Hon. Martin James Tenni
[redacted]

Submission

Legal and Community Safety Committee

Crime and Misconduct

and

Other Legislation Amendment Bill 2014

I have endeavoured to acquaint myself with the proposed Bill as set out in its objectives. While I understand the interconnectedness of these objectives, I propose to concentrate of the following points and make submissions based on my previous experience as a Minister of the Crown, what I have observed since leaving Parliament, and what disturbs me greatly in 2014 concerning the state of our governance in Queensland.

Before doing so, I must restate here and now my agreement with Lord Acton's words: *Power corrupts, absolute power corrupts absolutely.*

In an environment such as Queensland's where we operate under a unicameral system of government, the executive, which to all intents and purposes also controls the Parliament because there is no check and balance to the exercise of power in the absence of an Upper House, the danger of abuse of power happening is ever-present.

After the Fitzgerald Inquiry, when it might be suggested a unique window of opportunity presented itself to recommend the reintroduction of the Upper House, another course of action creating so-called independent statutory watchdog authorities was embarked on, and saw the creation of the Criminal Justice Commission (CJC).

What immediately arose was the perennial question of who shall guard the guards?

The Parliament chose to hold the CJC to account via an all-party parliamentary oversight committee, namely the PCJC, now the PCMC, and in 1997 it chose to create a Parliamentary Commissioner to assist the PCJC/PCMC in their deliberations through his/her expertise as a suitably qualified barrister. However, it required a bipartisan vote of the committee for any matter to reach his/her expertise (assuming that his/her independence and knowledge would ensure the impartial eradication of corruption in government).

Has this worked? I suggest that it hasn't.

I have the old-fashioned view, that while politicians are obliged to be ethical and to obey the law, they are elected to Parliament for their political views and not for any criminal justice competence which only one or two may happen to have, if even that. Parliament is a political domain, not a law-enforcement domain.

There is a strong element in any democracy that the purpose of politicians is to enact laws (i.e. their election platform) by use of their majority numbers delivered to them by the people in free and open elections, not to administer and enforce them.

This crosses the line of the separation of powers, and whenever that occurs, we move into dangerous territory.

In other words, by making politicians guards over criminal justice matters which may involve politicians, we are inviting on ourselves a recipe for major conflict when an issue comes along which may involve high political stakes. Such a conflict can bring the entire system of government into disrepute, and plainly that is not a good thing.

We should always expect the unexpected.

The points are:

4. improve the complaints management system of the commission to refocus it on more serious cases of corruption and reduce the number of complaints the commission is to deal with and investigate

The idea of a department investigating its own allegations of misconduct/corruption being utterly devoid of self-interest is a brave one. The recent Health Department-Fijian Prince debacle is a case in point. It doesn't work. The CJC/CMC was brought into existence because of their proclaimed independence and complete indifference to any network of mates within departments where the propensity to cover-up may too easily arise.

In other words, you are what you are or your continuing existence must be open to question. Do we have an independent watchdog, or don't we?

Either way resources have to be expended to ward against and to investigate allegation of corruption because it is essential that we have clean government. It is therefore far better to expend them where a positive outcome is more likely than embracing a mode of operation where mates may be investigating mates.

7. strengthen the transparency and accountability of the commission by expanding the role of the Parliamentary Crime and Corruption Commissioner (parliamentary commissioner) in his oversight of the commission, and requiring meetings between the commission and the Parliamentary Crime and Corruption Committee (the parliamentary committee) to be held in public as much as possible'

Insofar as the Parliamentary Commissioner is properly appointed to ensure his/her independence, integrity and competence, then the change to permit a direct approach to him/her by a complainant and to then table his report directly to Parliament is a positive step, and one which I support. It may be the one sound step forward made in many years in these reforms. As I understand, this replicates what has been in place in Western Australia for some time with its integrity authority, the CCC.

There is the overriding question of ensuring that the Parliamentary Commissioner is a legal practitioner of the highest calibre, professionally and ethically. To ensure this vital outcome, it may be necessary to hold interviews in public (aided by delegates from the Queensland Bar Association, Law Society, Local Government Association and a representative of repute and standing from the community) and/or, once nominated, to undergo public scrutiny as occurs in the United States Congress before a key public official takes up his/her public post.

It is far better to discover embarrassing matters hidden in the closet **before** taking office rather than afterwards.

In this system which we have embraced in lieu of re-establishing an Upper House etc, the Parliamentary Commissioner, on face value at least, may be the only 'guard' who is not political. Therefore, he/she may be the one official who can pull a halt to party-political interests (especially of the government of the day with the numbers) and other corruption imbedded in the watchdog authorities which might otherwise continue unabated.

For example, the recent Carmody Commission of Inquiry investigated the long-running notorious scandal of Queensland's public administration, the Heiner affair. Notwithstanding his investigation was limited to just whether the 5 March 1990 Queensland Cabinet had committed a serious crime when destroying public records known to be required as evidence in foreshadowed judicial proceedings, Commissioner Carmody did find the prima facie crime which the CJC/CMC/PCJC/PCMC **could not find** even when told over the years by eminent retired judges, barristers, lawyers and others that a serious breach of the criminal law existed and needed to be addressed because of its serious impact on the rule of law and on the standing of government itself.

How can such a situation have ever occurred in a so-called sophisticated society like ours where – since the Fitzgerald inquiry as some would have us believe – corruption was a thing of the past?

Consequently, it is quite clear to me, and many others, that the Heiner affair remains unfinished business for Queensland, and for that matter our nation. Indeed, the Callinan/Aroney Report makes specific reference to it but did not do anything about it but instead deferred to the Carmody Inquiry's investigation which everyone knows never looked at how the CJC/CMC/PCJC/PCMC and others handled the Heiner allegations when confronted with them, and, as the public record shows, this included Commissioner Carmody himself when he was the Crime Commissioner in late 2001.

In other words, these current changes proposed in the Bill, although welcome in some respect, simply cannot be the final word when it comes to our machinery of government structures to ensure open and accountable government in Queensland.

That day will not come until the Heiner affair has been properly investigated and justice is done.

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Martin Ferrie

30 March 2014