: It is recommended in Clause 17 that the mandatory reporting threshold test for Principal Officers of units of the public administration pursuant to section 38 remain as a 'mere' suspicion and not be amended to a 'reasonable' suspicion.

C. THE ISSUE OF VEXATIOUS, RECKLESS COMPLAINTS

1. Clause 29 of the Bill is a new section 216A into the Act that, *inter alia*, provides for a new offence for the making of "a complaint" that is deemed to be made: vexatiously; not in good faith; primarily for a mischievous purpose; or recklessly or maliciously etc.

2. It is submitted that this new power may be open to abuse by the commission in certain circumstances. For example, it may prevent what is in reality a persistent legitimate criticism of the commission in the performance of its duty in the form of a complaint against the commission itself. The Heiner affair provides a prime example in this regard.[25]

3. The current wording does not stipulate against whom the complaint is being made and against the existence of section 208(2) of the *CM Act* it ought to be clarified because this provision recognises that unlawful conduct might occur inside the commission. The section relevantly says:

> *"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 commits a crime*."

4. As with threats of an action in defamation, or executing what becomes nothing more than a stopper writ against an impoverished agitator whose cause may be well founded but he/she is up against a well-resourced party who wants the spotlight turned off, it is submitted therefore that it is reasonable to recommend that this Clause be amended to ensure that this imposing new power

[25] See QPCI Recusal Hearing Public Exhibit 5 Attachment Two - **Rofe QC Audit of the Heiner Affair**; Volume III, Alleged *prima facie* Criminal Counts 30 and 31; Volume IV, Alleged *prima facie* Criminal Counts 32, 33, 34, 35, and 36: Volume VII, Alleged *prima facie* Criminal Count 51.

is not allowed to be used to abuse and intimidate a persistent and justified complainant out of self-interest by the commission itself rather than in the spirit for which it is intended.

No 3: It is recommended that the word 'complaint' in Clause 29 be qualified with appropriate wording so as not to stifle dissent and complaint by any person which may be engendered by conduct of an officer/s working inside the commission as prohibited in section 208(2) of the *CM Act*.

This submission is provided in the public interest.

I am prepared to appear before the LACSC to speak to this submission under oath.

KEVIN LINDEBERG

4 April 2014