

Curl

Property law | women and law | contemporary legal issues

Sunday, 24 November 2013

How Queensland is failing to measure up to standards of accountability



Checks and balances at risk in Queensland*

Following its findings of extensive corruption in Queensland government and police service, the [Fitzgerald Inquiry](#) recommended an independent body be established, charged with investigation of corruption and crime in Queensland.

Detailed analysis of the various common instances of other prevalent official misconduct is not called for in this report. It is sufficient to record that the evidence before this Inquiry plainly established common and, apparently, growing manifestations of other official misconduct and its central importance in facilitating major and organized crime.

The seriousness of that other official misconduct must not be overlooked. Rather it is the plainest demonstration of the need for the researched and integrated approach to organized and major crime mentioned earlier in this report.

One possible model explored by the Report was an independent commission against corruption. This was rejected because of the myriad tensions inevitably associated with it. Instead, a Criminal Justice Commission ('CJC') was recommended, to be overseen by a parliamentary Criminal Justice Committee [Part 10.2]. In 2002, the CJC merged with the Queensland Crime Commission to form the [Crime and Misconduct Commission](#) ('CMC').

As the functions of the original CJC have evolved, it is instructive, particularly in light of recent political events in Queensland, to revisit Fitzgerald's discussion of the tensions and challenges in having an independent commission against corruption. Many of his observations seem pertinent to the CMC and its relationship with the government.

In this post I will use Fitzgerald's report to provide context for why developments in Queensland are so troubling.

There is the risk that any autonomous investigative body, particularly one infused by its own inevitable sense of importance and crusading zeal, may become increasingly insensitive to the delicate balance between conflicting

About Me



Kate Galloway

I lecture in land law at James Cook University and I write and think about the nature of property and its representations in the law; about issues affecting women; about justice generally; and about legal education.

[View my complete profile](#)

What readers like

[Queensland to reintroduce gendered statutory language](#)

[Women in Queensland. Back to the Future.](#)

[Why is Breastfeeding Scary?](#)

[Thinking Like a Lawyer - the Good the Bad and the Ugly](#)

[How the Law Constructs the Environment: The Wandoan Coal Case](#)

Subscribe To Curl

 Posts 

 Comments 

Follow me on twitter

[Tweet](#)

Labels

[environment](#) [feminism](#)
[human](#) [body](#)
[human](#) [rights](#)
[land law](#)
[marriage](#)
[Queensland](#)
[sexism](#) [women](#)

My Blog List

public and private interests, which is traditionally and best struck by judges.

In a recent [opinion piece](#) written by the Acting Chair of the CMC Dr Ken Levy, he expressed his support for new anti-bikie legislation. Some questioned the appropriateness of Dr Levy's comments, while others, including the Attorney-General Jarrod Bleijie, felt that it is appropriate for the CMC to provide an educative function. That is, the community should be made aware of the importance of its crime fighting activities.

This support fails to observe that Dr Levy's article failed to offer any evidence to support the laws introduced: how they are envisaged to be effective, what the alternatives might be and the precise nature of the problem to be resolved including the shortcomings with the previous legislative regime. The best evidence produced is that a majority of Queenslanders apparently supports the introduction of 'tough' new laws.

This lack of balance is perhaps an indication of what Fitzgerald described as 'the inevitable sense of importance and crusading zeal'. But in particular, the failure of government or indeed Dr Levy to recognise the fundamental winding back of civil liberties through criminalisation of association, demonstrates the 'insensitivity to the delicate balance between conflicting public and private interests' and that such a balance is 'traditionally and best struck by judges.'

ICACs are powerful bodies, which cannot be fully supervised in the same way as other parts of the criminal justice system. They are extremely controversial. Invariably setting one up has been accompanied by cogent and trenchant criticism. Control immediately becomes controversial. The government has a natural wish to control the appointment, resourcing and activities of an ICAC, whilst opposition and other interest groups have demanded that policy formulation and the overseeing of operational activities should be the domain of Parliamentary committees.

And so events progressed and the Parliamentary Crime and Misconduct Committee (PCMC) found evidence that Dr Levy had met with government media advisers before writing his opinion piece - in contradiction to evidence given by Dr Levy on this point. Dr Levy [subsequently admitted](#) to misleading parliament. Following this admission, further evidence was apparently adduced that indicated that Dr Levy's admission [may not have disclosed the complete story](#).

In response, the government accused the PCMC of bias against the Acting Chair of the CMC and [attempted to block the chair](#) of the PCMC from reporting its recommendations. The government subsequently [used its significant majority in parliament to sack the PCMC](#). The PCMC is now constituted by a majority of government members.

Again, the words of Fitzgerald are perhaps prescient. Even if the government's claims of bias were to be upheld, its actions embody its 'natural wish to control the appointment, resourcing and activities of [the CMC]'. The biggest problem with these events lies not in the allegation of bias - which may or may not be correct - but rather the government's actions in sacking the PCMC without due process. This is ironic considering the claims of the Attorney-General that the PCMC itself acted without due process.

It is increasingly common, and will undoubtedly become standard practice where enough is at stake, for those whose conduct is in question to impugn the motives and behaviour of those appointed to that task. No doubt there is ample scope for individual personal vituperation according to the circumstances, but orthodox allegations will include bias, unfairness, abuse and excess of authority most effectively in extravagantly pejorative terms such as 'witchhunt', 'McCarthyism' and so on.

And so Fitzgerald has again identified the logical consequence of the investment of 'crusading zeal'. Contemporary events have revealed their inevitable orthodoxy, through allegations of bias and unfairness. The question is whether the government itself has exercised an 'abuse and excess of authority' in response to its own claims of bias and unfairness.

The exclusion or reduction of party political considerations and processes from the decision-making process with respect to the administration of criminal justice is an important consideration underlying the establishment of the CJC. Accordingly, executive authority and connection with the CJC must be limited

[A Barrister's Blog \(by Paul Cutler\)](#)

[Amicae Curiae](#)

[Castan Centre for Human Rights Law's Blog](#)

[CDU Law and Business Online](#)

[cearta.ie](#)

[Charon QC](#)

[Law Geek Down Under](#)

[Marshall Chambers - Blog](#)

[PleagleTrainer Blog](#)

[Private Law Tutor](#)

[PropertyProf Blog](#)

[RAW/ROAR](#)

[simonmckay](#)

[Skepticalwyer](#)

[Survive Law](#)

[The Australian Professional Liability Blog](#)

[The Ed Techie](#)

[THE TRIAL WARRIOR BLOG](#)

[The Volokh Conspiracy](#)

[The Watermelon Blog](#)

Blog Archive

▶ [2014 \(3\)](#)

▼ [2013 \(18\)](#)

▶ [December \(4\)](#)

▼ [November \(3\)](#)

[How Queensland is failing to measure up to standar...](#)

[Forced removal of children. When will government l...](#)

[Is the Queensland government man enough to really ...](#)

▶ [October \(1\)](#)

▶ [September \(1\)](#)

▶ [August \(1\)](#)

▶ [July \(2\)](#)

▶ [June \(1\)](#)

▶ [May \(1\)](#)

▶ [April \(1\)](#)

▶ [March \(1\)](#)

▶ [January \(2\)](#)

▶ [2012 \(26\)](#)

▶ [2011 \(5\)](#)

to what is necessary to finance it, provide administrative and resource needs, and that necessary for public financial and other accounting purposes. For those purposes, but not otherwise, a Minister should be responsible for the CJC. ...[W]hich Minister should be responsible for the CJC depends upon adoption of the earlier recommendation in respect of the role and office of the Attorney-General. If the Attorney-General's ministerial responsibilities are changed as recommended earlier in this report, the Attorney-General should be responsible for the CJC. Otherwise the Premier or a Minister assisting the Premier (with no other responsibility) should be responsible for the CJC.

The Attorney-General Jarrod Bleijie is responsible for the CMC. He is also Minister for Justice. The Fitzgerald Report advised against one minister holding both portfolios as this removed one opportunity for checks and balances regarding criminal justice legislation in particular. This is perhaps borne out by the political nature of the latest raft of anti-association legislation. The structuring of accountability of the CMC is therefore contrary to Fitzgerald's recommendations.

The administration of criminal justice should be independent of Executive controls. It is an apolitical, vital public function. Such administration must be accountable for its activities and should be open to public review and accountable to the Parliament.

While there is more in Fitzgerald's report that explains cause for concern with Queensland's governance, I provide this quote as my last word here. The latest actions of the government, in a highly politically charged environment, undermine the vital public function of the criminal justice system and the system of parliamentary committees fundamental to our unicameral system.

Readers interested in keeping up with events in Queensland may be interested in this blog: [What's the State of Queensland](#), which curates news, commentary, law and scholarly work relevant to Queensland's governance.

* Image from <http://www.bboyscience.com/wp-content/uploads/2012/09/imbalance-300x198.jpg>

Posted by Kate Galloway at 11:05

