Mr Toby Chambers
[redacted]

22 June 2017

Committee Chair
Legal Affairs and Community Safety Committee
Parliament House Brisbane Qld 4000
Lacsc@parliament.qld.gov.au

Dear Committee Chair

Re : Statement Contesting Point of Law - Honourable Angelo Vasta (Reversal of Removal) Bill 2017

Declaration of Association

1. This is a response statement made by Toby Chambers contesting on the grounds of technical points of law. The response seeks further consideration and points to be addressed before considering the tabled Bill, the Honourable Angelo Vasta (Reversal of Removal) Bill 2017.

2. For transparency it is stated that I, Toby Chambers attended Griffith University 1988-1990 completing Bachelor of Commerce Degree at the time Ross Vasta, the son of Angelo Vasta attended and completed his degree. I knew only of his son Ross Vasta and to my re-collection have not seen, met, nor spoken to his son Ross Vasta since leaving Griffith University in 1990.

Summary of Submission

3. This submission is guided by 8 main over-arching arguments :
   A. The Fitzgerald Inquiry Files should be unsealed prior to any further consideration of the Bill.

   B. It was Chief Justice Dormer and not the Qld Legislative Assembly who first instigated the standing down of Justice Vasta.

   C. The question of holding Judiciary to account, including the issue of security of tenure and future protocols of removing Judiciary when the need may arise should form part of this Bill.

D. A question that needs to be directly asked of Angelo Vasta by the Committee is has he previously sought permission to appeal to the Privy Council via the exercising of Section 74 of the Commonwealth of Australia Constitution? If not why not? This submission argues that exercising an appeal to the Privy Council would expedite the main body of argument for this Bill more efficiently than seeking to overturn a previous decision by Parliament that is Statute Barred from being overturned as the Sunset Clause has already expired on 31 December 1989. The Sunset Clause has not been revoked by this Bill

E. It is submitted that it would be beyond the Legislative Powers of the Qld Parliament, as proposed in this Bill to overturn the original decision to Remove Justice Vasta from office, until such time as the original Act, Parliamentary Judges Commission of Inquiry ("the Commission") were amended or repealed including agreement to amended the Sunset Clause expiry date.

F. Did Angelo Vasta seek support from his local Legislative Member to amend the original legislation soon after the late Honourable Wayne Goss was elected as leader of the Qld Legislative Assembly soon after the Dec 1989 State election? This at the time would have been the most appropriate mechanism for an appeal given that Wayne Goss was of the opinion that Justice Vasta should not have been removed from Public Office when he was by the Qld Legislative Assembly.

G. It would be appropriate under the circumstances for any file currently held on the recommendation and or concern that may have been considered prior to Angelo Vasta being appointed as a Justice of the Supreme Court. This information should be considered by the Legislative Assembly in further determining this Bill.

H. The competency of Justice Vasta, as a Supreme Court Judge has been called into Question in the case of Raymond Carroll in the death of Deidre Kennedy. Further consideration in this high profile case with the possibility of charging Angelo Vasta should not be overlooked given that successive appeal courts judges have been highly critical of Angelo Vasta's management of this case. By prosecuting Angelo Vasta in the Case of Raymond Carroll may finally uncover more of the truth and result in Justice.

Unsealing Fitzgerald Inquiry Files

4. It is submitted that due consideration be firstly given in this matter to the "Unsealing of Fitzgerald Inquiry Files."

5. The Fitzgerald Inquiry and the events leading up to the inquiry have had profound impacts across the State of Queensland. The evidence tendered in the Fitzgerald Inquiry is pertinent to the Bill being considered. Evidence in the Fitzgerald Inquiry should be considered in parallel with this Bill.

6. The time has now come in a democratic society to question the long term sealing of Commission's of Inquiry files. There are those who may wish for certain information to remain secret and not disclosed to the wider public, but the overriding object should be full

disclosure for the wider public to have confidence that the proposal sought in this Bill to reverse the decision to remove Justice Angelo Vasta is in fact justifiable. There needs to be a high threshold to overturn the decision in any event. This has not been met by this Bill.

7. It is understood that the Honourable Neville Harper has supported this Bill in the form of a formal letter presented by the Honourable Robbie Katter on his behalf to the Public Briefing held on Wednesday 24 May 2017. It is not clear exactly what the contents of the former Member of the Qld Legislative Assembly Neville Harpers letter said specifically in support of the Bill, but this should be disclosed publicly.

8. Full disclosure of all Fitzgerald Files that have remained sealed has the potential to further embarrass and or discredit previous testimony and or corroborate previous uncorroborated allegations, if by unsealing certain testimony that has been previously over-look or not subject to a high degree of scrutiny. There is overwhelming public benefit to be gained in accepting the proposition to unseal the Fitzgerald Inquiry Files. This is in stark contrast to the risks associated with public trust and confidence, if there was a refusal to consider releasing the Fitzgerald Inquiry Files held under seal prior to any vote and the potential passing of this Bill to exonerate Justice Vasta by the Qld Legislator.

9. If as the Bill suggests Justice Vasta is found to be innocent of any misconduct, then the unsealing and public disclosure of Fitzgerald Inquiry Files will therefore aid in the furtherance of this Bill. Maintaining Public trust and confidence can only be achieved in this instance by accepting the need to unseal the Fitzgerald Inquiry files for the public to be absolutely certain Justice Vasta has been wronged in this instance.

10. It is argued that the scope of the Bill under consideration should not preclude the argument that before any reversal and pardon is granted by this Bill, that is after all the overriding objective of what is being sought by Angela Vasta, that consideration first and foremost be given to the proposition that evidence submitted in the Fitzgerald Inquiry should all now be freely available for “Public Scrutiny.”

11. As the events surrounding the removal of the then Angelo Vasta, as a Justice of the Supreme Court are as a direct result of statements and testimony given in the Fitzgerald Inquiry, it should nevertheless form and inform part of the inquiry process of this Bill, by public disclosure of all those files sealed by Tony Fitzgerald in his capacity as Chair of the Fitzgerald Inquiry.

12. At the very least there should be public disclosure of the evidence pertaining to Angelo Vasta, in the Fitzgerald Inquiry that gave rise to his removal as Justice of the Supreme Court. But also more generally it is now time for all Fitzgerald Inquiry evidence to be unsealed.

13. It is argued that it would be right for the Qld Legislator to further consider the merits and “Public Interest” test and “Public Trust” that is almost certain to be gained by firstly unsealing the Fitzgerald Inquiry evidence files and releasing all those documents and evidence into the public domain. That is prior to the Qld Legislator considering any further the merits of , Honourable Angelo Vasta (Reversal of Removal) Bill 2017

14. Apart from the possibility to incriminate those who may have escaped the Fitzgerald Inquiry, there is no good reason for all of the evidence tendered in such a high profile inquiry to remain sealed from the public gaze and scrutiny, beyond 30 years.

15. It is highly likely that Angelo Vasta and Nevile Harper would be very much in favour and one would assume would be an incredibly valuable advocates in supporting the full release of all the sealed files relating to the Fitzgerald Inquiry. As after all, the release of sealed files may well help to clear Angelo Vasta's reputation and restore public trust in the Judiciary AND Parliament, if that is the overarching intention of the Bill.

16. As Qld Cabinet files are sealed for a period of 30 years and as the proclamation of the holding of the Fitzgerald Inquiry by the Governor in Council published in the Qld Government Gazette on the 26 May 1987 is now over 30 years, it would be an ideal opportunity to consider the merits of the Qld Legislator ordering the unsealing of all the Fitzgerald Inquiry evidence, prior to any further consideration of this Bill.

17. The Royal Commission into Institutional Responses to Child Sexual Abuse has set a new benchmark in the release of evidence and witness statements that can be viewed by all stakeholders directly involved and the wider community of citizens easily and accessibly online. This should be seen to be a future benchmark in the standards one would expect when holding any such Public Inquiry. The holding of leadership of public institutions to account is best achieved via the transparent disclosure of evidence, so there is no future shadow of doubt or contention.

http://www.childabuseroyalcommission.gov.au/public-hearings/case-studies

18. "The Blot in History," Angelo Vasta has recently and publicly referred to in the Brisbane Times on 15 June 2017 in support of this Bill, is almost certainly best served by the full disclosure of the currently sealed files of evidence in the Fitzgerald Inquiry. There will always be a blot in the minds and history of many Queenslanders until the day all the Fitzgerald Inquiry files are openly disclosed. It is to be hoped that this submission will commence the process of the Qld Legislator unsealing and making all the files freely available online to all.

http://www.brisbanetimes.com.au/queensland/former-supreme-court-justice-angelo-vasta-describes-his-ousting-as-a-blot-on-history-20170614-gwracy.html

Chief Justice Dormer

19. It should be highlighted to the Committee, the letter from Chief Justice Dormer dated 24 October 1988 to Minister for Justice and Attorney General, the Honourable Paul Clauson. It was tabled in Qld Parliament, 8 Nov 1988, as reported in Qld Parliamentary Debates, Hansard 8 Nov 1988 pages 2131 – 2133. See Appendix 1 for ease of reference.

20. Chief Justice Dormer in his letter quite rightly expressed his overriding concern that Justice Vasta could not possibly execute his normal duties and functions as a Judge when allegations against Justice Vasta had surfaced at the Fitzgerald Inquiry.

21. The allegations that gave rise to Justice Vasta being stood down according to the letter from Chief Justice Dormer were not related to any Tax issue misconduct at the time as suggested by this Bill. At issue and the original reason for Justice Vasta being stood down was as a direct result of evidence tendered in the Fitzgerald Inquiry. This evidence quite possibly contradicted a defamation action by Justice Vasta against the publishers of "Matilda" that was instigated by Justice Vasta himself. The defamation action was only won by default.

22. Under the circumstances, if Justice Vasta had not agreed to remove himself pending an inquiry as was then conducted, public confidence in any fair hearing of any party appearing before Justice Vasta in his capacity as Judge would be irreparably tarnished. Upholding Justice most certainly could not be seen to be served, under such pre-text. That is if a Judge in the case of Vasta continued to preside over legal cases, but was subject to public scrutiny into allegations of misconduct during the Fitzgerald Inquiry.

23. There will undoubtedly be times when vexatious and unfounded allegations of misconduct are directed towards a Judge in order to potentially sway an outcome. On balance the Chief Justice clearly weighed up the evidence and rightly concluded in the case of Justice Vasta that there was no other alternative, but for Justice Vasta to stand down pending the outcome of a formal inquiry.

24. There is no evidence to conclude that Justice Vasta initially opposed the Judge led Inquiry. Therefore while Justice Vasta may have disputed the final conclusions drawn from an investigation into his conduct, there is no evidence to suggest the process and methodology deployed in reaching such conclusions by the Commission was inherently flawed or bias from the outset. It was after-all a very transparent process.

25. Justice Vasta would surely have to accept there have been multiple layers of decisions by many more people, as a check and balance in his case, than is normally the case when by far the large majority of legal cases coming before the Courts are presented before a single sitting Judge, rather than a panel of three Judges and then further presented to elected representatives of Parliament to consider the verdict. The decision to formally remove Justice Vasta was most certainly not achieved at whim, as might be suggested in the narrative of events in support of this Bill. It would be very wrong to draw such inference from the presentation given by the Honourable Robbie Katter to the Committee.

26. A period of approximately eight months had elapsed since the allegations against Justice Vasta surfaced and the formal decision by the Qld Legislator to formalize his more permanent removal from Public Office. This was achieved after very careful consideration. In contrast to most legal hearings Justice Vasta was affording the luxury of a very fair hearing that in fact is rarely offered to most litigants in Courts of Law.

27. What has yet to be concluded is the proposition that the defamation action brought by Justice Vasta against the publishers of 'Matilda" was in hindsight potentially an abuse of process.

Holding Judiciary to Account

28. This Bill offers an ideal opportunity for wider public discourse on how in future the "Judiciary" can be held to public account. This is rather lacking in the current Bill.

29. There is wide spread community distrust of Judicial decisions and ultimate legal rulings ranging from lenient sentencing with an out of touch Judiciary, to extreme difficulty in those exceptional cases where the Judicial system itself has failed to deliver justice to either victims or even those accused and convicted of a criminal act, but later found to be innocent.

30. Just as Angelo Vasta has felt the law has not been on his side, in his futile attempts to appeal the original decision, this can be equally so for countless victims of crime and injustice who concur the "Law is an ass." In fairness to large numbers of legal cases that are regularly and routinely denied the opportunity to appeal Judicial decisions and or do not have the financial resources to appeal why should Justice Vasta be an exception simply because he was an appointed Judge?

31. Few other professions now enjoy the security of tenure still enjoyed by the Judiciary. It is therefore about time the Judiciary accept the public requirement for greater accountability and scrutiny of their own conduct and decisions. This includes a transparent and public mechanism to hold the Judiciary to account and when the need may ultimately arise removal from Public Office.

32. It should be highlighted that there was a detailed Ministerial Statement by the Honourable Paul Clauson to Qld Parliament on 25 Oct 1988, viewed Appendix 2. This was prior to the enactment of the Parliamentary Judges Commission of Inquiry ("the Commission"), assented on 17 Nov 1988. The statement gives a rather comprehensive account of the legal status of Judicial Security of Tenure and Removal from Public Office.

33. Angelo Vasta may not have agreed with the method deployed by the Qld Parliament to remove him from public office that this Bill is ultimately seeking to overturn and pardon him. However on balance the wider community is likely to concur that the "Separation of powers," was unlikely to have been abused by the Qld Parliament in this instance when all three pillars of power, that being the Executive, Legislative and Judiciary were being subject to very similar degrees of scrutiny during the Fitzgerald Inquiry.

34. It would be wrong in law given the circumstances surrounding the serious allegations at the time directed at Justice Vasta, for an argument to be made on his behalf that the Qld Legislator abused its own power on this occasion in removing him from Public Office. While the Judiciary may not want to be held to account there is certainly an appetite for the Judiciary to be held to account. When Parliament removed Justice Vasta from Public Office, other Executive members led by the former Qld Police Commissioner Terry Lewis were required to be removed from Public Office. Registered voters soon after removed significant numbers of the Legislator from Public Office in the State election held in December 1989.

One could argue that the "Separation of powers," all worked in unison to defeat each other. It was the ultimate vindication of "Separation of powers," as none of the three pillars were ultimately victorious, in the exposure of the systemic corruption occurring in Qld at the time. This is not to say one way or other in respect to Justice Vasta's guilt or innocence, but merely to point out that all three pillars of governance had to be held to account.

Privy Council Appeal

35. In the supporting documentation to the Bill, it is alleged that Angelo Vasta was denied normal Judicial appeals procedures and therefore was not given a fair hearing or appeal

b) the legislation prevented any decisions of the Commission to be made the subject of review in a court of law;

c) there was no provision for the Judge to appeal any adverse findings of the Commission

36. There is no indication that Angelo Vasta attempted to appeal to the Judicial Committee of the Privy Council. Therefore he is not technically correct in his assertion that he was denied an appeals procedure. If he did not avail himself of seeking to appeal to the Privy Council, then that is his own misfortune, rather than an inherent failure of the procedure and decision to remove Justice Vasta from Public office by the Qld Legislator. If such an appeal to the Privy Council was denied this would be a rather different matter, but as far as the submitted documentation is concerned, no such appeal whatsoever has been sought.

37. It would be wrong in Law for Qld Legislator to attempt to overturn and issue a pardon to Angelo Vasta when he himself should have followed the correct process in seeking to appeal to the Privy Council.

38. As a previous sitting Judge, it would surely be expected that he would be at least reasonably well versed on appeals procedures in this instance and the possibility of an appeal to the Privy Council. If Angelo Vasta did not seek permission to appeal to the Privy Council, a question mark should therefore be raised in respect of his competency as a Judge in any event, if he had not familiarized himself with such an appeals process.

39. Other than misconduct other disciplinary grounds might well be appropriate in this instance. That is if it were found by closer examination Angelo Vasta has only a rather rudimentary understanding of the law. Other grounds for denying the overturning of this Bill should be considered if on closer examination Angelo Vasta's competency and knowledge of the law is called into question.

40. It is submitted that since the passing of the Australia Act 1986, generally speaking appeals to the Privy Council are not possible in almost all circumstances. However pursuant to Section 74 Commonwealth of Australia Constitution offers, that is if the High Court were to accept and certify that the question is of such special reason it ought to be determined by Her Majesty in Council.

Section 74 of the Commonwealth of Australia Constitution - No appeal shall be permitted to the Queen in Council from a decision of the High Court upon any question, howsoever arising, as to the limits inter se of the Constitutional powers of the Commonwealth and those of any State or States, or as to the limits inter se of the Constitutional powers of any two or more States, unless the High Court shall certify that the question is one which ought to be determined by Her Majesty in Council.

The High Court may so certify if satisfied that for any special reason the certificate should be granted, and thereupon an appeal shall lie to Her Majesty in Council on the question without further leave.

Except as provided in this section, this Constitution shall not impair any right which the Queen may be pleased to exercise by virtue of Her Royal prerogative to grant special leave of appeal from the High Court to Her Majesty in Council. The Parliament may make laws limiting the matters in which such leave may be asked, but proposed laws containing any such limitation shall be reserved by the Governor-General for Her Majesty's pleasure.

Beyond Powers of Qld Legislator

41. It is submitted that it would be beyond the Legislative Powers of the Qld Parliament, as proposed in this Bill to overturn the original decision to remove Justice Vasta from office, until such time as the original Act, Parliamentary Judges Commission of Inquiry ("the Commission") were amended or repealed

42. Angelo Vasta may not agree with the legislation, Parliamentary Judges Commission of Inquiry ("the Commission") that was passed by the Qld Parliament and that gave rise to the Commission that recommended his removal. Unfortunately under the original Act unless it is repealed in full and or amended and or the Sunset Clause is extended, no other external commission apart from that specified under the Act has the legal powers to inform the Qld Legislator.

43. In essence it is submitted in considering this Bill, the Qld Legislator has to totally disregard any further external Commissions of Inquiry Reports, such as the cited ICJ Report. Any further reports other than the original report tabled to the Speaker that may have partially or wholly exonerated Angelo Vasta are ultimately superfluous to the decision by the Qld Legislator to remove Justice Vasta from Public Office. The Qld Legislator can only be guided by the Investigation, Report and Recommendation that was tabled to the Speaker by the Commission appointed to review the conduct of Justice Vasta. If the Qld Legislative Assembly were to base the decision to revoke the original decision to remove Justice Vasta and this were based on the ICJ Report, that differs from the original Commissions Report and Investigation, this in itself would be a breach of the very legislation that was enacted to consider and report on the allegations against Justice Vasta.

Since the Report of the Commission of Inquiry was tabled in the Legislative Assembly in 1989, a number of the allegations have since been dismissed or proven to be untrue. The 1995 Report of the International Commission of Jurists (Australian Chapter) ("ICJ Report") into the dismissal of the Judge outlines the allegations that have since been dismissed or proven to be untrue.

44. Parliamentary Judges Commission of Inquiry ("the Commission") the Act clear states pursuant to Section 3 and 4 who is appointed and what the terms of reference are. Unless

the original Act has been emended, it would be wrong in law for Qld Legislators to consider any other reports such as the cited ICJ Report when considering the merits of this Bill.

3. Establishment of Commission. (1) As soon as practicable after the commencement of this Act, a Commission to be known as the Parliamentary Judges Commission of Inquiry shall be appointed.

(2) The Commission shall consist of 3 members appointed by resolution of the Legislative Assembly.

(3) A person shall not be appointed as a member unless the person is or has been a Judge. (4) The resolution of the Legislative Assembly appointing the members shall also appoint one of the members to be the presiding member.

4. Functions. (1) The Commission shall inquire and advise the Legislative Assembly, whether(a) in the opinion of the members of the Commission any behaviour of the Honourable Mr. Justice Angelo Vasta since his appointment as a Judge of the Supreme Court constitutes such behaviour as, either of itself or in conjunction with any other behaviour, warrants his removal from office as a Judge of the Supreme Court; (b) in the opinion of the members of the Commission any behaviour of His Honour Judge Eric Charles Ernest Pratt one of Her Majesty's Counsel since his appointment as a Judge of the District Courts constitutes such behaviour as, either of itself or in conjunction with any other behaviour, warrants his removal from office as a Judge of the District Courts.

(2) In considering any relevant matter the Commission may have regard to the records of evidence and outcome of any previous official inquiry, may consider it to the extent that the Commission believes it necessary or desirable to do so and shall not be precluded by any other law or by any privileges of the Legislative Assembly from obtaining access to the records of evidence given at, or findings made as a result of, such an inquiry.

(3) The conduct of the inquiry and the right of the Commission to inquire into any matter shall not be justiciable in any court.

45. In practice it is a fruitless exercise by Angelo Vasta in seeking to overturn his removal, as the binding legislation, Parliamentary Judges Commission of Inquiry ("the Commission") is what Angelo Vasta should be seeking to amend or revoke, rather than the decision itself made by Qld Parliament on the 8th June 1989 to remove him from Public Office

46. As clearly set out the Function of the Commission pursuant to Section 4 and 5 of Parliamentary Judges Commission of Inquiry ("the Commission") the only body under the Act to Report to the Legislative Assembly is that as prescribed by the Act and no other.

4. Functions. (1) The Commission shall inquire and advise the Legislative Assembly, whether- (a) in the opinion of the members of the Commission any behaviour of the Honourable Mr. Justice Angelo Vasta since his appointment as a Judge of the Supreme Court constitutes such behaviour as, either of itself or in conjunction with any other behaviour , warrants his removal from office as a Judge of the Supreme Court;

5. Report to Parliament. (1) The Commission shall report to the Speaker of the Legislative Assembly- (a) its findings of fact; (b) its conclusions whether any behaviour referred to in section 4 (1) (a) of the Honourable Mr. Justice Angelo Vasta constitutes such behaviour as warrants his removal from office as a Judge of the Supreme Court;

47. It is submitted that any such overturning of the decision by the Qld Parliament on the 8 June 1989 to revoke the appointment of Justice Vasta could only be achieved by seeking permission from the High Court of Australia, pursuant to Section 74 of the Commonwealth of Australia Constitution in order to appeal to the Privy Council. It would be wrong in law for

the Qld Legislator as a State still beholden to Her Majesty the Queen to accept the Bill in its current form and for Parliament to vote and possible approve it when it is so deficient.

Appointment Recommendation

48. The Bill gives no consideration to any previous concerns and or appraisal of any panel reporting and providing a recommendation to the Attorney General, Minister for Justice or other Legislator in respect of the suitability of Angelo Vasta being originally appointed and approved as a Supreme Court Judge. It should be a requirement in this circumstance to table any reports including any application by Angelo Vasta seeking to be appointed as a Qld Justice, that may indicate either way the suitability of Angelo Vasta as a candidate for appointment to the Supreme Court.

49. It is noted from the Qld Justice published information that there are now clear reporting protocols prior to the formalizing of a Judicial appointment. It is not clear in the original appointment of Angelo Vasta to a position of extreme public trust, as a Justice what protocols were followed that may have highlighted possible weakness and deficiency in his candidacy and recommendation.

http://www.justice.qld.gov.au/corporate/justice-initiatives/protocol-for-judicial-appointments

Sunset Clause - Legal Implications

50. It should be highlighted to the Committee pursuant to Section 17 of the Parliamentary Judges Commission of Inquiry ("the Commission"), assented on the 17 Nov 1988, that gave rise to the Qld Parliaments ultimate decision to remove Justice Vasta from Public Office, a Sunset Clause was included. As specified by Section 17, the Act expired on 31 December 1989.

17. Termination of Act. This Act shall expire on 31 December 1989 that the overriding object

51. The inclusion of the Sunset Clause, specifying an expiry date of 31 December 1989, it is argued ultimately has the implied and intention of Statute Barring any further action including the presentation of this Reversal Bill in Qld Parliament.

52. The Sunset Clause with a specific expiry date of 31 Dec 1989 in effect and in law gives an "Absolute and definitive finality," to Justice Vasta's removal from public office, unless of course the Legislative Assembly agrees to amend and extend the expiry date of Section 17 of the Act beyond the 31 December 1989. Only then can Parliament if after having successfully voted for an amendment to the expiry date of the Act, proclaim that this Bill be considered further by the Qld Legislative Assembly.

53. While this Bill might be an attempt to reconcile any previous perceived injustice by Justice Vasta, the Sunset Clause simply can't be ignore. It is for this very reason that the Bill can only

but be suspended until such time as the Parliamentary Judges Commission of Inquiry ("the Commission") has been agreed to be amended.

Appeal to Goss Government

54. It is noted the late Honourable Wayne Goss opposed the recommendation to remove Justice Vasta. This was less than 6 months prior to the Qld Labor Goss Government winning office in a landslide Qld State election held on the 2nd December 1989. It is not clear if soon after the change of Government, the former Justice Vasta sought any amendments to Parliamentary Judges Commission of Inquiry ("the Commission") that could have been extended and amended beyond the Sunset expiry date of 31 December 1989.

55. If Angelo Vasta did not seek the newly elected Wayne Goss Government's consideration to review and amend the original legislation that brought about his removal from Public Office why did he not ? This after all would be a perfectly legitimate process of appealing directly to the Qld Legislative in reviewing the original decision and legislation that brought about his removal from Public Office.

56. It is alleged by Angleo Vasta that he did not receive a fair hearing by the Commission set up by the Act, nor a fair hearing from the Qld Parliament on 8th June 1989 and there was no appeal process. There are numerous other examples of Acts of Parliament that many individuals may disagree with the end results, as certain groups or individuals are "Political targets for persecution." As Justice Vasta should well know and understand, if an Act of Parliament is deemed to be unfair and unreasonable, then there is most certainly a fair appeals process in seeking to have the original legislation amended or repealed via representation from his local Member.

57. Legislation criminalizing homosexuality and "Bikie" legislation are two of many examples where an Act of the Legislative Assembly has been unfairly used to persecute certain groups. The only method and process of affecting real change and potentially justice is by way of seeking a review of the legislation that underpinned the original decision and not as in this case to attempt to circumvent the process as this Bill is clearly attempting to do.

58. It would be wrong in law for the Bill to be accepted by the Qld Legislative Assembly, but there be no amendments made to the Parliamentary Judges Commission of Inquiry ("the Commission"). It was this first Act that gave rise to Justice Vasta being removed from Public Office.

Question of Justice Vasta's Competency

Case of Raymond Carroll / Deidre Kennedy

59. It would be wrong and undermine public trust and confidence in the Judiciary for Justice Vasta to be exonerated, but not be held to accountability for specific decisions when he was a Supreme Court Justice.

60. The high profile case of Raymond Carroll who was tried for the murder of Deidre Kennedy under the guiding eye of Justice Vasta presiding in February 1985 with a jury conviction. On

successive appeals, the decision by the jury has been overturned. This case should be given the same degree of consideration in exonerating the accused Raymond Carroll, as may be afforded Justice Vasta. When a miscarriage of justice has occurred due to negligence and or incompetency by a trial Judge, the Judge in question should be held to public scrutiny and account for their actions and or inaction as the case might dictate. A formal government apology to Raymond Carroll, prior to any consideration to reverse and pardon Justice Vasta should be forth-coming.

61. The case of Raymond Carroll highlights the requirements for an appointed Judge to be held to public account and scrutiny. This is not to make any spurious allegations, but it is entirely possibly given the alleged close relationship Justice Vasta had maintained with the former Police Commissioner Terry Lewis, that as a Justice originally presiding over the case of Raymond Carroll, that he neglecting to draw to the jury's attention certain information or points of law in this high profile Case, that is almost certain to have swayed a jury not to convict. Therefore if Justice Vasta has correctly instructed the jury Raymond Carroll would have almost certainly have been acquitted at his first trial in Feb-Mar of 1985. This surely explains why successive appeals have ultimately resulted in the exoneration of Raymond Carroll. Those appeal Judges have been highly critical of the original case presided over by Justice Vasta.

62. The appeals court has been rather scathing of the original case overseen by Justice Vasta. The High Court of Australian on appeal in R v Carroll [2002] HCA 55; 213 CLR 635; 194 ALR 1; 77 ALJR 157 (5 December 2002) accepted that the Qld Court of Criminal Appeal that "No Jury, properly instructed, could be satisfied beyond reasonable doubt that Carroll had murdered Deidre Kennedy."

On appeal, however, the Court of Criminal Appeal of Queensland held that no jury, properly instructed, could be satisfied beyond reasonable doubt that Carroll had murdered Deidre Kennedy. It allowed his appeal and ordered that the conviction be set aside and that a verdict of acquittal of the charge be entered.

63. Justice Vasta was not named by the Court of appeal as the presiding Judge in the Case of Raymond Carroll, but it would be logical to conclude if both Courts of Appeal including the Australian High Court were very concerned and highly critical of Justice Vasta's competency to adequately direct and instruct a jury in the Case of Raymond Carroll, it directly calls into question Justice Vasta's competency as a Supreme Court Judge. Therefore under such basis it was right for the Qld Legislative Assembly to remove Justice Vasta irrespective of the allegations that surfaced against him at the Fitzgerald Inquiry necessitating his removal from Public Office in any event.

64. It should be noted that prior to Raymond Carroll being acquitted for the murder of Deidre kennedy, by the Court of Criminal Appeal of Qld in Nov 1985, the Satirical Magazine, "Matilda" published allegations against Justice Vasta and Terry Lewis indicating there was a close friendship between Justice Vasta and Terry Lewis. This was subject to defamation action by Judge Vasta in 1986. It would be wrong for this submission to speculate on what this close friendship may have meant, but under the circumstances at the time given the high profile nature of Raymond Carroll's case and the fact that he has protested his

innocence all these years, further inquiry is certainly justified in this instance to fully exonerate Raymond Carroll. That is if Justice Vasta is to be given a pardon by Qld Parliament.

65. It should also be noted that at the time Raymond Carroll was acquitted by the Court of Criminal Appeal of Qld on 27 Nov 1985, the Honourable Neville Harper Minister for Justice and Attorney General at the time acknowledges he would have received at almost exactly the same time frame, the Sturgess Inquiry Report into child sexual abuse, pornography and prostitution. He then tabled the Sturgess Report in Qld Parliament on 18 February 1986. While it is not known for certain, if those Judges who ruled to acquit Raymond Carroll had seen an internal copy of the Sturgess Report before giving their ruling. It is logical to conclude there is a high degree of probability they would have cited the Sturgess Report prior to acquitting Raymond Carroll. Given the damming Report on paedophilia contained in the Sturgess Report, it would be unlikely Raymond Carroll would have been acquitted given the context of the murder of Deidre Kennedy unless there was compelling reason to do so.

66. As it was testimony given by the Honourable Neville Harper in the Fitzgerald Inquiry, that implicated Justice Vasta, it would be appropriate for Neville Harper to be called and appear before the Committee. The Honourable Neville Harper should specifically be requested to review the circumstances as he remembers them, as to any brief he received in respect to accepting Raymond Carroll's appeal and was this before or after receiving the Sturgess Report?

67. The most glaring omission and lack of direction by Justice Vasta in the trial of Raymond Carroll is summed up well in para 67 – 69 R v Carroll [2001] QCA 394 (21 September 2001) It is very obvious the description given by the next door neighbour Nuggett Carroll, no relation to Raymond Carroll described a very different person who took clothes off the washing line. It was these clothes that Deidre Kennedy was later found dressed in. Therefore it is obvious Raymond Carroll was certainly not the killer of Deidre Kennedy when whoever removed the clothes must have been involved in the killing. Raymond Carroll should therefore never have been brought to trial. All the while the real killer has eluded Justice when such focus has unfortunately centred on Raymond Carroll, rather than the identity of the person who removed the clothes and therefore the real killer of Deidre Kennedy.

[67] As at 14 April 1973, C H (Nugget) Carroll (no relation to the appellant) resided with the witness Borchert and others next door to the Kennedy family. He was then a man aged 73. He occupied a bedroom which was surrounded on two sides by a verandah. On the western side there was a "glass push-up window" which opened onto the verandah where two rope clothes lines were strung. He gave a statement to the police on 16 April 1973 in which he stated that on the evening of 13 April 1973 that clothes line contained numerous articles of female and children's clothing. About 10pm that evening he was smoking a cigarette whilst lying on the bed. The window referred to was open approximately 6 inches. He saw a male person on the verandah and initially thought it was another occupant of the residence. He noticed that person removing something from the clothes line. He kept the person under observation for about 5 minutes. Eventually he realised that the person was not an occupant of the house and in consequence he walked to the kitchen and spoke to other occupants, including Borchert. They then walked onto the verandah but no person was located. Nugget Carroll described the prowler on the verandah as a male, aged about 18-20, about 5' 9" tall, of thin build and about 10 stone. He also said the person's hair was brown to fairish and about collar length. Those observations by Nugget Carroll were extremely significant because there was a formal admission made by the prosecution that the panties and step-in found on the deceased child had been hanging on the clothes line referred to by Nugget Carroll on the evening of 13 April. The inference is irresistible that the person seen by Nugget Carroll taking clothes from that

line was the person responsible for the death of the child. The evidence was that Nugget Carroll died early in 1974. His statement given to police on 16 April 1973 was tendered in evidence at both the murder trial and the perjury trial.

[68] The description given by Nugget Carroll of the person he saw taking clothing from the verandah is significant because the appellant at the material time had jet black hair which was short in length, and was six foot one inch in height. The importance of Nugget Carroll's evidence should have been obvious; the issues were discussed at some length by Shepherdson J at 431-432 of his judgment on the appeal from the murder conviction. Counsel for the appellant at the perjury trial specifically asked for a direction in the summing-up with respect to it. There was a complaint on the hearing of the appeal that the learned trial judge failed to direct the jury as to the importance of the statement of Nugget Carroll. Specifically it was submitted the learned trial judge failed to remind the jury that it was clothing taken from the verandah in question which was found on the body of the child and the description did not match that of the appellant. As the evidence identifying the clothing was in the form of a Crown admission that is something which could have been overlooked by the jury given the length of the trial and the detail of the odontological evidence.

[69] In my view there is some force in the submission made by counsel for the appellant. A perusal of the summing-up reveals that the learned trial judge merely recounted some of the contents of the statement of Nugget Carroll but did not at any stage of the summing-up specifically draw the jury's attention to the fact that at the material time the appellant had short dark hair, was taller than the man described and the fact that clothing taken from the clothes line on the verandah was identified as being the clothing on the deceased child. However, because I have reached a definite conclusion on other aspects of the case it is not necessary to consider whether those deficiencies in the summing-up would alone have caused the trial to miscarry. It is sufficient to say that such considerations add additional support to the conclusion that the verdict of the jury was unsafe and unsatisfactory.

68. The evidence is very clear that the wrong person was brought to trial in the case of Raymond Carroll in the murder of Deidre Kennedy. The question that needs to be determined is did Justice Vasta in any way contribute to the mis-carriage of Justice in the case of Raymond Carroll ? If the answer is yes, then Angelo Vasta should never ever be re-instated as a Judge and therefore never be given a pardon for the term of his life.

69. This Committee should consider instigating a full investigation and possible charging Angelo Vasta for this mis-carriage of Justice in the case of Raymond Carroll and Deidre Kennedy.

Summary

70. In Summary and on balance it would not be appropriate for this Bill to proceed any further until the issues highlighted in this submission are adequately considered and addressed.

71. Any action to reverse the decision of removing Justive Vasta as a Supreme Court Judge is Statute Barred until such time as the Sunset Clause pursuant to Section 17 of Parliamentary Judges Commission of Inquiry (“the Commission”) is amended or repealed.

    Statement made on this day 22 June 2017 by Mr Toby Chambers

T Chambers

Toby Chambers

Appendix 1

Chambers of the Chief Justice
Supreme Court
Brisbane
24th October, 1988

Private and Confidential
The Honourable P. J. Clauson, M.L.A.,
Minister for Justice and
Attomey-General of Queensland,
State Law Building,
Cnr. Ann & George Streets,
Brisbane. Qld. 4000

My dear Attomey,

I thank you for your letter of even date touching upon evidence given by the Honourablem Mr. Justice Vasta in defamation proceedings by him in respect of articles published in a magazine named "Matilda" and in respect of a letter dated 7th November, 1985 from the Judge to Sir Terence Lewis which has been tendered to the Fitzgerald Inquiry. You mention as well that attention has been drawn in the Inquiry to Sir Terence's diaries which record numerous personal and telephonic contacts between the Judge and the Commissioner of Police. You have no doubt drawn these matters to my attention as an intimation that further investigation will be undertaken. It is not made clear whether this will be carried out in the usual way or by way of examination before the Fitzgerald Inquiry, but this does not affect my view of the course which I should take.
You state that you think it essential to put all the facts before me for my consideration for which I thank you. The material brings me to the opinion that investigation is called for as to whether an offence against section 123 of the Queensland Criminal Code has been committed. It is relevant also to a question whether misconduct has been demonstrated to such an extent that removal or censure might be considered. I would think that in the circumstances made known similar issues and exigencies of proof would be involved. It is hardly likely that there would be room for the latter if it were decided that there was no case to answer on the former. I note your emphasis, on which I take common ground with you, that the Judge has not had an opportunity to refute evidence before the Commission or the inferences which might be drawn from it or to cross-examine the Police Commissioner in relation to his recent evidence before the Inquiry. You also refer quite properly to the fundamental right of any person to a hearing and proper opportunity to defend his name and actions alleged against him. You will readily understand that Mr. Justice Vasta could not be expected to perform his regular duties efficiently while such an investigation is with his knowledge proceeding. I consider regrettably that the circumstances call for having Mr. Justice Vasta stand down from the performance of his regular judicial duties. I have made formal arrangements to effect this indefinitely until such time as due investigation has taken place which enables proper conclusions to be drawn.
It should be made clear, of course, that I take this step in the public interest. It is not to be interpreted as any expression of opinion by me as to guilt or innocence because it would be no more appropriate for me to draw conclusions at this stage than it would for anybody else. No inference adverse to Mr. Justice Vasta should be drawn from what has taken place

Yours faithfully,
D. G. ANDREWS
Chief Justice

Appendix 2

MINISTERIAL STATEMENT

Security of Tenure and Removal from Office of Judges Hon. P. J. CLAUSON (Redlands—Minister for Justice and Attomey-General) (10.14 a.m.), by leave: In view of recent happenings, it is appropriate that I inform this House of some of the factors relating to the security of tenure and the removal from office of judges of the superior courts of Queensland. The security of tenure of judges in the English tradition is founded in section 3 of the Act of Settlement of 1701, which provides— "Judges commissions be made quamdiu se bene gesserint and their salaries ascertained and established; but upon the address of both Houses of Parliament it may be lawful to remove them." This principle is reflected in Queensland legislation. In the Supreme Court Act of 1867, section 9 provides as follows— "Commission of judges. The commissions of the present and any future judges of the said Supreme Court shall be continue and remain in full force during his or their good behaviour notwithstanding the demise of Her Majesty or of her heirs and successors any law usage or practice hereof in anywise notwithstanding. Provided always that it shall be lawful for Her Majesty her heirs and successors to remove any such judge or judges upon the address of both Houses of the Legislature." Sections 15 and 16 of the Constitution Acts 1867-1988 also provide as follows— " 15. Judges continued in the enjoyment of their offices during their good behaviour notwithstanding any demise of the Crown. The commissions of the present judges of the Supreme Court of the said colony and of all future judges thereof shall be continue and remain in full force during their good behaviour notwithstanding the demise of Her Majesty (whom may God long preserve) or of her heirs and successors any law usage or practice to the contrary thereof in anywise notwithstanding. 16. But they may be removed by the Crown on the address of Parliament. It shall be lawful nevertheless for Her Majesty her heirs or successors to remove any such judge or judges upon the address of the Legislative Assembly." It should not, however, be thought that removal by address by Parliament alone is necessarily the only manner whereby Supreme Court judges may be removed from office. Fajgembaum and Hanks in their work Australian Constitutional Law, at page 345 state that such judges are liable to be removed in at least two and probably three ways, namely— (a) by the Queen on an address by both Houses of the State Parliament on any ground whatsoever; (b) by the State Governor in whom the power of appointing judges is vested by taking proceedings to forfeit the judge's commission on the grounds of misbehaviour; or (c) if the Colonial Leave of Absence Act 1782 (Burkes Act) has survived, by the State Government removing the judge on the ground of absence from the State without leave, neglect of duty or misbehaviour. There is considerable doubt about whether this last option is available in modem times (see Fajgembaum and Hanks, at pages 342 to 343) and no doubt in view of the fact that an appeal to the Privy Council might lie against a motion under that Act this possibility can, for all practical purposes, be disregarded. Thus it would seem in theory that there are at least two basic methods by which a Supreme Court judge may be removed, namely, by the Crown on an address by Parliament on any ground whatsoever or by procedures to forfeit the judge's commission on the ground of misbehaviour. That such altemative possibilities are open for removing a State superior court judge was recognised by Mr Justice Thomas of the Queensland Supreme Court in his recent book Judicial Ethics in Australia, where at pages 70 and 71 he pointed out that a State Parliament may remove a State judge at pleasure (see McCawley's case 1918 CLR 9 at pages 58 and 59) whereas proved misbehaviour or incapacity is necessary in the case of Federal or High Court judges. He also pointed out that the limitation of office of such judges to "during good behaviour" may make it possible for a court to declare the office to be vacant upon proof of absence of good behaviour. His Honour indicates that such a matter could be brought before the court in earlier times by a writ of scire facias. He further comments— "... whether this form of action survives as such may be questioned but there is little doubt that if such a question is justiciable at all, the superior courts could entertain such a question under proceedings for declaratory relief injunction or possibly even quo warranto."

Suffice it to say that this method is so lacking in precedent and fraught with such complications and obscurity that it may not be in practical terms an appropriate mechanism for proceeding. The question of what constitutes "misbehaviour" by a judge was extensively canvassed in the opinions of the three former judges given to the special parliamentary commission of inquiry appointed by the Commonwealth Parliament to investigate matters relating to the late Mr Justice Lionel Murphy of the High Court. Such opinions dealt specifically with the provisions of section 72 of the Commonwealth Constitution, which, as a sui generis provision, required that such term be given its natural meaning. The three retired judges, however, were required to examine the question of misbehaviour generally in the context of public office. All rejected the limited view that misconduct or misbehaviour must be confined to misbehaviour in office except in the case of a conviction for an "infamous offence". They were clearly of the view that misconduct can be found not only in conduct related to the performance of judicial duties but also in non-judicial conduct of sufficient gravity even though no conviction has resulted from such conduct. I would particularly commend those members of this House who wish to more fully appreciate the legal niceties of these issues to read the opinion of the Honourable Andrew Wells, QC, which sets out, in significant detail, the distinction between Executive and parliamentary methods for the removal of judges and the issues inherent therein.

Any acceptable attempt to initiate action for the removal of a Supreme Court judge, either by the Executive method or by the parliamentary method, is surrounded with difficulty and should not be undertaken lightly, as was evidenced by the handling of the matters surrounding Mr Justice Murphy. Great care must be taken to ensure that not only are the rights of the judge concemed as an individual protected but also that the institution of the court itself as an organ of Government is not subject to overt or covert interference either by the Parliament or by the Executive.

Judges of the District Court of Queensland are in a somewhat different position from judges of the Supreme Court. Section 13 of the District Courts Act 1967-1988 provides— "The Govemor in Council may remove a Judge for incapacity or misbehaviour; Provided that 21 days at least before removal the Judge shall receive notice of the intention to remove him and he shall thereafter and before removal have the opportunity of being heard before the Govemor in Council in his defence."

Judges of the District Court therefore are, by statute, removable only by the Executive and are not necessarily removable through the agency of this Parliament. Whether any circumstances would exist that would justify the Govemment's taking the grave step of removing a judge of the District Court without consulting this Parliament is a matter yet to be determined. As honourable members would be aware, I recently received certain advice from the Government's senior legal adviser, Mr Ian Callinan, QC. As a result, I communicated with the Honourable the Chief Justice. Consequently, His Honour Mr Justice Angelo Vasta of the Supreme Court of Queensland, after extensive discussions with the Chief Justice and the Senior Puisne Judge, yesterday stood down from hearing any further judicial proceedings pending resolution of matters which have been raised both in the Fitzgerald inquiry and elsewhere. Honourable members would be aware that Mr Justice Vasta has also launched certain personal actions for defamation.

In a statement that was issued after he stood down, Mr Justice Vasta has referred to the possibiUty of answering his accusers before the bar of Parliament or before a panel of retired Supreme Court judges. It is not appropriate to determine immediately whether such courses of action, or indeed any other course of action which may be open to the Parliament or the Government, should be followed at this time. The investigations that are being conducted by Mr Fitzgerald have not been completed, nor does the Govemment have the benefit of Mr Fitzgerald's opinion on any matters that are covered by such investigations. Whether any—and if so, what—prosecutions may flow from Mr Fitzgerald's inquiries is not yet possible to determine. Certainly it is clear that Mr Justice Vasta wishes to dispute strongly matters which have been raised before the Fitzgerald inquiry and elsewhere. In all the circumstances, it would be best if neither this House nor the Government takes any further specific action on this matter at this time until further inquiries indicate either that a crime has been or may have been committed or impropriety has or may have occurred. No doubt Mr Justice Vasta is considering whether he should supply a statement to the Fitzgerald inquiry or, if necessary, give evidence on oath before the inquiry in order to assist Mr Fitzgerald's consideration of the matters in question.

The difficulties encountered by the South Australian Parliament in its attempts to remove Mr Justice Boothby by address provide a salutary lesson, even though they occurred over 120 years ago. Just as the Imperial authorities then expressed the view that the Crown would not remove a judge unless particulars of the charges had been proved with precision, and until the judge had had the opportunity to defend himself against them, so that view should be applied today. Insofar as any other judges who have been mentioned before the Fitzgerald inquiry are concerned, I have yet to be advised by Government representatives at the inquiry that evidence has been led which creates a necessity to contemplate any specific action in relation to any such judges. Should I receive advice, appropriate action will be immediately taken. However, I will not be stampeded into taking premature action on any allegations against a member of the Queensland judiciary.

If respect for the Queensland judiciary is to be maintained and if the judiciary is not to be the subject of improper interference, all members of the House must be careful in their comments on these issues. Short-term political point-scoring must not be allowed to damage the status and standing of the Queensland courts. Should sufficient material be obtained through the Fitzgerald inquiry or otherwise that would justify the taking of action by the Govemment or this Parliament against a judge, then that action will be taken no matter how painful the procedure or the resulting consequences may be. In the mean time, however, as Attorney-General of Queensland I will not be a party to the lynch-mob mentality which so seems to dominate public comment today and which instantly converts allegations into proven facts. Similarly, I and the Government will not permit this House to be used as a mechanism to interfere with proper inquiries that are being conducted by the Fitzgerald inquiry, such as has been threatened in the media by the Opposition.