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Government keeps the Governor waiting

Alyssa Betts

INFORMATION provided to state parliament last week shows that 18 months after the Governor sought a report from the state government, it had still not responded to the request.

Her Excellency sought a situation brief from the Beattie government in October 2003 in response to a submission by former union advocate and Heiner Affair campaigner Kevin Lindeberg.

Mr Lindeberg's submission raised, in part, concerns over the double standards in the state's legal system which meant a group of Ministers were not charged with destroying evidence while a member of the public, Douglas Ray Ensbey, had been charged and was facing trial for the very same offence.

Premier ... in no hurry

On February 23, Member for Gladstone Liz Cunningham asked the Premier a question on notice and enquired if the information sought by the Governor had been provided.

Mr Beattie responded that the request had been referred to the Attorney-General for advice, but that a response had been delayed pending an Appeal Court decision in the Ensbey case "to allow for subsequent assessment for the implication of that case".

However, it has been six months since the Court of Appeal upheld the Ensbey sentence, after the Attorney-General appealed the leniency of it.

Ms Cunningham said it was concerning that the government was keeping the Governor waiting so long for a briefing that she could legitimately request.

"… any reasonable person would expect that there would have been something that the government could respond to – given its resources in that period of time," she said.

Governor ... lady in waiting

Mr Beattie also said in his answer to Ms Cunningham'a question that he would not be tabling the Governor's request, nor any forthcoming brief, as there was "no constitutional provision or convention that would necessitate such a tabling".

Ms Cunningham said Mr Beattie had previously tabled Crown Solicitor's advice in parliament.

"If the brief substantially showed that the position that he has held over a long period of time was validated, I believe he would table it," she said.

"So it sort of begs the question," she said.

Mr Lindberg said the government's delay in providing the brief was untenable.

"It's an affront to constitutional democracy in Queensland," he said.

"There's no good reason why they ought not to have supplied Her Excellency with the report, other than the fact that they have finally been caught out."

DPP letter exposes legal double standards

One law for us … another for them

Alyssa Betts

A DOCUMENT obtained by *The Independent Monthly* shows completely contradictory interpretations of a section of the Criminal Code have been used by a former and the current Director of Public Prosecutions (DPP) to reject or commence proceedings for breaches of the law.

The conflicting opinions have resulted in a glaring double standard operating in the Queensland justice system.

In 1996 former DPP Royce Miller's advice resulted in a number of senior government figures escaping prosecution for shredding 100 hours of tapes and documents knowing the material was being sought by a firm of lawyers for a potential legal proceeding.

Mr Miller said the wording of a form of the Supreme Court meant the Cabinet Ministers and senior officials involved could not be prosecuted for destroying evidence – despite the wording of the law involved (section 129 of the Criminal Code).

Mr Miller said a court proceeding had to be under way at the time of the destruction for an offence to be committed.

His argument has been criticised since by a number of legal figures.

However, current DPP Leanne Clare's interpretation of s 129 resulted in an ordinary citizen being prosecuted and given a suspended jail term for shredding four pages of a book – a shredding which took place some five years before legal proceedings relating to those pages were initiated.

The document obtained by *TIM* is a letter from Ms Clare [see page 2] who wrote to the legal team representing Douglas Ray Ensbey in relation to the charges laid against him for guillotining four pages of a girl's notebook.

In her letter, Ms Clare said the prosecution of the case against Mr Ensbey was "in the public interest".

"I note that the indictment form for Section 129 refers to an accused's knowledge that the document '*was or* ***might be***' [Ms Clare's emphasis] required in evidence in a judicial proceeding," Ms Clare said.

She said the scope of s 129 was wide enough to allow prosecution of Mr Ensbey as he "must have known that despite his efforts, there was a possibility of such a prosecution" when he guillotined the pages.

Former Baptist minister Douglas Ensbey ... lost his job

In her letter Ms Clare cited the case of 'R v Rogerson' (1992) in which the High Court determined that an attempt to pervert the course of justice did not require evidence that a prosecution for an offence was being considered.

Support for Ms Clare's interpretation of s 129 was provided by Attorney-General Rod Welford last year when he appealed the leniency of the sentence Mr Ensbey was given.

The Attorney's appeal contradicted the state government's repeated reliance on Mr Miller's analysis to avoid setting up an inquiry into the Heiner document shredding by Goss government Ministers and senior bureaucrats - a shredding which occurred after notification that the material involved could be needed for a potential legal action.

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What if a tsunami

came tonight and you didn't hear the loud hailer?

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Unis may mount

constitutional case against student union reforms.

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In 40 years there

has been only one Aborigine in state parliament.

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Ruddock's

defamation reforms cop a blast from Qld lawyers.

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