

## **Edited transcript of an interview with Kevin Lindeberg by Sebastian Gurciullo, 20 December 2010**

*In May 1990, shortly after the destruction of documents relating to the Heiner Inquiry into alleged child sexual abuse at John Oxley Youth Detention Centre (JOYDC), Kevin Lindeberg was dismissed as a union organiser for the Queensland Professional Officers' Association, Union of Employees (QPOA). Lindeberg initially became involved in what has become known as the Heiner Affair when he was called upon to defend the interests and rights of union member Peter Coyne, the manager of JOYDC. Lindeberg's loss of his job at the outset of this political scandal which has haunted successive Queensland governments for more than two decades was one of the main factors motivating his long campaign for justice. At the heart of the Heiner Affair are a series of other injustices: against the victims of the child abuse that prompted the inquiry in the first place; and against Peter Coyne, who never had the opportunity to clear his name because of the destruction of the documents. It is strange that this matter remains largely unresolved; the political scandal, the allegations of corruption and the injustices are now well on their way to becoming a globally recognised instance of how the failure of proper recordkeeping practices can help protect the powerful from the rule of law. What follows is an edited transcript of an interview conducted with Kevin Lindeberg on 20 December 2010 on the subject of his actions as a whistleblower and advocate on the recordkeeping issues involved in the Heiner Affair.*

**Sebastian Gurciullo:** Your advocacy in the Heiner Affair and for a better recognition of the archives profession is well known to those who have followed the Heiner Affair, but what other interests occupy your time?

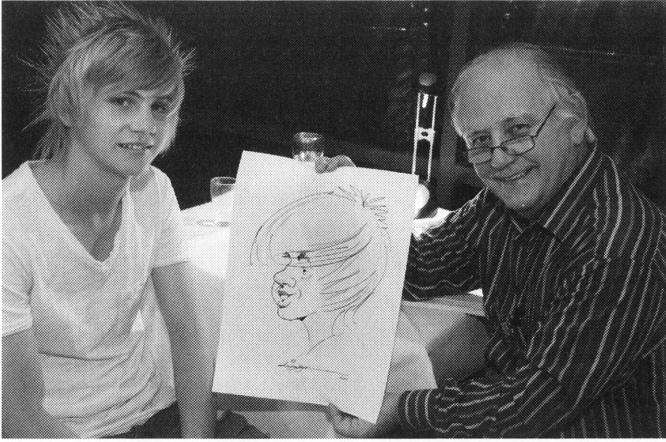
**Kevin Lindeberg:** While I am very passionate about recordkeeping, I'm a trained opera singer. I love great singing, and am easily reduced

to tears. I tried to pursue a career on the stage for many years from Maryborough in Queensland, to Brisbane, Sydney and London. If I can say, I was pretty good. I played the leading roles of Curley in *Oklahoma* and Bill in *The Sentimental Bloke* in Sydney, and eventually auditioned for the English National Opera in London, but unsuccessfully. I sang with the London Philharmonic Chorus and did a recording of Carl Orff's stirring *Carmina Burana* in Abbey Road Studios. I made sure I walked across the famous Beatles heritage road crossing.

I am also very interested in Australian pioneer aviators Bert Hinkler and Sir Charles Kingsford Smith. I played a significant role in establishing the Hinkler Museum in Bundaberg. While living in London for nine years I managed to save his Southampton House from being destroyed in the late 1970s and early 1980s. It was subsequently transported brick by brick to Bundaberg for the 1988 Australian Bicentennial celebrations, and is now one of Australia's major historical aviation museums. I also located Hinkler's death site in Italy in 1974 with the Duke of Aosta, and placed markers on the mountainside where Hinkler tried to land but lost his life after experiencing propeller troubles in flight. With the Duke and Australian Ambassador, I organised a ceremony to pay tribute to the Italians who found and removed Hinkler's body from Mount Pratomagno in 1933. Mussolini gave Hinkler a state funeral and he is buried in Florence. I am one of the few people alive who knows these details of Hinkler's life.

Another source of interest for me is administrative, criminal and constitutional law. I am quite knowledgeable about the workings of parliament and the public sector. I am considered to be one of Queensland's leading political cartoonists and caricaturists. In 2010 I finished my first major novel called *Weren't heroes made of sterner stuff?* It's a mad, zany 'black' comedy set in America's Wild West. It oozes sex, violence, love, conspiracies, political intrigue and ambition, racism and bigotry. It's on the other end of my scale of writing abilities. I love zany comedy and a good laugh. I got great enjoyment in writing it to get away from the serious Heiner stuff. I am now committed to writing a book on the Heiner Affair. I hope it will be ready for publishing around August 2012 when the International Council on Archives comes to Brisbane, and I hope that the Heiner Affair may

be a major item of discussion. It's going to be a huge task, but I owe it to the archives profession, academia, national politics and, not least, myself and my family to set down this incredible journey.



Kevin Lindeberg engaged to do caricatures at a wedding reception in New Farm by the Brisbane River in February 2011. Courtesy of Kevin Lindeberg

**SG:** How have your whistleblower actions in regard to the Heiner Affair and the ensuing 20-year advocacy campaign impacted on your life?

**KL:** This 20-year campaign, it's impacted greatly. In many ways it is too difficult, if not too painful, to quantify. The central struggle against the systemic abuse of power has always been daunting, and, in many ways, overwhelming, but I've pressed forward with the universal truth, that known evidence in the form of documents or otherwise cannot be lawfully disposed of to prevent their use in foreshadowed judicial proceedings before those proceedings have commenced.

I believe I've grown immeasurably as a person. The simple truth is I've never liked bullies of any kind, either as a person or as a former trade union official, whether it involved human, political, legal or workplace rights, and I dislike them far more now having seen and experienced the massive abuse of power by people in positions of trust caught up in the Heiner Affair.

It is difficult to quantify the impact on my life because the battle in some senses changes because it has taken on bigger and bigger dimensions and I never expected it to take on these dimensions. Who would ever have thought that the sacking of the union official in a union office in May 1990 would ever end up becoming the subject of lectures across the world and so on? The reason is that I have fought back against the injustice that was inflicted on me and I've not accepted what the authorities have told me and I've fought against that simple truth which goes to the heart of recordkeeping - one of its truths anyway - that evidence known to be required for judicial proceedings cannot be lawfully destroyed to prevent it being used in those proceedings because otherwise you destroy the administration of justice. That principle is right at the core of proper recordkeeping.

So in that sense I've learnt these things and I've become a much more knowledgeable person. So in terms of the impact, it's been both good and bad. Personally it's too painful to talk about - the sacrifice that I, and also my family, have had to endure. You really can't put it down other than in some sense it's almost too painful to talk about what it may have done to your children. But then again, when you look at your children who have become more rounded and all that type of thing, well, you can say it was a good thing, but it would be almost perverse to say that because why should someone have to go through all this when one's attempting to hold up a simple truth. But, of course, I am wise enough to know that truth is always under attack and must be defended.

I really also want to make this point: one of the things that drives me is that I hate bullies. I've always disliked bullies. Any abuse of power I dislike. I particularly detest abuse of women and children. That's one of the reasons I was a trade union official and so was caught up in the Heiner Affair, with this massive abuse of power by people in positions of trust - they picked the wrong dog for the fight.

**SG:** What did you expect to achieve through this campaign when you started and what do you still hope to achieve after so many years?

**KL:** Well, this journey started when I lost my job as a trade union official while trying to preserve the Heiner Inquiry documents being sought by union members. I wanted my job back. The sacking started off as a



personal journey seeking justice for the injustice inflicted on me and the others by association. Now it had a snowball effect and it took on more and more serious dimensions and it has now reached the critical mass of whether or not we in Australia, as one of the world's longest functioning democracies, truly live by the core value of equality before the law.

So one of the things that I would hope to achieve in this is justice and entrenching of the principle that no one in Australia is above the law, be they prime ministers, governors-general, premiers, politicians or whoever.

So in my view cover-ups of this magnitude and seriousness simply must be resolved if we, in Australia, wish to consider ourselves as a mature democracy. If that ultimately means that we have to adjust our current system of governance to ensure that such an incident never occurs again then we must do it as a nation.

**SG:** That would be the kind of formulation you would use now presumably, but in the past when it started off was it more about seeking redress for a wrong to yourself and to others, your client for instance?

**KL:** Yes. When the journey started it was limited. My sacking was unjust; I wanted my job back, and the public servants who were seeking access to the documents had their industrial rights trampled upon. They had to have their rights restored. So it was on that simple plank if you like that I started this journey, and then when I got into it the first realisation came about that this was a decision by the entire Cabinet and senior bureaucrats to destroy the evidence, not just one minister or civil servant. Everything then, from the other side of it if you like, and even from my side, took on a different dimension in terms of the ramifications of this matter.

**SG:** And as time went on new dimensions were added?

**KL:** Yeah, that's right, new dimensions, and as time went on and the cover-up was engaged in, new dimensions were added upon that simple core truth that no one should be destroying documents once they know they're required for court, even members of Cabinets.

**SG:** Moving on from the realisation that it was not just about a personal

injustice and about an injustice to a client but something more systemic, have you wondered whether the vast majority of the governed, as you call them, in Queensland and Australia more broadly, actually care about the implications of the Heiner Affair and what it reveals about the precarious nature of their rights and entitlements?

**KL:** Well, I'm very confident that ordinary Australians hold dear to the principle of equality before the law because it goes to the heart of our so-called fair-go society: that everyone should be treated equally. I believe that once Australians fully realise how serious the abuse of power has been by the governors to preserve their false position of being above the law, then they will care, and care very deeply about the matter.

The fact that Australians are more interested in the footy scores than whether their governments are functioning in a proper democratic manner is no reason why I shouldn't care myself. I have a duty to my own values and to leaving this place a far better society for my children and their children.

There is no doubt that my opponents say 'well look, how can this be such a pervasive scandal when it involves so many authorities', and therefore when an authority like the Crime and Misconduct Commission (CMC) says that this matter's been investigated to the 'nth degree', they say it from a position of great authority. I, however, am but a lonely whistleblower saying that's not true.

Well, what's happened in recent years is that a critical mass situation is being reached, if it hasn't been reached already, whereby this is no longer just Lindeberg saying that there's something wrong here, there are a raft of senior judges, respected academics and indeed the archives community saying 'look, there is something fundamentally wrong here which needs to be addressed'. But within that mass, while there are people now of immense reputation coming onside on the Heiner Affair, there is still a problem of it being properly presented in the media because of the politics of the thing. It seems to me that people look at this politically rather than impartially in terms of who did the wrong. Now that may be changing as well because to have the Heiner Affair being taught in Queensland schools as a major scandal and yet it's not being addressed by the governors, I don't think that

can last. I think that it's getting to the point where they're going to have to realise that this matter has to be addressed despite the passage of time.

**SG:** What have you concluded about archivists and the Australian Society of Archivists as a result of your advocacy on the Heiner Affair?

**KL:** Well, I've been grateful for the assistance that's been given off and on by the archives community. I mean, this is a long-running affair and there may be an element of 'Heiner fatigue' in many people's minds, but in others the issue has become increasingly serious as it's got more and more people involved in it who've gone into positions of high trust.

I believe that the archivists, as a community, have to be much more forthright in having their voices heard inside government and across the general community, because the simple truth is that without proper recordkeeping, societies will fail. It would be the strongest easily prevailing over the weak. Information is power and I believe that proper recordkeeping practice ought to be promoted to the premier division of the professional class because sound recordkeeping keeps everything running.

What makes the Heiner Affair so difficult for, shall I say, ordinary public archivists or even key archivists – you know, the key office holders – is that the people in positions of power are claiming that everything was done properly on the one hand, while on the other, people like me are calling for archivists or the profession to stand up to the might of government, and that's a very daunting thing, particularly in the case where public servants are looking for a career.

But from a citizen's perspective where I'm coming from, I'm interested in archivists preserving records in the public interest, not for their own personal career. That's their calling. They're there to preserve the records in the public interest and, hopefully, a terrible thing like the Heiner Affair never ever touches the lives of any archivist out there because it could place their career in some form of jeopardy. But that's the nature of the beast.

If you're working with public records, you are potentially likely to run into abuse of power. In the beginning a person like Chris Hurley, for

instance, who had his own problems as Victoria's state archivist over abuse of government power, made the comment back in 1996 that this matter must not be allowed to stand. That was a very brave thing for Chris to say, but the thing still stands. And yet, you have people in positions of power who are still prepared to misrepresent the role of the archivist on this key point in respect of one of the claims they made, which was that an archivist doesn't have to worry about the legal value of documents at the time of disposal, only their historical value. Well that's utter nonsense! But it was self-serving nonsense put forward by the Criminal Justice Commission and it ought to be enough for archivists to storm the barricades to protect their profession, because their profession can only stand really if it's done in the public interest. A government's interest and the public interest are two different things. Hopefully they're not, but in critical times like the Heiner Affair, they divide.

**SG:** What sort of challenges have you encountered trying to stir archivists and recordkeepers into action on this cause and getting them to see the full implications of the Heiner Affair?

**KL:** I have had some wonderful assistance from the giants in the recordkeeping world like Chris Hurley, Rick Barry, Terry Cook, John McDonald, Adrian Cunningham and others. I have been forced to go outside my community to seek assistance from the archives community and that has been an extraordinary journey in itself within the Heiner Affair. I've been on journeys into the world of academia, into the legal world in respect of the proper interpretation of Section 129 of the criminal code in relation to the destruction of evidence. I've been on journeys into the political world and on journeys into the archives world. They've all got their own different aspects. Essentially I was, shall I say, cast into the desert by my local community and had to go looking for assistance from the national and international archives community. The first assistance I think I really got was from Chris Hurley but then I had to go international and that's where I met people like Rick Barry and Terry Cook and John McDonald and they were the ones who readily recognised my core message that proper recordkeeping involved the legal appraisal of a document. It struck a deep chord with them.

Consequently, they were the ones who came to my rescue, but within Queensland I have been denied justice from Queenslanders. In Queensland, fear dominates the entire community because of the ramifications of the Heiner Affair. Consequently, it's virtually impossible to stir up the Queensland community of archivists. It's been through the advocacy of others, and then, the more I've researched and continued to write, I think that I've gradually stirred up things from overseas and then it's washed back onto Australian shores. I've written several articles on the Heiner Affair. I wrote one with the guidance of Terry Cook for which I won the Mander Jones Award in 2003.<sup>2</sup> Recently I wrote 'Where best practice recordkeeping ends, corruption begins', which appeared in the *Information and records management annual*, 2009.<sup>3</sup>

So it has been difficult because there is always the element of the fear factor for public servants: if I put my head up I might lose my job.

**SG:** You've mentioned that you've had assistance from outside of Queensland and internationally and some of that has started to now flow back and open doors, or open minds maybe. Do you find that within the Queensland government sector that archivists generally are keeping their mouths shut?

**KL:** Well, indeed, without doubt, on the subject of those who carried out the desire of Cabinet and the action of actually destroying the documents themselves when they knew they were required for court, they have remained conspicuously silent.

The first public official who was really confronted with this terrible problem was the state archivist. She was in many ways - and this will become clearer when the Rofe audit is made public - caught betwixt and between, but the public interest demanded that she could not remain silent about the circumstances under which she oversaw the destruction of these documents. Things have flowed on since that.<sup>4</sup>

So when you're a public official and you're in a key position involved in protecting public records, it's not an easy job at the end of the day. It's not an easy job when something like this comes along and it requires you to take a stand because if you don't take a stand and the cover-up continues it just gets worse and worse and worse, and that's what's happened in the Heiner Affair. People have failed to do their jobs.

**SG:** And I guess in this situation it really hasn't gone away for them? It's always been there; something that probably dogs them in some small way throughout the rest of their lives.

**KL:** Well, until the issue is resolved, it will. When the various prima facie alleged charges are looked at in the Rofe QC audit of the Heiner Affair, I think the archives world will be just outraged in terms of what's gone on in the name of their profession and how this thing could have ever happened in the first place. It arguably happened through intimidation or worse.

What makes it so compelling is it contravened a simple truth: that you don't destroy evidence once you know it's required for judicial proceedings.

**SG:** It's very straightforward, isn't it?

**KL:** Yes, and you can't explain it away. It's not even a matter of saying 'well, there were guidelines in place', because these are fundamental guidelines and the ordinary person in the street knows that, let alone a state archivist.

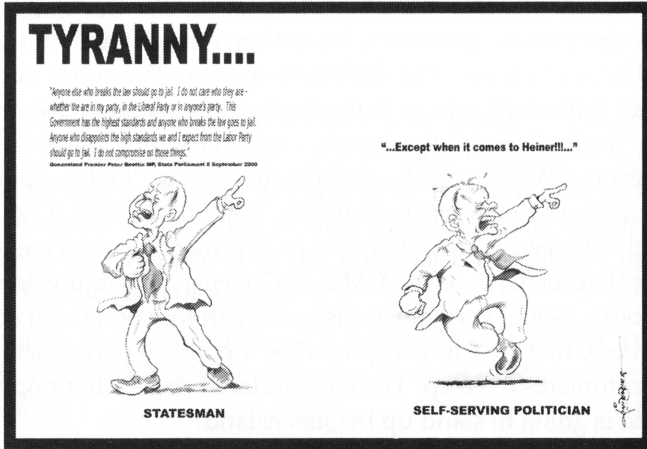
**SG:** In Queensland, is this just a leftover from the Bjelke-Petersen era; that a Cabinet would try this kind of obfuscation?

**KL:** Queensland, I think without a doubt, is the rogue state in the Commonwealth of Australia and its roguery, unfortunately, as it's manifested itself in the Heiner Affair, has not just infected government in Canberra but it's reached all the way to Buckingham Palace.<sup>5</sup> Why is that? It may be that we, in Queensland, are a unicameral system of government. It may be that we've only got one main newspaper. I feel it may be that Queensland has always had long-term governments and there may have been a belief within the public service or in the government itself that, after the Fitzgerald Inquiry and the demise of the National Party, the Labor Party was going to be in power for the next 20 years, which essentially has proven to be correct.<sup>6</sup> Consequently, in that environment where you don't have a regular change of government, you get public servants who are looking over their shoulders, trying to serve a government which might last the whole of their career and, consequently, what Cabinet wants, Cabinet gets.

The Heiner Affair also involves other elements of, shall we say, law enforcement or governments acting outside the rule of law. The archivist plays an important role in that. The other body that played an important role in that was the new integrity tribunal, the Criminal Justice Commission which is now the Crime and Misconduct Commission (CMC). And the simple question is: 'Did it do its job?' And the answer to that is an emphatic 'no!' But the CJC/CMC is all-powerful in Queensland and you've had former Premier Peter Beattie claiming that the CJC, or the CMC, is Queensland's equivalent to an upper house. Well, I very much disagree with that because it could be that if a body like the CJC is captured by a political party, then you've got the complete cover-up. The CJC declared there's nothing wrong; well, who is going to stand up in Queensland?

What enlivened the archives world in respect of the Heiner Affair was when the CJC told the Australian Senate in 1995, or even its report to me in January 1993, that it claimed to resolve this matter of alleged wrongdoing. In 1993 the CJC said an archivist has basically an unfettered discretion to destroy anything he or she liked. But then in 1995, on the other hand, when giving evidence to the Senate - and this greatly enlivened the archives community - the CJC officer claimed that the archivist's discretion did not go beyond the historical value of documents when deciding whether to dispose of or retain them. Now that's plainly wrong, and consequently what did the Queensland State Archivist do to correct the public record? She did nothing. That then came to the attention of people like Chris Hurley, and I went elsewhere in search of further information and support. That's what's greatly enlivened the archives community. Once the CJC, the so-called premier crime fighting body in Queensland, declared the matter resolved, everybody fell silent except me.

**SG:** The Rofe audit, which you've already mentioned in this interview and in your article published in 2009 in the *Information and records management annual*, has not yet been released publicly. As I understand it, you are campaigning now to get a commission of inquiry established based on the evidence gathered in this audit. Can you tell us about the audit and what is likely to happen?



Caricature by Kevin Lindeberg of Peter Beattie relating to the Heiner Affair.  
 Courtesy of Kevin Lindeberg

**KL:** Well the Rofe audit is a forensic examination of all the evidence, the chronology of events spanning 17 or 18 years of the Heiner Affair. It took two years to complete. It looked at the role of each public official, how they performed their role when they were confronted with the allegations that the shredding was illegal. Also, there is the additional fact that the contents of the Heiner Inquiry documents concerned the abuse of children in a state-run institution. So there were two levels to the shredding in regard to their protection and criminality. Once they knew they were required as evidence, irrespective of what was in them, they ought not to have been destroyed. But given that the Cabinet and senior departmental bureaucrats knew that the documents contained evidence of child abuse, unresolved child abuse, then the documents ought to have been preserved as well. These elements in both cases give rise to a *prima facie* obstruction of justice.

The Rofe audit is essentially a blueprint for a royal commission so that the alleged *prima facie* charges that are in its nine volumes can be either found to be of substance or dismissed. The contents are legal/constitutional and political dynamite and they're based on case law and on the simple truth, as was proven in the case against the Baptist minister R v Ensby, that you don't need to have judicial proceedings



on foot to break the law if you destroy documents when you know those documents are required for those judicial proceedings, and in the Heiner Affair there's no doubt that the Queensland Cabinet knew the documents were required for court at the time they procured their destruction.

Now efforts are being put forward to have the Rofe audit tabled in parliament and one would hope that if that can be achieved and people look at the evidence, the various alleged *prima facie* charges, who they affect and so on, that ought to be sufficient reason to establish a royal commission.

Now if the documents are tabled and there's no royal commission established, I believe it will say a great deal about our nation's commitment to the rule of law. I am aware that ramifications of the Heiner Affair, if proven, are horrendous, but if we're a society truly governed by the rule of law, then these matters should be properly addressed.

It may ultimately be for historians and ordinary Australians to make their own judgement on the matter because if the audit is tabled and nothing happens, well, at least I have achieved getting the matter on the public record so that people can read it.

As I said, the ramifications of the allegations in the Rofe audit being substantiated are immense. In my article in the *Information and records management annual*, I discuss how it also now goes to the very important issue of how we appoint a Governor-General to the position of head of state and what happened in my dealings with Buckingham Palace when the Rofe audit was before a parliamentary committee in Queensland in 2008. An evolutionary element of the affair now goes to the integrity of the public office of the Governor-General, not unlike what happened with Governor-General Hollingworth. We have a similar, if not worse, situation with the current Governor-General of Australia flowing from her handling of the Heiner Affair allegations when Governor of Queensland. So, you know, it's no longer just about the governance of Queensland; it now bears upon the governance of the Commonwealth of Australia.

**SG:** In the 2009 article you call for a body like the Bar Association or the Law Society to be established by statute for recordkeepers. What

would a body like that be able to achieve that the ASA and the RMAA have not been able to do?

**KL:** Well, I think that the recordkeeping profession is so critically important to a democracy, human rights, justice and all that type of thing, that it ought to be seen in the same light as the legal profession because, as I said in my article, I believe that one really can't – and certainly lawyers can't – exist without good recordkeeping. Lawyers and the courts need evidence to be properly and lawfully protected.

I believe that such a unified body would be able to speak with one voice and be much more powerful. In my view, one of the reasons why you need a body like that is to protect the standards of the profession, and when a rogue archivist does something, there needs to be a mechanism to officially pull that person into line, as would happen with a lawyer who might have breached the code of conduct of the legal profession, like breaching a trust, or even destroying documents and so on. They can be punished by the professional standards unit of their particular organisation. Also such a body could offer – in my view, critically important – support for an archivist who may be coming under great pressure from a government to do something which is professionally, if not legally, unacceptable.

I think that archivists in many ways working out there at the coalface are too isolated by the power of government and that's got to be addressed.

**SG:** Are there any other measures that you're able to take on the Heiner Affair; have you ever considered taking the matter to international forums or tribunals?

**KL:** There are some tentative moves indicated to me that I may deliver a paper on the Heiner Affair to the International Council on Archives (ICA) Congress in August of 2012 when they come to the scene of the crime: Brisbane.

To that extent I might lodge a fresh complaint with the ICA. I did something like this some years ago and it wasn't taken up then. Now the matter has taken on a different dimension since then. I'm not overly attracted to taking the matter internationally, beyond the fact that it's international now where it's discussed in universities throughout the world. I think this is a challenge for Australians to properly address

within our own laws; to have the courage to face the fact that perhaps an entire Queensland Cabinet and senior bureaucrats broke the law, and need to be held to account. I don't think we've properly exhausted that yet and I may not need to go beyond that position once the Rofe audit is tabled. I really think nations need to have their own justice systems functioning properly – because currently in international forums, it ought to be highly embarrassing, yet more so unacceptable, that the Heiner Affair should be discussed in forums throughout the world as an unresolved scandal.

**SG:** Well, I guess that's what I had in mind; ultimately there may not be all that much binding power on the matter being brought up in an international forum, but it would be the scale of potential embarrassment that might result in the matter being taken more seriously.

**KL:** Yes, that's right. I mean, I'm a proud Australian; it gives me no joy to know that papers can be delivered and this matter can be discussed in forums as a major unresolved scandal. We're supposed to be one of the world's oldest functioning democracies. To have this scandal hanging over our heads makes us look like hypocrites, and immature, and I think that's not good enough.

**SG:** Especially considering Australia is a signatory to human rights conventions?

**KL:** Well, indeed it is. I mean, it is a signatory to civil and political rights. It's also signatory to the rights of the child and the UN convention against corruption. It's also a signatory to the rights to collective bargaining and organising which represents the rights of trade union officials to be able to advocate on behalf of their members without reprisal. Well, I suffered the reprisal right at the beginning of this when I was trying to preserve records that were crucial to the industrial rights of my union members.

**SG:** Finally, what does the lack of resolution on the Heiner Affair say to you about the state of our political system?

**KL:** I think it means that our democracy is not as secure as we would like to believe. Its unresolved status is a danger to the human and legal rights of every citizen in Australia because it goes to the very core

issue of equality before the law. You simply cannot have the governors applying the law to its full and proper force to the governed – the people – but not applying it to themselves when they engage in similar illegal conduct. That’s tyranny and that’s what the Heiner Affair represents. It’s a tyranny in our democracy which must be removed.

### Postscript:

Since this interview took place, Kevin Lindeberg has submitted the Rofe Audit to a Senate Inquiry into guidance and advice for officers giving advice and providing information. The inquiry is being conducted by the Australian Senate Privileges Committee. Recently, the Clerk of the Senate, Dr Rosemary Laing, in a formal written advice (No. 47) requested by the committee about whether the submission fits the terms of references of the inquiry, acknowledged that ‘... *There is no doubt the subject matter is very serious.*’ Laing also observes that the Lindeberg documents may give rise to the possibility of contempt of the Senate and that this may need to be investigated further.

### Endnotes

<sup>1</sup> The Queensland Crime and Misconduct Commission came into existence on 1 January 2002, merging the Criminal Justice Commission (CJC) and the Queensland Crime Commission (QCC) under the *Crime and Misconduct Act 2001*. The Queensland government decided in 2001 to amalgamate the two former commissions into a single body to fight crime and public sector misconduct. The CJC, which was established under the *Criminal Justice Act 1989*, was created to help restore confidence in Queensland public institutions after the revelations of the 1987–89 Fitzgerald Inquiry into police corruption. For further information about the CMC see the organisation’s website at <<http://www.cmc.qld.gov.au/>>, accessed 6 February 2011.

<sup>2</sup> Kevin Lindeberg, ‘The rule of law: model archival legislation in the wake of the Heiner Affair’, *Archives and manuscripts*, vol. 31, no. 1, May 2003, pp. 91–105.

<sup>3</sup> Kevin Lindeberg, ‘Where best practice recordkeeping ends, corruption begins: the Heiner Affair’, *Information and records management annual*, Records Management Association of Australasia, St Helens, Tasmania, 2009, available online at <<http://www.rmaa.com.au/docs/library/items/iRMA2009-HeinerAffair.pdf>>, accessed 18 December 2010.

<sup>4</sup> The Rofe audit is a forensic examination of all public exhibits, submissions, parliamentary reports, and admissions and omissions by relevant persons relating to the continuum of associated events from May 1988 to late 2007. It consists of 3,000 pages in nine volumes. It was compiled over a period of two years (2005–07) by Lindeberg, lawyers, relevant experts/professionals and overseen, edited and finalised by leading Sydney senior counsel, David F Rofe QC. At its core, it examines the events leading up to and surrounding the shredding and how Lindeberg’s allegations of suspected official

misconduct were subsequently handled by public officials who had a responsibility to review them honestly, impartially and in the public interest but could not find any such suspicion of wrongdoing. It has the foundation support of *prima facie* illegality in respect of the similar shredding found in the Queensland Court of Appeal September 2004 decision in *R v Ensbey*, and in a leading opinion by (the late) Chief Justice of the High Court of Australia, the Hon. Sir Harry Gibbs. The audit found 68 alleged *prima facie* criminal charges capable of being brought against persons involved in the affair to date.

<sup>5</sup> In early 2008, after having lodged the Rofe QC audit with the Queensland Parliamentary Crime and Misconduct Committee (PCMC) for review and been accepted, Lindeberg became concerned that the integrity of the Office of Governor-General may be tainted when Prime Minister Kevin Rudd announced that Australia's next Governor-General was to be Queensland's Governor, the Hon. Quentin Bryce. Lindeberg knew that she, along with Rudd, were adversely named in the audit and that a lawful parliamentary committee was actively reviewing the matter. Lindeberg wanted to avoid any repeat of the 2003 incident which saw then Governor-General the Rvd Peter Hollingworth resign from the same office, amid high public controversy over his prior handling of child abuse allegations when Archbishop of Brisbane. In an effort to protect the office's integrity, on advice Lindeberg wrote to Queen Elizabeth II on 30 May 2008 forewarning that it would be unsafe to sign the authorising instrument, Our Sign Manual and the Great Seal of Australia, until the PCMC - a committee of our supreme institution - had finalised its deliberations. Lindeberg also informed then Governor-General Major-General Michael Jeffrey who, on 10 June 2008, requested an examination and advice on the matter from Rudd but was ignored. The instrument was signed by the Queen in Balmoral Castle on 21 August and the Bryce appointment went ahead on 5 September 2008 while this aspect of the Heiner Affair was unresolved, and remains so.

<sup>6</sup> Unique in the Commonwealth of Australia, Queensland is its only federated state with a unicameral system of government. By proclamation on 23 March 1922, the act of the Theodore ALP government's specially appointed 'suicide' Legislative Council members to abolish Queensland's Upper House became a reality. Since 1922, both sides of politics in Queensland have effectively governed as an 'elected dictatorship' for long periods. By adopting the famous 1987-89 Fitzgerald Inquiry Reform Processes, a de facto check and balance on executive government has been imposed through a comprehensive parliamentary committee system, but governments of the day always hold a majority in these committees. For further information see the Queensland Parliament's Fact Sheet 39, 'Information on parliament and government in Queensland: abolition of the Upper House', updated 27 March 2001, available at <<http://www.parliament.qld.gov.au/view/education/documents/factSheets/Paper%20-%20ABOLITION%20OF%20THE%20UPPER%20HOUSE.pdf>>, accessed 4 March 2011.