

CHAPTER 2

Concerns relating to public administration

2.1 The committee was established to look at a number of aspects of Queensland Government Administration as they related to Commonwealth Government Affairs.

2.2 While the establishment of the committee raised questions about the doctrine of comity (which provides that one level of government should render appropriate respect for the processes of another), the terms of reference limited the inquiry to matters where there is a link between administrative activities of the Queensland government, and those of the Commonwealth, primarily through funding, bilateral processes and mutual obligations under certain legislation and international instruments.

2.3 The terms of reference also stipulate the timeframe to be considered is that which begins with the election of the former Queensland government, led by the Hon Campbell Newman on 26 March 2012.

2.4 It is useful to reflect upon the historical context of this inquiry, to help understand the depth of concerns felt by the people of Queensland. First, the Queensland parliament is the only unicameral state parliament in Australia, with no second house to keep checks and balances on decision making about legislation. This means that a single chamber can be entirely dominated by the governing party and can lead to concerns about the independence of decision making.

2.5 Second, the people of Queensland have chequered history with successive governments, with concerns perhaps never more evident than during the Bjelke-Petersen government that spanned from 1968 to 1987 and which led to the Fitzgerald inquiry in the late 1980s.

2.6 The Commission of Inquiry into Possible Illegal Activities and Associated Police Misconduct was conducted by Tony Fitzgerald QC from 1987 – 1989, in response to allegations of serious levels of corruption in the Queensland police force. Fitzgerald concluded in his 1989 report that corruption was not limited to branches of the Queensland Police Service, but was 'endemic across the state's public institutions and was both a symptom and a cause of Queensland's wider political culture.'¹

2.7 As a result of this inquiry, four Ministers and a Police Commissioner were jailed, the Premier was charged with perjury and the National Party was defeated at the Queensland state election after 32 years in government.

2.8 The people of Queensland have again voted to change their government, on 31 January 2015. They voted to remove Mr Newman not only as Premier, but also as a member of the Queensland Parliament.

1 Brisbane Institute, *The Fitzgerald legacy: 15 years on*, 26 August 2003, http://parlinfo.aph.gov.au/parlInfo/download/library/jrnart/4FBA6/upload_binary/4fba66.pdf;fileType=application%2Fpdf (accessed 17 March 2015).

2.9 In spite of the recent Queensland state election results, the committee believes it is important to set out concerns that were raised with it during this inquiry as a sign of respect to all those who took the time to contribute, and in the hope that lessons can be learned, and past mistakes not repeated.

2.10 Many submitters to the inquiry commented on the broader policies and practices of the former Queensland government. The volume of submissions received demonstrates the community's active engagement and interest in a range of issues, including the roles of the Crime and Corruption Commission (CCC) and the Queensland Industrial Relations Commission (QIRC), the importance of access to education and health care, Australia's international obligations, and the issue of political donations.

2.11 This chapter briefly sets out a number of issues that were touched on by witnesses and submitters.

Crime and Corruption Commission

2.12 The Queensland Crime and Corruption Commission (CCC), formerly the Crime and Misconduct Commission (CMC), was created to combat major and serious corruption in Queensland.² The CCC has unique investigative powers that are not available to the police or any other government agency.³ Specifically, it has the power to investigate particular cases of major crime and misconduct in the Queensland public sector.⁴

2.13 Some submitters drew the committee's attention to concerns they hold about the independence of the CCC in light of changes initiated by the Newman Government.⁵

2.14 For example, Mr Peter Wellington, MP, argued that measures 'raising the threshold for complaints and giving the Attorney-General control of the [CCC's] research program'⁶ have lessened the CCC's independence and weakened its powers.

[I]t is totally inappropriate that the Attorney-General can decide what areas the Crime and Corruption Commission undertakes research in... if the Crime and Corruption Commission wants to undertake research into a whole range of matters involving significant decisions or potential decisions involving big dollars and the government, they should have the capacity to do that without needing the authority of the Attorney-General.

2 Crime and Corruption Commission Queensland, *CCC 2014-18 Strategic Plan*, <http://www.ccc.qld.gov.au/about-the-ccc/ccc-2014201318-strategic-plan> (accessed 15 January 2015).

3 Crime and Corruption Commission Queensland, *About the CCC: Special powers*, <http://www.ccc.qld.gov.au/about-the-ccc/powers> (accessed 14 January 2015).

4 Crime and Corruption Commission Queensland, *CCC 2014-18 Strategic Plan*, <http://www.ccc.qld.gov.au/about-the-ccc/ccc-2014201318-strategic-plan> (accessed 14 January 2015).

5 Peter Wellington, MP, *Committee Hansard*, 28 November 2014, pp 1–13; Peter Wellington, MP, *Submission 38*; Dr Chris Davis, *Committee Hansard*, 28 November 2014, pp 14–22.

6 Peter Wellington, MP, *Submission 38*, p. 4.

Some of these decisions, some of these investigations may have significant implications and may involve politicians. If we want to have a separation between the leadership of a government and the Crime and Corruption Commission, which has the responsibility of investigating the leaders of our state, it must be totally separate.⁷

2.15 Dr Chris Davis drew comparison to the Independent Commission Against Corruption in NSW (ICAC), and posited that the CCC is not 'independent enough' to act in a way similar to ICAC.⁸

[T]he only way that you could actually answer the question of a truly transparent, truly accountable and truly honourable state government is to have the kind of powers of audit of politician performance such as they have in New South Wales.⁹

2.16 The committee notes the comparison with ICAC, which was established by the NSW Government in the late 1980s in response to community concern about the integrity of the state's public administration.¹⁰ ICAC's jurisdiction extends to all NSW public sector agencies and employees, except the police force, including government departments, local councils, members of state parliament, ministers, the judiciary and the governor.¹¹

2.17 ICAC's operations, including investigations, are not subject to the direction of politicians, any political party, or the government. Unlike most other publicly funded organisations, ICAC is not responsible to a government minister. ICAC argues that this independence is essential for the public to have confidence that it is not biased or subject to direction by the government of the day.¹²

2.18 In the context of the approval process for the CCC to undertake research, a number of submitters questioned the CCC's failure to investigate referrals relating to Coal Seam Gas (CSG) matters.¹³

2.19 For example, Ms Simone Marsh and Lock the Gate Alliance argued that the CCC failed to investigate legal flaws in the approval of CSG projects in Queensland by 'claiming that health and environmental "policy" matters were outside their

7 Peter Wellington, MP, *Committee Hansard*, 28 November 2014, pp 6–7.

8 Dr Chris Davis, *Committee Hansard*, 28 November 2014, pp 14–22.

9 Dr Chris Davis, *Committee Hansard*, 28 November 2014, p. 20.

10 Independent Commission Against Corruption, New South Wales, *Overview*, <http://www.icac.nsw.gov.au/about-the-icac/overview> (accessed 15 January 2015).

11 Independent Commission Against Corruption, New South Wales, *Overview*, <http://www.icac.nsw.gov.au/about-the-icac/overview> (accessed 15 January 2015).

12 Independent Commission Against Corruption, New South Wales, *Independence and accountability*, <http://www.icac.nsw.gov.au/about-the-icac/independence-accountability> (accessed 15 January 2015).

13 Lock the Gate Alliance, *Submission 133*, p. 38; Lock the Gate Alliance, *Committee Hansard*, 21 November 2014, pp 17–32; Jenny Chester, *Submission 6*; Sandra Williams, *Submission 11*; Simone Marsh, *Submission 39*.

jurisdiction.¹⁴ With specific reference to the investigation of referrals relating to the approval of CSG projects and export terminals, both Ms Jenny Chester and Ms Sandra Williams opined that the CCC's powers are manifestly inadequate.¹⁵

2.20 In speaking about the CMC, Ms Marsh stated: 'Well, at some stage they have decided they did not want to investigate environmental law matters. They did not tell us until seven months later.'¹⁶

2.21 Ms Marsh expressed further concerns about the failure of the CMC to investigate misconduct regarding environmental matters because in considering complaints about CSG made in February 2013, the CMC issued a statement:

It is important to note that the assessment did not examine matters of government policy or the environmental and health impacts of the coal seam gas industry as these issues do not fall within the CMC's jurisdiction.¹⁷

2.22 The committee will consider a number of issues relating to CSG in Chapter 3 of this report.

Queensland Industrial Relations Commission

2.23 The Queensland Industrial Relations Commission (QIRC) is an independent tribunal established to conciliate and arbitrate industrial matters in the state of Queensland.¹⁸

2.24 The committee heard from several union organisations which expressed views that the power and independence of QIRC has been diluted by changes made to Queensland's industrial relations system.¹⁹ For example, the Australian Council of Trade Unions (ACTU) stated:

Several changes have been made to Queensland's industrial relations system which served to dilute the power and independence of the Queensland Industrial Relations Commission (QIRC). For example, under the Industrial Relations (Fair Work Harmonisation) and Other Legislation Amendment Act 2012 (the FWH Act), enacted in June 2012, the QIRC has now been directed to be briefed by the government on a range of matters, such as the State's financial position and fiscal strategy, and to take this into consideration when making decisions. Of course, it has always been the

14 Simone Marsh, *Submission 39*; Lock the Gate Alliance, *Submission 133*, p. 38.

15 Jenny Chester, *Submission 6*; Sandra Williams, *Submission 11*.

16 Simone Marsh, *Committee Hansard*, 28 November 2015, p. 11.

17 Simone Marsh, *Submission 39*, p. 7.

18 Industrial Court of Queensland, Queensland Industrial Relations Commission, http://www.qirc.qld.gov.au/qirc/aboutus/aboutus_info/index.htm (accessed 14 January 2014).

19 The Australian Council of Trade Unions, *Submission 3*; The Australian Council of Trade Unions, *Committee Hansard*, 21 November 2014, pp 1–16; Queensland Council of Unions, *Submission 115*; Queensland Council of Unions, *Committee Hansard*, 21 November 2014, pp 1–16.

custom of industrial tribunals to take such matters into consideration; by legislating this, it appears that the State Government may be attempting to unduly influence the QIRC in its decision making. In addition, appeals of the Public Service Commission are now being referred to the QIRC, which causes some ambiguity and confusion in relation to the separate roles of these two bodies. Moreover, as part of the second tranche of Fair Work Harmonisation legislation, the Queensland Government has now introduced fixed one-year terms for their industrial commissioners. This is a radical departure from the previous system, which granted life tenure to its industrial commissioners. Life tenure is an important cornerstone of an independent judiciary as it ensures that judicial appointments, once made, are not subject to revocation for political reasons. These legislative changes suggest an alarming trend towards a potential dilution of the independence of the QIRC.²⁰

2.25 The Queensland Council of Unions (QCU) similarly argued that the state government has unduly influenced QIRC in its decision making, including through the referral of appeals of the Public Service Commission to QIRC and through the introduction of fixed one-year terms for industrial commissioners.²¹

2.26 QCU also raised specific concerns about the new requirement for QIRC to consider government 'fiscal strategy' and 'financial position' when determining wage negotiations by arbitration, claiming this goes 'a bridge too far'.²²

Taking the point back again to that of the fiscal strategy, that is a political determination. That is what the LNP will decide as its strategy. If you are going to operate as an independent tribunal, that is politicising the bench.²³

Education

2.27 Queensland Teachers' Union (QTU) officials advised the committee of concerns they held about the Queensland government's 'lack of transparent processes, inconsistency in decision making and potential conflicts of interest' within the education industry.²⁴

2.28 QTU suggested that the Queensland Government's appointment of members to the Queensland Skills and Training Taskforce excluded members with experience in relation to the public provision of vocational education and training (VET), and therefore, that the review process was flawed.

From our perspective, for such an important review of a critical element of both the education industry and the Queensland economy to exclude the public provider of vocational education and training, and indeed to have no

20 Australian Council of Trade Unions, *Submission 3*, pp 2–3.

21 Queensland Council of Unions, *Submission 115*; Queensland Council of Unions, *Committee Hansard*, 21 November 2014, pp 1–16.

22 Queensland Council of Unions, *Committee Hansard*, 21 November 2014, p. 6.

23 Queensland Council of Unions, *Committee Hansard*, 21 November 2014, p. 7.

24 Queensland Teachers' Union, *Submission 36*, p. 4.

representation from the union that represents the vast majority of educators who work in that industry, is a fundamental flaw in any review process.²⁵

2.29 By way of context, the Queensland Skills and Training Taskforce was established by the Queensland Government on 19 June 2012 in recognition that, in the government's view, strengthening Queensland's VET sector is fundamental to growing the state's four pillar economy and reducing unemployment to four per cent in six years.²⁶

2.30 The QTU also observed that in March 2012, the former Premier, the Hon Campbell Newman, assured voters that there would be no asset sales without a mandate for such sales. In spite of this, in May 2013, the former Minister for Education, Training and Employment announced that eight Queensland state schools had been identified for community consultation regarding proposed closure, and in September of that year, it was announced that six schools would close.²⁷

2.31 To illustrate its concerns, the QTU described to the committee the closure of a Queensland state high school, Nyanda,²⁸ and its subsequent sale to a private school. QTU explained to the committee that the subsequent sale both 'acknowledges that there was community need for a secondary school in the area' and 'erodes the public education system.'²⁹

2.32 Nyanda was the last secondary facility available to students in the area, and served a demographic whose parent community is dominated by Aboriginal and Torres Strait Islander peoples, Pacific peoples and people from other countries. Local students now have to travel some considerable distance to access secondary education.³⁰

2.33 QTU drew the committee's attention to alleged deficiencies in consultation about the school's closure, and the impact of not enabling Nyanda students to complete the end of the 2014 school year.³¹

2.34 In discussing recent improvements made to Nyanda, including a new resource centre, QTU noted that the decision to close Nyanda, meant the benefits of the facilities funded from the public purse would only be enjoyed by a few. Additionally, the substantial amounts of maintenance funds spent in the recent past on the 'soon-to-close school and significant, ongoing funds raised by the parents and citizens

25 Mr Kevin Bates, Queensland Teacher's Union, *Committee Hansard*, 28 November 2014, p. 37.

26 Queensland Skills and Training Taskforce, <http://www.training.qld.gov.au/industry/skills-training-taskforce/index.html> (accessed 15 January 2015).

27 Queensland Teachers' Union, *Submission 36*, p. 8.

28 Nyanda State High School was located in Salisbury, Queensland, on native Australian bushland. It had a strong focus on traineeships and apprenticeships. https://eqi.com.au/pdfs/school/eqi_sp_nyanda.pdf (accessed 15 January 2015).

29 Queensland Teachers' Union, *Submission 36*, p. 8.

30 Mr Kevin Bates, Queensland Teacher's Union, *Committee Hansard*, 28 November 2014, p. 37.

31 Queensland Teachers' Union, *Submission 36*, pp 8–12.

association to improve school facilities will not now benefit the public school students they were intended for.³²

[W]ith all of the six schools that closed the parent communities were very strong in their voice in saying that they had invested heavily as a community in those schools over decades. They were certainly concerned about the loss of that amenity to their community in terms of the investment. I have to acknowledge that, in all of these circumstances, parent groups are aware that, when they invest money into a public school, by operation of legislation, they cede to the state any control of that money and the resources that they had purchased. That is a condition under which it operates. Nonetheless, those people certainly feel a strong ownership of their schools and are concerned about the loss of that amenity in their community.³³

2.35 QTU also highlighted concerns surrounding the decision and circumstances that led to the closure of the Barrett Adolescent Centre (BAC) at Wacol,³⁴ the only tier 3 mental health service in Queensland providing both education and health care services for children and adolescents.³⁵ Of particular concern in this instance, was the lack of transitional arrangements for the patients following BAC's closure.

Following the closure of BAC, and with no tier 3 service available, patients were moved back into community care. Here many suffered detrimental effects due to the lack of 24/7 support required. Three former BAC patients have now taken their own lives and their deaths are currently being investigated by the Queensland Coroner.³⁶

2.36 The committee is saddened by the tragedy of young people taking their own lives, and concerned by any lack of targeted services available to support these vulnerable young people.

Healthcare

2.37 One issue that was raised with the committee – albeit to a limited degree – is the health care system in Queensland. Given the health system is vitally important to all members of the community, the committee believes it is important to summarise this evidence in its report.

32 Queensland Teachers' Union, *Submission 36*, p. 11.

33 Mr Kevin Bates, Queensland Teacher's Union, *Committee Hansard*, 28 November 2014, pp 37–38.

34 Barrett Adolescent Centre is a Special School which ensures normality through education and helps to prevent anxiety about school work. Where appropriate, Barrett Adolescent Centre will provide continuity of education from the presenting school or a program within the framework of the state curriculum. See <https://barrettadolescentcentreschool.eq.edu.au/Pages/default.aspx> (accessed 15 January 2015).

35 Queensland Teachers' Union, *Submission 36*, pp 13–15.

36 Queensland Teachers' Union, *Submission 36*, p. 13.

2.38 While some submitters raised issues about individual facilities, it became evident during the committee's hearing on 28 November 2014 in Brisbane that there are concerns about the health system as a whole, and there is perhaps a need for a closer expert look at whether the system is working optimally.

2.39 In this regard, Dr Chris Davis effectively set the context for considering the performance of the health system:

My interest in sharing some ideas with the committee today is really based on how we have performed since the major health reforms of 2012; the new national health agreements that came out, which provided for some very substantial increases in funding; whether those funds have been put to optimal use; and, most importantly, how we will cope with the increased pressures on the healthcare system going forward.³⁷

2.40 Dr Davis discussed in more detail the need for improved operational and allocative efficiency in the health care system:

[W]here we have to allocate what are going to be increasingly finite healthcare dollars in a way that achieves the maximum good for both the individual and the community. That will require rigorous data looking at the benefit accrued from medical interventions and also some decisions by patients and the community as to the models of care that work and do not work. Indeed, there are many models of care that do not actually achieve any good but they are entrenched in our clinical practice.³⁸

2.41 Dr Davis went on to emphasise the need for greater leadership by government in steering change in management of the health care sector.³⁹

[I]t is going to require great leadership by government to have those conversations and do the change management that is necessary, and that includes better and more timely access to palliative care, which of course is what many patients want. We need very much more ability to treat more conditions in primary care and more Hospital in the Nursing Home so that you do not have to traumatise everybody by admitting patients to hospital when they would prefer to be palliated and treated well in a nursing home. That is another example of the challenge for the Commonwealth and state government, where traditionally there has been a game.⁴⁰

2.42 Mr John Dutton also argued that the Queensland Government was in breach of the National Health Reform Agreement and the associated funding, as demonstrated by allowing the downgrading of the Wynnum Hospital. Mr Dutton highlighted that such a downgrade resulted in a decrease of patient access to services

37 Dr Chris Davis, *Committee Hansard*, 28 November 2014, p. 14.

38 Dr Chris Davis, *Committee Hansard*, 28 November 2014, p. 16.

39 Dr Chris Davis, *Committee Hansard*, 28 November 2014, p. 16.

40 Dr Chris Davis, *Committee Hansard*, 28 November 2014, p. 16.

and failure to improve local accountability and responsiveness to the needs of the local community.⁴¹

Political donations

2.43 Numerous submitters and witnesses commented on the issue of political donations by industry, and the impression that such donations have led to government decisions that are not impartial or in the best interest of the Queensland community. A number of submitters expressed concerns about the size and timing of donations.⁴²

2.44 Dr Chris Davis shared his views about political donations, and the perceptions that can be created by larger donations:

I thought the previous threshold was entirely reasonable. I think you are not going to buy – hopefully – too much influence. It is this whole notion, as you know, of common law – what the reasonable man considers. I think most reasonable voters would accept that \$1 000 is something that is just a reasonable donation in goodwill to give you some support for your campaign, but \$12 000 and heading upwards certainly can be seen to buy a significant amount of influence.⁴³

2.45 Further, he related that during his time as a Member of Parliament in Queensland and as a doctor, constituents raised similar concerns:

I was in touch with my constituency. I received a lot of communication from them in which they expressed grave concerns about changes to both the CMC and indeed political donations.⁴⁴

2.46 The Electrical Trades Union (ETU) of Australia raised specific concerns about donations made by ERM Power to the Newman Government, and alleged that as a result, ERM Power has been afforded unfettered access to the government and its energy policy discussions and political activities.⁴⁵ The ETU expressed the view that:

[A] close and constant relationship between a government and one of its political donors that appears to be deliberately kept from the public falls well short of the expected public standards of openness, accountability and transparency.⁴⁶

41 John Dutton, *Submission 25*, pp 1–2.

42 Dr Chris Davis, *Committee Hansard*, 28 November 2014, pp 14–22; Electrical Trades Union of Australia, *Submission 37*; Electrical Trades Union, *Committee Hansard*, pp 23–35; Lock the Gate Alliance, *Submission 133*; Lock the Gate Alliance, *Committee Hansard*, 21 November 2014, pp 17–32; Ms Jenny Chester, *Submission 6*; Ms Sandra Williams, *Submission 11*.

43 Dr Chris Davis, *Committee Hansard*, 28 November 2014, p. 18.

44 Dr Chris Davis, *Committee Hansard*, 28 November 2014, p. 18.

45 Electrical Trades Union of Australia, *Submission 37*, pp 2–3.

46 Electrical Trades Union, *Committee Hansard*, p. 25.

2.47 Lock the Gate Alliance specifically raised the issue of large political donations from the mining industry.⁴⁷ Lock the Gate Alliance offered the following example, related to the dredging of the Great Barrier Reef:

Former mining tycoon, Paul Darrouzet, was allegedly granted an approval to amend his environmental authority for maintenance dredging at Abell Point marina in August 2013, just a week after purportedly donating \$150 000 to the LNP.⁴⁸

2.48 Ms Jenny Chester alleged that large donations from the mining industry have led to policy decisions in their favour:

Other matters which appear relevant to this Inquiry include corruption and perversion of good governance in Queensland and the undue influence of the mining industry on our democratic processes. For example, large donations from the mining industry apparently leading to favourable policy decisions. The revolving door between the Queensland Government and the mining industry is of great concern, as is the extraordinary access mining lobbyists have to politicians.⁴⁹

2.49 Ms Sandra Williams offered the following example which she submitted demonstrates the influence of the coal mining sector on the former Queensland government:

New Hope Coal and associated entities purportedly donated \$700,000 to the state and federal Liberal/National Parties; the Qld LNP Govt back-flipped on a pre-election promise to reject an application by New Hope to expand the Acland coal mine.⁵⁰

2.50 Similarly, Dr Nicki Laws, Secretary of the Oakey Coal Action Alliance gave evidence about activities in the Darling Downs region that cast doubt on relationships between government and mining companies:

It greatly concerns communities. There is a very close association between these companies and politicians. There is no doubt about that. It is social, it is financial, it is an open door between government departments and mining companies. We are staying that at the Coordinator-General level all the way down to the regional planning committees that met to determine Mr Seeney's new regional plans, which were to settle once and for all the angst between farmers and mining, it has not happened.⁵¹

2.51 The committee notes the concerns expressed by witnesses and submitters about the close relationships that appear to exist between the state government and private enterprise. While the committee is not in a position to conclude that any inappropriate relationship existed between the former government and political

47 Lock the Gate Alliance, *Submission 133* pp 36–37.

48 Lock the Gate Alliance, *Submission 133*, p. 37.

49 Ms Jenny Chester, *Submission 6*, p. 1.

50 Ms Sandra Williams, *Submission 11*, p. 2.

51 Dr Nicki Laws, *Committee Hansard*, 19 February 2015, p. 5.

donors, it is clear that a perception exists that political donations were made with the intention of influencing government decision making.

Consistency with international obligations

2.52 A key issue raised with the committee is the alleged inconsistencies between the previous Queensland government's policies and practices and Australia's international obligations.

2.53 Specific concerns were raised regarding compliance with the International Covenant on Economic, Social and Cultural Rights (ICESR), the UN Declaration on the Rights of Indigenous Peoples, the International Covenant on Civil and Political Rights (ICCPR) and various International Labour Organisation (ILO) instruments.

International Covenant on Economic, Social and Cultural Rights

2.54 The ICESR aims to ensure the protection of economic, social and cultural rights, including: under Article 11, the right to an adequate standard of living; and under Article 12, the right to health. The scope of the right to an adequate standard of living, includes the right to water.

2.55 Some submitters to the inquiry argued that the laws and policies of the Queensland government relevant to coal, CSG and mining projects, have impinged upon the right to an adequate standard of living and the right to health. For example, Ms Sandra Williams alleged that the former Queensland government has permitted dangerous levels of coal dust pollution close to townships such as Jondaryan, and in Brisbane suburbs located on the coal train corridor:

The Qld Government is allowing mining companies to impinge on the right to health and an adequate standard of living, including the right to water. The Qld Government has allowed dangerous levels of coal dust pollution near townships such as Jondaryan, and in suburbs of Brisbane located along the coal train corridor. At Tara, the Qld Government has forced landholders to live in a gas field, with subsequent health effects, without any prior Health Impact Assessments, appropriate buffer zones, baseline health testing or ongoing monitoring. Landholders and communities are losing reliable groundwater because CSG companies are dewatering the Walloon coal measures.⁵²

2.56 The committee notes that more specific concerns relating to the protection of economic, social and cultural rights have been raised with respect to CSG projects discussed in Chapter 3 of this report.

UN Declaration on the Rights of Indigenous Peoples

2.57 The UN Declaration on the Rights of Indigenous Peoples aims to ensure the survival, dignity and well-being of Indigenous Peoples, including under Articles 11 and 12, which declare that Indigenous Peoples have the right to maintain, protect and develop cultural property.

52 Ms Sandra Williams, *Submission 11*, p. 2.

2.58 The Quandamooka Yoolooburrabee Aboriginal Corporation (QYAC) made a written submission and appeared before the committee to provide evidence about challenges faced on North Stradbroke Island. Dr Robert Anderson, a Ngugi elder and representative of QYAC told the committee:

In spite of these changes by law thrust upon us, we have always been able to maintain our cultural identity and our cultural integrity through the systems that have been passed on to us. My concerns and my family's concerns at the moment are the uncertainty that we are faced through our native title rights.

...

We are concerned about the intrusions, the lack of support or adherence to the ILUA for one instance by the Queensland government through whatever process of stalling or hesitating to allow us to conduct our affairs in our traditional manner. They have held back finances that would have allowed us to do that and are restricting the activities of QYAC as our representative body to carry out its responsibilities.

It is a great concern to our elders – elders like myself- that this interruption has taken place. At my age, 85, I am really very uncomfortable that I will not see come to fruition guarantees for their futures, and I am a father, grandfather and great-grandfather. So those are my personal concerns, and I would echo the similar concerns of other elders in the Quandamooka community.⁵³

2.59 In discussing the issues on North Stradbroke Island, and specifically a state government decision to extend a sand mining licence against the wishes of the traditional owners, Mr Cameron Costello, CEO of QYAC provided the following information:

They did not consult with us in that period up to the legislation. They did however, consult extensively with the mining company and took into account is commercial imperatives. The Premier and his office personally intervened in several key decisions. It is this unequal, possibly corrupt, treatment and the failure to comply with the EPBC Act at the federal level and international law that is at the heart of our submission to the select committee.

...

In our submission, we submit that Campbell Newman's LNP government in enacting the amendment act failed to properly consult with the Quandamooka people prior to passing the amendment act in contravention of the International Declaration on the Rights of Indigenous Peoples, the Convention on Biological Diversity and the [Akwe Kon] principles.⁵⁴

53 Dr Robert Anderson, Quandamooka Yoolooburrabee Aboriginal Corporation, *Committee Hansard*, 4 February 2015, p. 7.

54 Mr Cameron Costello, Quandamooka Yoolooburrabee Aboriginal Corporation, *Committee Hansard*, 4 February 2015, p. 8.

2.60 Ms Jenny Chester also raised concerns about the impact of mining approvals on indigenous culture:

With regard to human rights, the Queensland Government allows mining without facilitating free, prior and informed consent from Indigenous Traditional Owners, and without ensuring the right of Indigenous people to maintain and protect cultural property, and the right to religious and cultural sites. Indigenous people have raised serious concerns about losing access to their land and damage to important sites and locations as near as Tara and on Curtis Island.⁵⁵

2.61 Other witnesses and submitters also stressed serious concerns about the Queensland government's mining policies, in the context of Australia's obligations under the UN Declaration on the Right of Indigenous Peoples. For example Lock that Gate Alliance alleged that:

[T]he policies of the Queensland Government allows mining without requiring free, prior and informed consent by Indigenous Traditional Owners, and without ensuring the right of Indigenous people to maintain and protect cultural property, and the right to religious and cultural sites in violation of the UN Declaration on the Rights of Indigenous Peoples.

2.62 The committee notes the evidence it received suggesting the former Queensland government ignored the rights of indigenous communities. The committee encourages the current Queensland government to consider what steps can be taken to ensure the rights of indigenous communities are respected, including their right to maintain their cultures.

International Covenant on Civil and Political Rights

2.63 The ICCPR aims to protect civil and political rights, including:

- Article 9 - the right to liberty and security of person and freedom from arbitrary arrest or detention;
- Article 10 - the right of detainees to be treated with humanity and respect for the inherent dignity of human person;
- Article 14 - the right to be heard by a competent, independent and impartial tribunal; and
- Article 22 - the right to freedom of association.

2.64 Mr Peter Wellington, MP, submitted that Queensland's *Vicious Lawless Association Disestablishment Act 2013* (VLADA) and *Criminal Law (Criminal Organisations Disruptions) Amendment Act 2013* (CODA) are inconsistent with the ICCPR.

2.65 Specifically, Mr Wellington raised concerns that VLADA is inconsistent with rights contained in Article 14 of the ICCPR. He submitted that VLADA places the onus on an accused bkie gang member to show they should not be detained; and

55 Ms Jenny Chester, *Submission 6*, p. 1.

attempts to force bikie gang members charged with an offence to provide incriminating information to law enforcers.

Article 14 of the International Covenant on Civil and Political Rights says that everyone has the right to be considered equal before the courts. There are mandatory sentencing issues, whereby people could have an additional component of 15 to 25 years, mandatory term of imprisonment. There is the removal of the opportunity for reasonable bail conditions to be imposed by our magistrates to the judiciary. The independence of the judiciary has clearly been challenged by removing the discretion that has traditionally been part of the separation of powers in Queensland. No longer in Queensland are you able to claim that you are innocent until proven guilty by the Crown. In actual fact recently the government under these laws said people would be charged and may have to prove their innocence. Further, the right to silence has been removed.⁵⁶

2.66 Mr Wellington further raised the inconsistency of the new laws with the ICCPR right to freedom of association:

Article 22 of the International Covenant on Civil and Political Rights says everyone has the right to freedom of association. But these laws make people guilty of criminal offences as a result of the company they keep, even where the person has not committed any other criminal offence.⁵⁷

2.67 With respect to CODA, Mr Wellington argued it is inconsistent with the rights contained in Articles 9 and 10 of the ICCPR. He submitted that CODA allows people who are, or were, a member of a criminal organisation charged with a crime to be detained without trial and subjected to harsh conditions.

Article 9 of the ICCPR provides that everyone has the right to liberty and security of person and that no one should be subjected to arbitrary arrest or detention. 'Everyone' includes people who have been convicted of a crime.³³ According to article 9 anyone who is arrested or detained on a criminal charges should be promptly brought before a judge and people who are awaiting trial should not generally be detained in custody. They should be released subject to guarantees such as to appear for trial.⁵⁸

2.68 Under Article 6, the ICESR also protects the right to work, which includes the right to the opportunity to gain a living by work that one freely chooses or accepts.

2.69 Mr Peter Wellington, MP, submitted that Queensland's *Tattoo Parlour Act 2013* and *Criminal Law (Criminal Organisations Disruptions) and other Legislation Amendment Act 2013* (CODOLA) engage Article 6 of the ICESR. Mr Wellington alleged that:

The CODOLA Act aims to prevent people who have been identified by the Police Commissioner as participants in a criminal organisation from doing

56 Mr Peter Wellington, *Committee Hansard*, 28 November 2014, p. 2.

57 Mr Peter Wellington, *Committee Hansard*, 28 November 2014, p. 2.

58 Mr Peter Wellington, *Submission 38*, p. 10.

their usual work. Amendments have been made [sic] to legislation that regulates electricians, the building, liquor and racing industry, second hand dealers and pawnbrokers as well as security providers and tow truck operators, so that people who may have been associated with a criminal organisation are prevented from carrying on businesses in these industries.⁵⁹

2.70 Australia is also a signatory to a number of International Labour Organisation (ILO) instruments, including the Freedom of Association and Protection of the Right to Organise Convention 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), and Termination of Employment Convention 1982 (No. 158).

2.71 The ACTU expressed concerns that *Queensland's Industrial Relations (Fair Work Harmonisation) and Other Legislation Amendment Act 2012* is inconsistent with ILO Convention No. 87 that protects the right of workers to join a union; and within ILO Convention No. 98 that protects the right of individual workers to join together and take action to improve their employment conditions.

2.72 ACTU explained to the committee that:

The Newman Government's legislation has introduced several important changes to industrial action processes, making it more difficult for workers to take collective action. The initiatives introduced by the Newman government, including through the introduction of Protected Action Ballot Orders and employer-sponsored agreements, may contravene the freedom of association and collective bargaining provisions.⁶⁰

2.73 ACTU also highlighted that Queensland's *Public Service and Other Legislation Amendment Act 2012* may also engage ILO Convention No. 158 that sets out basic principles in regards to the termination of employment and requires employers to engage in meaningful and timely consultation around redundancies. ACTU argued that 'the Newman Government has served to significantly strip back and water down employee entitlements and conditions in relation to redundancies.'⁶¹

Committee view

2.74 The committee notes that during this inquiry, a wide and varied range of issues were raised which fall broadly within the terms of reference. The committee acknowledges the concerns of all submitters and witnesses, and notes a number of common themes emerged, including general concerns about transparency of state government decision making, accountability and consultation with the community.

2.75 The committee notes the issue of political donations is complex because of community concerns and the competing interests of stakeholders. While donations may be reflected in donor logs and are thus entirely lawful, the committee does accept that large donations, followed by decisions that appear to benefit the donor or donor

59 Mr Peter Wellington, *Submission 38*, p. 11.

60 Australian Council of Trade Unions, *Submission 3*, p. 2.

61 Australian Council of Trade Unions, *Submission 3*, p. 3.

industry, can create a perception that a conflict of interest exists and that influence can be bought.

2.76 Submitters have also raised concerns about the operation of the CCC that require further consideration because to be effective, anti-corruption bodies clearly need substantial independence from government. It appears changes implemented by the former Queensland government have significantly eroded the independence of the CCC. The committee notes the ICAC model of independent oversight is beneficial and strongly suggests it would be appropriate for the current Queensland government to consider adopting this model.

2.77 The committee is of the view that the challenges faced by all levels of government and industry are considerable and commitment will be required to improve the relationship with the community. The committee trusts that the new Queensland government will improve consultation with the Queensland people in relation to the contentious issues raised during this inquiry.

2.78 The committee is most concerned by evidence that some Queensland legislation and decision making is not consistent with Australia's international obligations. Queenslanders have a right to expect that the state will legislate and make decisions consistent with Australia's obligations under international human rights law.

2.79 The committee is of the view that the Queensland government should make decisions that are consistent with those of the Federal Court of Australia. The committee notes in particular, decisions in relation to the rights of the Quandamooka Peoples on North Stradbroke Island, and a Federal Court determination that was ignored by the Newman Government when granting mining leases on the island to Sibelco.

Recommendation 1

2.80 The committee recommends the Queensland government make it a priority to review legislation that may be inconsistent with Australia's obligations under a range of international instruments, with a view to ensuring Queensland legislation is amended to ensure consistency with Australia's international obligations.

Recommendation 2

2.81 The committee recommends the Queensland government recognise all decisions that have been delivered by the Federal Court of Australia in the recognition of Indigenous land rights in Queensland.

Recommendation 3

2.82 The committee recommends the Queensland government consider replacing the Crime and Corruption Commission with an organisation modelled on the Independent Commission Against Corruption in New South Wales.

Recommendation 4

2.83 The committee recommends once the Crime and Corruption Commission is replaced that the Queensland Government re-open, review and reconsider all issues, matters and cases presented to the Crime and Corruption Commission inclusive of all decisions.

Recommendation 5

2.84 The committee recommends the Queensland government make a commitment to restoring the relationship between government and the Queensland people, through adequate consultation, transparent decision making and accountability for outcomes.

Recommendation 6

2.85 The committee recommends the Queensland Government review decisions made by the Newman Government as well as decisions pending, in relation to the approval of mining leases and other projects called in by the Deputy Premier and Minister for Infrastructure and Planning, where environmental and planning laws and decisions reached by Local Government, have been ignored and disregarded and/or where potential conflicts of interest may have occurred and/or where political donations to the Liberal National Party were involved in some way.

Recommendation 7

2.86 The committee recommends the Queensland Government review all alleged conflicts of interest raised during the Inquiry.

Recommendation 8

2.87 The committee recommends the Queensland Government review any controversial asset sale during the Newman Government's term.

Recommendation 9

2.88 The committee recommends the Queensland Government conduct a thorough review of the Queensland vocational education and training programs and reinstate courses cut under the Newman Government. In particular, the review should consider course cost increases, infrastructure, facilities, staffing, course accessibility and other matters.

Recommendation 10

2.89 The committee recommends that the Queensland government refers to the Crime and Corruption Commission and/or to the Parliamentary Crime and Corruption Commission the issue of the extension of the sand mining lease on Stradbroke Island and any issues relating to political donations and election spending by Sibelco.