

## **REFORM IN POLITICS, CRIMINAL JUSTICE AND THE POLICE IN POST-FITZGERALD QUEENSLAND**

### **An Assessment**

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This article reviews the main recommendations and reforms emanating from the 1989 Fitzgerald Inquiry in Queensland. The ups and downs of the reform process are chronicled under the three headings of 'politics', 'criminal justice' and 'police'. In politics, there has been a retreat from Fitzgerald's vision for integrity in government, evidenced by bias in the electoral system, the failure to establish transparency in government decision-making, violations of appointment by merit, and the politicisation of policing. In criminal justice, major hypocrisies and inefficiencies remain in the operation of the law, with a regressive approach to crime reduction through over-reliance on imprisonment. In policing, the Fitzgerald vision for community policing was never implemented at the local level, and the pre-Fitzgerald model of police investigating police remains dominant. The article is focused on describing the nature and extent of the subversion of reform, with some reference to two contributing factors. The first is the gap between the general principles articulated in the Fitzgerald Report and the specific wording of its recommendations. The second concerns the power culture of the Australian Labor Party, whose winner-takes-all philosophy has triumphed over participatory democracy.

The Fitzgerald Inquiry produced a watershed report for democracy and criminal justice in Queensland. The report was intended to usher in a bold new age of transparency, innovation and integrity in politics and public sector management. Instead, the last 20 years have seen a series of stop-go efforts to implement reform and an overall retreat from the Fitzgerald vision of open and accountable government. Queensland's systems of government and justice remain 'ordinary' — mirroring the common biases and failings of other representative democracies — when Fitzgerald articulated something extraordinary: free and fair elections; transparency in government decision-making; the elimination of graft and gratuities; the removal of cronyism, nepotism and bias in public service appointments and decisions; and a scientifically grounded criminal justice system focused on crime prevention and progressive law reform.

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## Politics

The Fitzgerald Inquiry (1987–89) found that police corruption was the product of corruption in government — in the broadest sense of the word. The democratic basis of government — the electoral system — was corrupted by a system of zonal malapportionment that favoured the National Party (formerly the Country Party). The system was so distorted that some country voters had three times the voting power of many city voters. At the height of their power in 1986, the Nationals won 55 per cent of the seats in parliament with 39 per cent of the vote.<sup>1</sup> Queensland also lacked many standard curbs on executive power. The political reforms outlined in the Fitzgerald Report were intended to be substantive and wide ranging, and were to be implemented through two new permanent institutions: the Criminal Justice Commission (CJC) and the Electoral and Administrative Review Commission (EARC). The functions of the CJC were set out in some detail in the report. However, practical formulation of the vision for a ‘fair’ and ‘open’ political system was delegated to the EARC.<sup>2</sup>

During its short life, the EARC generated a series of reports with mixed outcomes. Implementation fell to the new Goss Labor government, which swept to power in 1989. On the positive side, a new independent Electoral Commission put an end to decades of gerrymandering by redrawing electoral boundaries close to one vote, one value. Freedom of Information (FOI) legislation was introduced and a register of parliamentarians’ financial interests was established along with disclosure of party political donations, judicial review, an independent Auditor-General’s office, a code of conduct for politicians and whistleblower-protection legislation. Labor also put an end to the banning and violent suppression by police of public demonstrations through a practical street march permit system.<sup>3</sup>

These reforms nonetheless masked deeper structural problems, which the Fitzgerald Report failed to address. The new boundaries simply created an ostensible fairness within the unfair system of single-member electorates in a single house of parliament.<sup>4</sup> The EARC accepted the submissions of the major parties regarding stable government and the value of tradition in favour of single-member electorates.<sup>5</sup> The main effect has been that Queensland has continued to be dominated by a duopoly of Labor and Coalition parties. Minor parties with support spread across electorates cannot concentrate sufficient votes to win seats. For example, in the last two elections the Greens obtained 8 per cent of votes but no place in the 89-seat parliament. These voters have effectively been disenfranchised because of the absence of any form of proportional representation in the parliament.

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<sup>1</sup> Queensland Parliamentary Record, *Table 1: Precis of Results of Queensland State Elections 1932–2006*, [www.parliament.qld.gov.au/view/historical/documents/electionsReferendums/Election\\_results.pdf](http://www.parliament.qld.gov.au/view/historical/documents/electionsReferendums/Election_results.pdf).

<sup>2</sup> Fitzgerald (1989), pp 127, 370–71.

<sup>3</sup> EARC (1990); Ransley (2001).

<sup>4</sup> Mackerras (1992).

<sup>5</sup> EARC (1990).

In 2001, Labor won its greatest majority with 74 per cent of the seats in parliament from 49 per cent of votes.<sup>6</sup>

Without the need to negotiate with minor parties or appeal to a wide constituency, the major parties perpetuated their winner-takes-all mentality. Immediately upon taking office, the new Goss Labor government broke an election promise to remove tolls on the Sunshine Coast motorway. Labor's demise in 1996 was widely attributed to a protest vote over a broken promise not to build a freeway through koala habitat.<sup>7</sup> The Borbidge Coalition government lasted one term and lost office, with a huge swing to the new fringe party One Nation, after it squandered \$11 million of taxpayers' money on a barely disguised witch-hunt of the CJC — in the form of Connelly-Ryan Inquiry — and failed to address issues of concern for ordinary voters.<sup>8</sup> The Beattie Labor government — 1998–2007 — survived on goodwill from an electorate willing to repeatedly forgive the *mea culpa* pleas from Beattie over failed hospital and infrastructure systems in the absence of any viable opposition from the in-fighting conservatives.<sup>9</sup> Labor's 'ordinary' party discipline has meant that members' first loyalty is to the parliamentary party, not the electorate. Labor hypocrisy was evident in its 2007 conscience vote on embryonic stem cell research, in contrast to its compulsory vote on the unpopular Traveston Dam Bill in 2006. The Labor machine showed its brutal face when the member for Noosa, Cate Molloy, voted against the dam. Molloy's support for the environment and the 900 residents and 90 businesses in the Mary Valley made her a martyr when she was disendorsed by the party and lost her seat.<sup>10</sup>

FOI was another victim of slippage between Fitzgerald's visionary statements and the finer text and recommendations of the report. 'Without information,' declared Fitzgerald, 'there can be no accountability ... In an atmosphere of secrecy ... corruption flourishes.'<sup>11</sup> FOI therefore became a major plank in the Fitzgerald reforms, adopted as a key policy by Labor. The Fitzgerald Report identified Cabinet as the real engine of government and criticised the Bjelke-Petersen government for hiding decision-making behind the doors of Cabinet. At the same time, however, Fitzgerald's comments were confined to 'excessive cabinet secrecy',<sup>12</sup> and he acquiesced to the tradition of Cabinet confidentiality. The insult to electors represented by Cabinet secrecy was compounded by the Goss government's cynical decision to expand FOI exemptions beyond areas such as government-owned corporations to any document vaguely related to Cabinet, thus granting 'blanket

<sup>6</sup> Queensland Parliamentary Record, *Table 1: Precis of Results of Queensland State Elections 1932–2006*, [www.parliament.qld.gov.au/view/historical/documents/electionsReferendums/Election\\_results.pdf](http://www.parliament.qld.gov.au/view/historical/documents/electionsReferendums/Election_results.pdf).

<sup>7</sup> Australian Broadcasting Corporation, 'Queensland Election 1998: Hot Spots, Key Seats', [www.abc.net.au/news/qe98/hotspots.htm](http://www.abc.net.au/news/qe98/hotspots.htm).

<sup>8</sup> Emerson and Niesche (1997); Reynolds (2000).

<sup>9</sup> Williams (2004).

<sup>10</sup> Robson (2006a, 2006b).

<sup>11</sup> Fitzgerald (1989), p 124.

<sup>12</sup> Fitzgerald (1989), p 127.

secrecy to wheelbarrow loads of material which might be required by Cabinet, even without taking them there'.<sup>13</sup>

The new CJC also failed to ensure accountability in government. It was a peculiar hybrid creature that combined the functions of a public sector anti-corruption commission, a crime commission and a coordinating agency. The 1992 'travel rorts affair' provided the first major test of its powers and tenacity — and of Labor's commitment to reform. The report into improprieties in the management of politicians' expense accounts found that in one parliamentary term, 54 members had been involved in 225 journeys of a highly questionable nature.<sup>14</sup> The majority of members under suspicion were unable to recall what they did or provide any reasonable explanations for the trips. Many of the journeys were transparently for personal reasons, such as family holidays. Despite the revelations, there was a perception that the CJC 'fudged' the issue in that offenders were not named, detailed investigations were not conducted and no charges were laid.<sup>15</sup> The report claimed that criminal charges would not succeed in the courts, but it did not detail the legal reasoning and it remains difficult to see how criminal code provisions — for example, in relation to fraud and dishonesty — should not have been applied at least in a test case. One of those involved, Terry Mackenroth, travelled with his wife to Sydney at taxpayers' expense in order to coach his netball team, which was playing in a national competition.<sup>16</sup> Mackenroth was forced to resign as Police Minister but was soon rehabilitated as Treasurer.

Revised guidelines emanating from the travel rorts inquiry failed to clamp down on perks of office and conflicts of interest.<sup>17</sup> Gratuities, for example, are normally completely prohibited by public service codes of conduct.<sup>18</sup> However, in 1997 the *Courier-Mail* revealed that heads of government departments had accepted gifts from companies tendering for work. Kevin Davies, Director-General of the Public Works and Housing Department, 'accepted free tickets to the Three Tenors concert from Telstra and was accused of later granting the telecommunications company a \$200,000 contract'.<sup>19</sup> Davies was also accused of using his departmental credit card to pay for accommodation in Melbourne while attending the performance. Despite a promise by Premier Borbidge to tighten the rules, a 2004 *Sunday Mail* investigation obtained details of numerous gifts paid to senior public servants. Denis Luttrell, Director of the Police Service's Information Management Division, received 82 gifts in five years — including numerous free golf games, theatre tickets and tickets to sporting events — all from companies seeking business

<sup>13</sup> Chamberlin (2009), p 24.

<sup>14</sup> CJC (1992).

<sup>15</sup> Walker (1992), p 9.

<sup>16</sup> Targett (2001).

<sup>17</sup> Morley (1997).

<sup>18</sup> Prenzler (2009a), pp 17–18.

<sup>19</sup> Metcalf (1997), p 3.

with the police.<sup>20</sup> The CJC/CMC has shown scant interest in the topic, producing a guidelines paper<sup>21</sup> but failing to fix the problem.

Appointment by merit was another area of reform focused on by Fitzgerald but trampled on by the major parties and ignored by the CJC.<sup>22</sup> The issue of the appointment of elected members' relatives to electoral offices remains unresolved 20 years after the inquiry.<sup>23</sup> Nepotism in the courts was revealed by the *Courier-Mail* in a 2000 report on judges employing their children as associates.<sup>24</sup> Senior public service appointments have been another area of abuse. In 2000, for example, former minister Bob Gibbs walked into the plumb post of Trade Commissioner to the Americas after quitting his seat.<sup>25</sup> The vacancy was not advertised and there was no competition.<sup>26</sup> Most spectacularly, former Premier Beattie replaced Gibbs in Los Angeles, again without an open appointment process, soon after quitting his seat mid-term in 2009 and forcing an expensive by-election. Beattie had previously declared he would not take any government posts, 'to avoid any unfavourable perceptions of deals or otherwise'.<sup>27</sup>

Another area where reform has failed is in the politicisation of the police portfolio. Fitzgerald was highly critical of the role of the Queensland Police Union of Employees in defending corrupt police and aggressively opposing anti-corruption measures. The pre-Fitzgerald Union had been highly politicised, openly declaring support for the government and campaigning to remove the reforming Commissioner Ray Whitrod (1970–76). Commissioner Lewis (1976–87) — jailed for 14 years for corruption — was accused of forming a 'kitchen cabinet' with Premier Joh Bjelke-Petersen. With the appointment of President Gary Wilkinson in 1994, the union stepped up its campaign to limit oversight of the police. A perfect opportunity arrived following the 1995 state election in which a wave of protest votes reduced Labor's majority to one. The opposition successfully appealed the result in the electorate of Mundingburra and a by-election was ordered. Wilkinson met secretly with opposition leader Rob Borbidge and shadow Police Minister Russell Cooper. The parties signed a memorandum of understanding (MOU), in which the politicians agreed to a shopping list of union claims. The union then launched a law-and-order campaign in the by-election in support of the Coalition. The Liberal Party candidate won by a narrow margin and government in Queensland reverted to the National Party-dominated Coalition. An ecstatic member of the union executive boasted of its achievements in a newsletter, thus revealing the agreement.<sup>28</sup>

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<sup>20</sup> Murray (2004), p 21.

<sup>21</sup> CMC (2008).

<sup>22</sup> Fitzgerald (1989), pp 131, 253–54.

<sup>23</sup> For example, Cole (2005).

<sup>24</sup> Whittaker (2000).

<sup>25</sup> Odgers (2006), p 10.

<sup>26</sup> Cf. Fitzgerald (1989), p 131.

<sup>27</sup> In Condon (2008), p 28.

<sup>28</sup> Prenzler (1997), p 16.

The disclosure of the agreement was met with outrage in the media, and the MOU was roundly condemned as a return to kitchen cabinet politics. Borbidge and Cooper had agreed to remove the compulsion for police to answer self-incriminating questions and to restrict the CJC's jurisdiction over police to criminal matters. The signatories also agreed to a major role for the union in appointing the Police Commissioner. The CJC launched an inquiry, appointing an out-of-state Supreme Court judge — Mr Kenneth Carruthers — who was given the widest possible brief in terms of the Fitzgerald reform agenda. His comments during the inquiry suggested the strong possibility of adverse findings against the signatories to the MOU. The new government had promised an inquiry into the CJC and immediately established an inquiry into the CJC known as the 'Connolly-Ryan Inquiry'. Connolly and Ryan demanded Carruthers preserve documents from his inquiry for possible access; this prompted Carruthers to resign, claiming the demand compromised his independence. Two barristers took over from Carruthers and were given narrow legal terms of reference. It was found that the politicians involved had no case to answer.<sup>29</sup> The barristers recommended departmental charges against the police officers involved in the MOU under a section of the police Code of Conduct related to unwarranted criticism of QPS personnel. Police Commissioner O'Sullivan, however, claimed there was insufficient evidence to proceed.

The Connolly-Ryan Inquiry into the CJC was shut down by the Supreme Court for 'ostensible bias' after a CJC Commissioner reported that Connolly had told him: 'Now that our side of politics is back in power we can do a proper critique of the Fitzgerald experiment.'<sup>30</sup> However, this did not stop the Borbidge government pursuing its vendetta against the CJC, partly over the damage done to key party figures in the travel rorts affair.<sup>31</sup> The government accused the CJC of neglecting pedophilia. It then put the CJC's serious and organised crime function into a new Queensland Crime Commission (QCC). Ironically, structurally this was arguably the right thing to do. It was not to last, however. The Beattie Labor government shut down the QCC in 2001 and put its functions back into the CJC, renamed the Crime and Misconduct Commission (CMC).

The problem of politicisation also carried over to the CJC's handling of allegations against the Labor Party in the Mundingburra by-election. The incumbent Labor member claimed that senior party officials had tried to bribe him into withdrawing to allow his replacement by another candidate. The CJC found insufficient evidence, but the investigation appeared superficial.<sup>32</sup> Since the MOU fiasco, Labor has had a series of police ministers who appeared more concerned with appeasing the union than ensuring genuine accountability. In one of the most prominent examples, in 2008 Police Minister Judy Spence gave in to Police Union

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<sup>29</sup> CJC (1996b).

<sup>30</sup> In Finnane (2000), p 4.

<sup>31</sup> Prenzler (2000).

<sup>32</sup> Meryment (1997).

pressure and pre-empted a trial of tasers by announcing a statewide rollout of the guns.<sup>33</sup>

Fitzgerald asserted that the EARC should 'provide an enduring and independent process to review and recommend the necessary electoral and administrative laws and guidelines and procedures'.<sup>34</sup> However, government arrogance was further entrenched when Labor disestablished EARC in 1993. The EARC had fallen out of favour with Premier Goss over secrecy in government advertising expenditures.<sup>35</sup> Its recommendations for a Bill of Rights, a Code of Conduct for politicians and advertising guidelines had also been an irritant. Had the EARC remained, it might have pre-empted, or at least provided a systematic response to, the 2009 integrity crisis faced by the Bligh government (2007– ) over disaffection with FOI, influence peddling by developers making party political donations, privileged access to ministers by businesses people at ultra-expensive party fundraising dinners, and conflicts of interest with ex-ministers turned lobbyists sitting on government boards.<sup>36</sup> (The Beattie government had earlier failed to implement CMC recommendations to stop deception in local government elections.)<sup>37</sup> It is also the case that there are still no adequate brakes on wasteful government expenditure.<sup>38</sup> For example, in 2008 the *Courier-Mail* revealed that Queensland Rail planned to spend \$30,000 on a party while school children and the elderly were squashed into commuter trains every day.<sup>39</sup>

A final point to make under the heading of political accountability concerns the jurisdiction of the CJC/CMC. Its governing Act, *The Crime and Misconduct Act 2001*, appears to provide very wide coverage of politicians and public officials. However, the fact that there are no disciplinary procedures available for state and local elected officials means that the CMC has no authority over this group except in criminal matters. The large majority of complaints against politicians are therefore outside the CMC's jurisdiction.<sup>40</sup> The problem was highlighted in the travel rorts affair and again in the CMC's inquiry into the 2004 Gold Coast City Council election — in which councillors escaped sanctions over widespread deceit in a developer-bankrolled campaign.<sup>41</sup> The CMC is also unable to exercise jurisdiction over corporatised government entities or outsourced services, such as private prisons.<sup>42</sup> Another limitation follows from the enormous discretion granted to the CMC on how to proceed with matters. The commission generally complies with the principle of devolution set out in the Act in Section 34C. It investigates

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<sup>33</sup> 'Qld Taser trial ends ahead of statewide rollout', *Australian Associated Press General News*, 30 June 2008.

<sup>34</sup> (1989) p 370.

<sup>35</sup> Chamberlin (2009).

<sup>36</sup> Chamberlin (2009).

<sup>37</sup> CMC (2006); Stolz (2006).

<sup>38</sup> Parnell (2003).

<sup>39</sup> Wardill (2008).

<sup>40</sup> Butler (2000).

<sup>41</sup> CMC (2006).

<sup>42</sup> Butler (2000), p 5.

fewer than 2 per cent of the approximately 3,500 complaints it receives each year — despite a budget of \$37 million and a staff of 350.<sup>43</sup> The remaining complaints are dealt with in house by government departments and local government. The commission also lacks public accessibility. It is bunkered down in the Brisbane CBD, with no offices in regional centres in an enormous decentralised state.

## Criminal Justice

Fitzgerald described crime in Queensland as a serious problem, exacerbated by government neglect. The approach to law enforcement and crime prevention was characterised as ‘piecemeal’, ‘fragmented’ and ‘under-resourced’.<sup>44</sup> Fitzgerald observed that the system lacked the data necessary to focus and evaluate enforcement strategies. The report also pointed to the hypocrisy in criminal law. Numerous activities were prohibited but widely practised with the knowledge of authorities. The criminal justice system was characterised by excessive delays at all stages in the process of investigation and prosecution. Fitzgerald therefore envisaged a wholesale reorientation of criminal justice towards more tangibly just outcomes and more efficient scientific practice.

The post-Fitzgerald period saw some positive reforms in criminal justice. Homosexuality was legalised. Gambling was liberalised and regulated more effectively. Prostitution law reform, on the other hand, was avoided and then addressed with a system that allowed prostitutes to work alone from home. After a predictable spate of attacks on sole operators, regulation of brothels was introduced in 1999. However, it is estimated that only 10 per cent of prostitution is conducted within legal brothels, and that most prostitution occurs through a large illegal and unsafe outcall sector.<sup>45</sup>

In the area of criminal sanctions, there was a positive enlargement of community corrections. The Coalition government also introduced a system of victim–offender mediation for juvenile offences. An evaluation found high levels of stakeholder satisfaction and recommended the system be mainstreamed across both juvenile and adult systems.<sup>46</sup> The recommendations were ignored, and a decade later restorative justice and restitution to victims of crime remain marginal to criminal justice. It costs \$43,000 per year to house a prisoner and only \$3,500 to manage an offender in community corrections.<sup>47</sup> Nonetheless, both sides of politics have persisted with prison as a first option for many offences, including a large volume of non-violent offences. The Beattie government launched a prison building program, including a ‘megaprison’ facility at Gatton expected to cost taxpayers \$500 million.<sup>48</sup> A 2008 review of prisons by the Prisoners’ Legal Service and

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<sup>43</sup> CMC (2008), pp 25–6, 67, 76.

<sup>44</sup> Fitzgerald (1989) p 149.

<sup>45</sup> Schloenhardt and Cameron (2009).

<sup>46</sup> Hayes and Prenzler (1998).

<sup>47</sup> SCRGSP (2009), Tables 8A.9 and 8.11.

<sup>48</sup> ‘Qld: Gatton Selected for “Megaprison”’, *Australian Associated Press General News*, 29 November 2006; ‘Work Begins on Gatton Jail Project’, *Australian Broadcasting Corporation (ABC) News*, 24 January 2008.



Catholic Prison Ministry found inadequate health services, and inadequate education, rehabilitation and pre-release programs.<sup>49</sup> Queensland has the lowest prisoner employment rate of any Australian jurisdiction and the second lowest rate of education and training of prisoners.<sup>50</sup>

Given Fitzgerald's emphasis on a progressive, scientific approach to criminal justice, what is most striking about the Queensland criminal justice system is its ordinariness. The criminal courts remain under-resourced, with justice delayed by over six months in the magistrates court in 30 per cent of cases, 30 per cent in the children's court and 20 per cent in the district court (non-appeal).<sup>51</sup> Queensland still uses an expensive and time-wasting committal process that entails double handling of the very large majority of higher court matters. The government introduced an innovative State Penalties Enforcement Registry to negotiate recovery of unpaid fines, but in 2008 it was revealed the system had a backlog of 1.9 million fines worth \$462 million.<sup>52</sup> A recent study of domestic violence protection orders found a pattern of significant downgrading of assault and other crimes associated with breaches of orders.<sup>53</sup> The system of judicial appointment also remains archaic and vulnerable to patronage, with no open advertising and competition for vacancies. Despite Fitzgerald's findings of extensive process corruption, Queensland still lacks a permanent criminal case review commission to independently investigate suspected miscarriages of justice.<sup>54</sup>

Criminal law in Queensland also remains characterised by hypocrisy. Elective abortions remain illegal despite the fact that 85 per cent of Queenslanders believe abortion should be a decision between a woman and her doctor, and despite the fact that a legal farce — a loophole defence related to preserving the life of the mother — means that 13,000–14,000 abortions are performed each year.<sup>55</sup> The prohibition is largely the result of conservative religious influences on the ruling political parties,<sup>56</sup> as is the prohibition on voluntary euthanasia, which is also widely practised and strongly supported by public opinion. It is a crime to give a dying person drugs to hasten their death, but not to give them the same drugs for pain relief while knowing the drugs will cause death.<sup>57</sup> Gross hypocrisy also characterises Queensland's drug laws. Illicit drugs are heavily criminalized, and tobacco and alcohol are lightly regulated. This is despite the fact that, in Australia, tobacco kills 55 times as many people as heroin and alcohol kills 12 times as many.<sup>58</sup>

Perhaps most tragic of all is Queensland's 'ordinary' road toll. Each year approximately 350 people are killed in horrific smashes on Queensland roads and

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<sup>49</sup> PLS/CPM (2008).

<sup>50</sup> SCRGSP (2009), Table 8A.40.

<sup>51</sup> SCRGSP (2009), Table 7.9.

<sup>52</sup> Burke (2008).

<sup>53</sup> Douglas (2008).

<sup>54</sup> Weathered (2007).

<sup>55</sup> Ransley and Prenzler (2009), p 30.

<sup>56</sup> Fraser (2009).

<sup>57</sup> Ransley and Prenzler (2009), pp 29–30.

<sup>58</sup> Ransley and Prenzler (2009), p 28.

more than 6,600 are hospitalised.<sup>59</sup> In traffic law enforcement, Queensland has always been well behind the innovators. Victoria introduced random drug testing in 2004. Queensland introduced it in 2007 despite the fact that survey data were available from 1998 showing that 5.3 per cent of Queensland drivers were under the influence of drugs.<sup>60</sup> Particularly telling is the anti-democratic nature of government inaction on road safety. Thousands of Queenslanders have been killed and maimed in grotesque multi-vehicle accidents at notorious black spots that were the subject of frequent complaints from local residents.<sup>61</sup> There is a palpable failure to match intervention to risk. There are no tests, for example, to renew a licence and demonstrate currency with the law and road safety principles. The culture of under-enforcement in traffic law is also strongly evident in other areas of regulation, such as environmental protection<sup>62</sup> and consumer protection.<sup>63</sup>

A particular oddity of the Fitzgerald report was the recommendation that the new anti-corruption commission should include a criminal justice coordination unit. This resulted from Fitzgerald's observation that the Bjelke-Petersen government took a backward and uncoordinated approach to criminal justice. A 'Research and Co-ordination Division' within the CJC was given the task of analysing crime trends, initiating law reform, prioritising resource allocations across the system, and developing 'compatible systems' for effective cooperation between the three arms of the system.<sup>64</sup> This was a unique arrangement that attracted attention away from the Commission's core business — public sector integrity — and could create policy conflicts between efficiency and integrity. The idea of coordination did nonetheless make sense. But 20 years later there is no coordination of the criminal justice system, and the critical question of how best to utilise the whole criminal justice system to reduce crime was never addressed by the CJC.

Another peculiarity of the CJC/CMC is its role in fighting major and organised crime. It seems bizarre to task an anti-corruption commission with this mission. Again, the role divides the CMC's focus, and also distracts it from dealing with ordinary complaints. The Fitzgerald Report only saw a very limited role for the commission in the area of criminal intelligence coordination,<sup>65</sup> but this role has been enlarged significantly. Organised crime is a major corrupter of law enforcement, and the CMC's role requires it to work closely with police, with no equivalent anti-corruption body to provide a counter to this high-risk activity.

## The Police

Fitzgerald found that the police corruption problem he identified was inextricably linked to a wider problem of management. As a result, the report made a wholesale

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<sup>59</sup> SCRGSP (2009), tables 6A.41 and 6A.42.

<sup>60</sup> Nielson (2005), p 4.

<sup>61</sup> For example, Madigan et al (2009).

<sup>62</sup> Briody and Prenzler (1998).

<sup>63</sup> Hayes and Prenzler (2003).

<sup>64</sup> Fitzgerald (1989), p 375.

<sup>65</sup> Fitzgerald (1989), p 372.

critique of police mismanagement, which was breathtaking in its uncompromising severity:

The Queensland Police Force is debilitated by misconduct, inefficiency, incompetence, and deficient leadership. The situation is compounded by poor organization and administration, inadequate resources, and insufficiently developed techniques and skills for the task of law enforcement in a modern complex society. Lack of discipline, cynicism, disinterest, frustration, anger and low self-esteem are the result. The culture which shares responsibility for and is supported by this grossly unsatisfactory situation includes contempt for the criminal justice system, disdain for the law and rejection of its application to police, disregard for the truth, and abuse of authority.<sup>66</sup>

One can see here the intermingling of management issues to do with both integrity and general policing. 'Leadership' also inevitably entailed the minister and government. The comprehensive reforms recommended by Fitzgerald matched the extent of the critique, with the adoption of community policing as a new philosophy, the creation of the CJC with a police focus, and the introduction of wholesale human-management reforms.

On the positive side of the ledger, the CMC was granted most of the powers and resources consistent with a best-practice model of police integrity management.<sup>67</sup> It has Royal Commission powers to compel answers to questions, seize evidence, apply for search warrants and conduct covert operations, and it has 'own motion' powers to pursue any matters as it sees appropriate. There has been a fairly steady stream of convictions, dismissals and resignations of police emanating from the CMC's work that provide some reassurance of vigilance and determination in combatting misconduct.<sup>68</sup> There have also been improvements within the Police Service. Selection criteria placed greater value on maturity and tertiary education. More thorough inquiries were made about the integrity of recruits, and community representatives were introduced on to interview panels. Discriminatory height, weight, age and sex restrictions were abolished. Ethics was given more prominence in police training, and a more systematic process of appointment by merit was introduced.<sup>69</sup>

A CJC evaluation of the first five years of reform, published in 1997, indicated a general improvement.<sup>70</sup> There had been large increases in complaints but these were attributed to greater public confidence in the new system, and there were declines in allegations of duty failure, fabrication of evidence and serious assaults. The proportion of investigated complaints that were substantiated rose from around 14 per cent per year pre-Fitzgerald to an average of 27 per cent per year in the four

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<sup>66</sup> Fitzgerald (1989), p 200.

<sup>67</sup> Prenzler (2009b).

<sup>68</sup> CJC (1997); Franklin (2002).

<sup>69</sup> Drew and Prenzler (2010).

<sup>70</sup> CJC (1997).

years after the full establishment of the new system.<sup>71</sup> Survey data also showed a strong improvement in public confidence in police integrity.

There was, however, an emerging set of problems. In terms of powers, the CJC lacked the full armoury expected of an advanced integrity commission. Successive governments refused to give it phone-tapping powers, despite the fact that this is a standard tool in high-end law enforcement. More significantly, the CJC lacked any adjudicative powers, as does the CMC. Disciplinary action can only be recommended to the Police Commissioner and criminal matters referred to the public prosecutor, although the CMC can prosecute intermediate matters in a misconduct tribunal. With no real adjudicative powers the CMC often finds itself impotently expressing a 'not happy' response over final decisions and sanctions administered by the police, tribunals or courts.<sup>72</sup>

The 1997 report on reform identified the police weakening of CJC disciplinary recommendations as a significant problem.<sup>73</sup> Too many matters were not accepted as substantiated or were downgraded, with tariffs such as reprimands or counselling. The problem was compounded, however, by a misdirection of the commission's efforts towards criminal prosecutions — despite Fitzgerald's recommendation that disciplinary and administrative action occur independently of criminal prosecutions.<sup>74</sup> The CJC review of reform reported a significant divergence in outcomes according to the mode of adjudicative procedure. A 'guilty' or 'resigned' outcome occurred in 35 per cent of cases where criminal charges were recommended. This compared with 50 per cent for 'official misconduct', 74 per cent for 'misconduct' and 78 per cent for 'breach of discipline'.<sup>75</sup> Overall, very little use has been made of tribunals as envisaged by Fitzgerald<sup>76</sup> — typically, only about five matters were finalised in this forum per year.<sup>77</sup> This is partly because tribunals involved unacceptable delays and took an 'excessively legalistic' approach, resulting in an unexpected number of dismissals.<sup>78</sup> The overall result of this is that the Commission is in a situation where all three adjudicative options are unsatisfactory.

Perhaps the greatest disappointment, however, lies with the CMC's failure to engage in genuinely independent investigations. Fitzgerald referred to a mix of seconded police and specialist civilian staff.<sup>79</sup> But the CMC has consistently relied on a large posse of about 100 seconded police to conduct its investigations, with limited supervision by lawyers.<sup>80</sup> In effect, the old system of police investigating police predominates, with the presumption — supported by limited evidence — that

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<sup>71</sup> CJC (1997), pp 60–62.

<sup>72</sup> For example, Viellaris (2009), p 1.

<sup>73</sup> CJC (1997).

<sup>74</sup> Fitzgerald (1989), p 386.

<sup>75</sup> CJC (1997), p 67.

<sup>76</sup> Fitzgerald (1989), pp 315–16.

<sup>77</sup> Prenzler (2000), p 666.

<sup>78</sup> CJC (1996a), p 3.15.

<sup>79</sup> Fitzgerald (1989), p 313.

<sup>80</sup> Prenzler (2000).

civilian oversight will solve the problem of apparent or real bias. In 1996 the wide-ranging 'Bingham Review' of the QPS received submissions from the QPS and the Police Union arguing that the QPS should take back more jurisdiction in misconduct matters. At the time, the CJC stated that 'the QPS has not yet demonstrated the ability to effectively and impartially investigate complaints of misconduct against its own members'.<sup>81</sup> Despite this judgment, the transformation of the CJC into the CMC saw a further shift in complaints-handling back to police.<sup>82</sup>

The above analysis indicates that, despite some achievements, the investigation and adjudication of alleged or suspected police misconduct are inadequate, with insufficient independence and robustness in the system to ensure confidence amongst stakeholders and the public. The system has evinced a profound disenchantment amongst journalists, scholars and civil libertarians, and generated deep dissatisfaction amongst those making complaints or disclosures about police (or any public official).<sup>83</sup> Journalist Phil Dickie — whose investigations led to the Fitzgerald Inquiry — described the CJC as 'a useful repository for burying complaints'.<sup>84</sup>

The view that the current system is far from ideal is also supported by analysis of a number of signal events that have drawn considerable media attention and public disquiet. The recent exposure of police misconduct involving criminal informants is a case in point. The 2009 report, *Dangerous Liaisons*, documented how disclosures were made to the CMC in 2003 and 2004 that were referred back to the police, who deemed them unsubstantiated allegations.<sup>85</sup> In 2005, the Commission was forced to give the case proper attention following a report from the Australian Federal Police, who stumbled across the matter in the course of a separate investigation. It took from 2003 to 2009 for a proper investigation to be completed. The following looks in some depth at another five signal events that further illustrate the problem of inadequate responses to police conduct issues.

### *The Death of Daniel Yock*

In 1993, the death in police custody of an 18-year-old Aboriginal man, Daniel Yock, sparked a bloody clash between police and protesters outside police headquarters. Investigative hearings were conducted for the CJC by a Queen's Counsel, Lou Wyvill. The resulting report concluded on medical evidence that Yock died from heart failure resulting from a long-term heart condition.<sup>86</sup> Death probably occurred in a police van en route to the Brisbane City Watchhouse after Yock was arrested for disorderly conduct. It was unlikely that his death was preventable in the immediate circumstances. Wyvill criticised the officers for their

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<sup>81</sup> CJC (1996a), p 3.21.

<sup>82</sup> CMC (2004).

<sup>83</sup> For example, Chamberlin (2002); CMC (2009b), p 47; Griffith and Fitzgerald (1992); Koch (2009); Wray (2009).

<sup>84</sup> *Good Weekend*, 12 August 1995, p 26.

<sup>85</sup> CMC (2009a).

<sup>86</sup> CJC (1994a).

lack of awareness of their duty of care, but concluded that there was no evidence supporting a charge of official misconduct.

The full circumstances revealed by Wyvill nonetheless evidenced a more complex failure of duty. Yock and eight other youths had been drinking alcohol in a park frequented by Indigenous people. The two police officers involved in the case circled the park in a police van several times and then followed the group as they walked through neighbouring streets, returning to their hostel. Wyvill affirmed that the youths acted in a disorderly manner. However, Wyvill also conceded that the disorderly conduct was directed at police in response to a perception of harassment. In addition, the officers conceded there was no intention to make arrests based on the behaviour observed in the park, and an element of provocation was clearly evident in their testimony. Ten police were eventually called to the scene of the arrests. When one of the officers radioed to another police vehicle carrying members of the Public Safety Response Team, he said: 'I just thought you might be around 'cause you love that type of stuff.'<sup>87</sup> Not only did Wyvill fail to see police provocation as a cause for a misconduct hearing, he also failed to take account of the 1991 report of the Royal Commission into Aboriginal Deaths in Custody.<sup>88</sup> Had the Royal Commission's recommendations been implemented, Yock would never have been arrested in the first place. However, following an arrest he would have been taken to a secure purpose-built diversionary centre where he could 'dry out'. The shorter distance to a local diversionary centre may have meant that First Aid could have been administered sooner. Had that failed, the different setting may have diffused the subsequent riot and profound deterioration of relations between police and Aborigines. Police had failed to initiate the establishment of a diversionary centre despite the problems of public drunkenness in the area, and the CJC had also failed to exercise its statutory authority to direct action to be taken.

### *The Pinkenba Six*

The 'Pinkenba Six' case began late on a cold night in 1994 in Brisbane's Fortitude Valley, when three Aboriginal boys were ordered into police vehicles by six officers. The boys — aged 12, 13 and 14 — were driven separately in three vehicles 14 kilometres to a swampy area of wasteland at Pinkenba. The officers threatened the boys, threw their shoes away and then drove off, leaving them to walk back to the city. The boys had criminal records but were not suspected of any crimes on this occasion. Police perceived them as a public nuisance and simply removed them. In the process, the officers were absent without authority and left the area understaffed. Following an investigation, the CJC initiated criminal charges of deprivation of liberty. The Police Union used its large fighting fund to hire two top barristers, who defeated the case at the committal stage, badgering the boys and confusing their testimony to make it appear they had voluntarily got in the car.<sup>89</sup> In a subsequent disciplinary hearing, the Deputy Police Commissioner dismissed three

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<sup>87</sup> CJC (1994a), p 29.

<sup>88</sup> Johnston (1991).

<sup>89</sup> Eades (2008).

of the officers and demoted three others, as well as their supervisor. The sentences were then suspended, effectively absolving all the officers involved.<sup>90</sup>

### *Palm Island*

The absence of a halfway house for intoxicated arrestees in Aboriginal communities was also a factor in the death of Mulrunji on Palm Island in 2004.<sup>91</sup> The event led to a destructive riot on the island in which the police station and courthouse were burnt down. On the morning of his death, a heavily intoxicated Mulrunji had been ambling down a footpath when he upbraided an Aboriginal Police Liaison Officer and a white police officer, Chris Hurley, who were arresting another man. Hurley then arrested Mulrunji and he was placed in the police van. At the police cells, an altercation between the two men led to Mulrunji's death from a split liver and ruptured portal vein. The coroner found that the liver could only have been split by an assault of some sort. Hurley initially maintained he and Mulrunji fell together to the cell floor, but he later changed his testimony to state that he must have fallen on to Mulrunji. This second account was critical to his acquittal in a trial for manslaughter. Regardless of the precise events, two critical contextual factors identified by the Coroner were the unnecessary nature of the arrest and the absence of a diversionary centre for intoxicated arrestees<sup>92</sup> — both evidencing failings by police management and the CMC.

### *South Bank Taser Incident*

Another controversial signal event concerned a 2008 police investigation that cleared an officer who tasered a 16 year old girl at Brisbane's South Bank Parklands. The officer tasered the girl while she was being held down by two security officers. The girl, who claimed she was supporting a friend who was waiting for an ambulance, was later acquitted of a charge of obstructing police. Although CMC Commissioner Robert Needham condemned the outcome of the police investigation, and alleged the police were failing to learn from mistakes, the CMC took no action itself.<sup>93</sup>

### *YouTube Assault*

In 2009 a YouTube video from 2007 was released of what appeared to be a serious assault of a man in custody in a Surfers Paradise police station. Grainy station footage showed a young man at the counter, his hands cuffed behind his back, kicking off his shoes. When he failed to remove his socks, a police officer knocked him to the ground. The man fell on his face and appeared to be left lying in a pool of blood. When other arrestees tried to assist him, they were pushed back by police and then escorted out of the waiting room over the man's body. The YouTube video was uploaded by the man's mother, who claimed his jaw was fractured and seven

<sup>90</sup> Prenzler (2000), pp 669–70.

<sup>91</sup> Waters (2008).

<sup>92</sup> Office of the State Coroner (2006).

<sup>93</sup> Wray and Chudleigh (2009).

teeth were broken. According to the *Sunday Mail*,<sup>94</sup> an internal police investigation overseen by the CMC cleared the officer involved of any charges.

A number of issues associated with more general cultural change have also highlighted deficiencies in the post-Fitzgerald accountability framework. One of these concerned reform of the detective culture. The Fitzgerald Inquiry revealed corruption that was most serious in the secretive and elite world of detectives. One anti-corruption measure concerned the integration of investigative and patrol functions.<sup>95</sup> This was intended to be achieved by training all police in investigation, requiring detectives to wear uniforms, rotating officers, breaking up specialist squads, and making most investigations a local responsibility. A 1994 report made some positive comments on the removal of specialist squads' monopolies,<sup>96</sup> but found that the core Fitzgerald recommendations were, on the whole, simply ignored. Two years later, the 1996 Bingham Review made many of the same criticisms.

The application of appointment by merit to police executive positions presents as another case of a derailed reform initiative. In response to its criticisms of police ineffectiveness, the Fitzgerald Inquiry recommended contract employment for commissioners and assistant commissioners. The most explicit comments were focused on the terms of employment of the Commissioner, with 'provision for termination on the grounds of inefficiency or incompetence evidenced by failure to achieve goals, standards of discipline and performance'.<sup>97</sup> The recommendations were reflected in the *Police Service Administration Act 1990*, but renewal of contracts was discretionary for the government. In 1992, Commissioner Noel Newnham's contract was advertised and he resigned in the face of hostile signals from the government.<sup>98</sup> But in 1996, six assistant commissioners marched on Minister Cooper's office to protest any moves to advertise their positions.<sup>99</sup> Cooper then renewed their positions, despite the fact that the 1996 Bingham Review of the QPS, initiated by Cooper, identified major failings in police management. It alleged that police had failed to reduce crime and lacked a corporate vision for crime reduction; that professional ethics were deficient; and that there were significant morale problems, an outmoded command and control ethos, and a significant problem of sexual harassment.<sup>100</sup>

The final area in which reform was subverted concerns the main philosophy and strategic direction of policing in Queensland. 'Community policing,' declared Fitzgerald, 'should be adopted as the primary policing strategy',<sup>101</sup> with an emphasis on close collaboration with local communities, a strong prevention focus and a service orientation to policing based on community needs. The 1994 CJC

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<sup>94</sup> Weston (2009).

<sup>95</sup> Fitzgerald (1989), pp 381–82.

<sup>96</sup> CJC (1994b).

<sup>97</sup> Fitzgerald (1989), p 278.

<sup>98</sup> *Courier-Mail*, 3 September 1996, p 1.

<sup>99</sup> *Courier-Mail*, 3 September 1996, p 4.

<sup>100</sup> Bingham (1996).

<sup>101</sup> Fitzgerald (1989), p 381.



evaluation of reform referred to some valuable innovations by the QPS in discrete areas such as a Women's Safety Project, Neighbourhood Watch and Community Consultative Committees. But it argued that the Police Service had adopted the form of community policing without the substance.<sup>102</sup> The very small number of exemplar community policing projects cited in the report, such as beat policing, were initiated from outside the QPS by the CJC. The Bingham Review also concluded that the QPS had failed to grasp the concept of working in partnership with the community or of an experimental and more scientific approach to crime prevention. Police still do not systematically engage local communities in crime prevention, nor do they communicate directly with their local constituencies through any regular open forums or newsletters. It is not even possible to access local crime data online to assess business or personal crime risks.

## Conclusions

Many of the problems that have occurred in Queensland in the post-Fitzgerald period can be explained in part by the gap between the Fitzgerald Report's visionary statements and its specific recommendations. In 1989, all political parties made commitments to implement the recommendations. But Fitzgerald left too much open to interpretation or compromised key principles of accountability in sketching out the new systems. In relation to the CMC, Fitzgerald's description of the Queensland Police Complaints Tribunal, which operated in the 1980s and 1990s, is a haunting reminder of how little progress has been achieved:

The Tribunal is an illustration of an administrative body with the superficial trappings of quasi-judicial impartiality and independence, set up as a façade for Government power ... a generally unsuspecting community is deceived ... [The Tribunal] has no power of determination and it can only make recommendations to the Minister which, if acted upon, almost always involve reference of the matters back to the Police Force ... The Tribunal is top heavy, its structure, functions and powers are misconceived, it is cumbersome and expensive ... its role overlaps with tasks already performed elsewhere.<sup>103</sup>

It is difficult to see how this description does not apply to the CMC in relation to its handling of the large bulk of complaints it receives about public sector misconduct. The CMC's reliance on seconded police and the devolution of complaints management demonstrate the point. In Queensland, in default of the CMC, the tabloid press appears as the most vigorous institution of accountability. There are now much more advanced models of successful integrity agencies in other jurisdictions.<sup>104</sup> The New South Wales Police Integrity Commission and the Northern Ireland Police Ombudsman, for example, are notable for minimising police involvement in investigations of police. The Northern Ireland Ombudsman also deals with all complaints itself. Policy has also moved forward in other jurisdictions in specifying police-to-civilian ratios in order to ensure civilian

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<sup>102</sup> CJC (1994b).

<sup>103</sup> Fitzgerald (1989), pp 290, 293.

<sup>104</sup> Prenzler (2009b), Chapter 10.

dominance, including a civilian presence on police disciplinary panels and specifying which matters must be dealt with by the independent agency to ensure stakeholder confidence in the impartiality of investigations and discipline.

Research on improvements in regulatory systems emphasises how opportunities for substantive change are rare, and frequently only occur in crisis situations generated by scandal.<sup>105</sup> The crisis in government in Queensland in the late 1980s was a rare opportunity for a giant leap forward in public accountability. The opportunity was tragically squandered. As noted, this occurred in part through the equivocal language of the Fitzgerald Report. But where the tragic principle has been most evident has been in the role taken by the Queensland branch of the Australian Labor Party. Not only did Labor in government subvert all the key Fitzgerald principles, it simultaneously betrayed the party's own policy commitment to a fair electoral system, open government and progressive criminal justice policies.<sup>106</sup>

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